

**HIGH COURT OF MADHYA PRADESH : JABALPUR****WRIT PETITION No. 4617/2015**

PAWAN KUMAR AHLUWALIA .....Petitioner

Versus

UNION OF INDIA AND ANOTHER. ....Respondents

**Coram:****Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice  
Hon'ble Shri Justice Sanjay Yadav****Whether approved for reporting? : Yes.**

Shri Naman Nagrath, learned Senior counsel with Shri Siddharth Singh, learned counsel for the petitioner.

Shri Sandeep K. Shukla, learned counsel on behalf of Shri J.K.Jain, learned Assistant Solicitor General for the respondent No.1/Union of India.

Shri A.A. Barnad, learned Govt. Advocate for the respondent No.2/State.

**Reserved On : 21.09.2015****Date of Decision : 23.09.2015****J U D G M E N T****{23/09/2015}**

**Per: A.M. Khanwilkar, Chief Justice:**

This writ petition, filed under Article 226 of the Constitution of India, takes exception to the order dated 09.03.2011 (Annexure P-10) and dated 10.05.2007 (Annexure P-5). Further relief is claimed against the respondents to grant an opportunity to the petitioner to remove the curable defects and grant the renewal of mining lease.

2. Briefly stated, on 19.11.1989, an area of 7.59 hectares in village Lillory, District Satna (M.P.) was leased out by the respondent-State for limestone mining to one Arun Singh for a period of 10 years from 19.11.1989 to 18.11.1998. On 21.09.1993, the said lease was transferred in favour of this petitioner after taking permission from the Central Government, Ministry of Mines w.e.f. 21.09.1993, as per Rule 37 of the Mineral Concession Rules, 1960. Before expiry of the lease period (i.e. 18.11.1998), the petitioner applied for renewal of the said mining lease on 13.11.1997, within the stipulated time under Rule 24A(1) of the Mineral Concession Rules, 1960. According to the petitioner, he complied with all the necessary formalities. However, the petitioner was surprised to receive a communication (Annexure P-5) dated 10.05.2007, issued under

the signature of Collector, District Satna. The said communication reads thus:-

“dk; kly; dyDVj ¼[kfut 'kk[kk½ ftyk I ruk e-iz

क्रं. / खनिज/2007/1047

सतना दिनांक 10.05.2007

प्रति,

श्री पवन कुमार अहलूवालिया,

प्लॉट न. बाधवगढ़ कालोनी,

सतना, (म.प्र.)

विषय: खनिपट्टा मौजा लिलौरी, रकबा 18.75 एकड खनिल चूनापत्थर अवधि  
19.11.88 से 18.11.98।

संदर्भ: म.प्र. शासन खनिज, साधन विभाग भोपाल का पत्र क्रं  
एफ3-21/107/12/1 दिनांक 09.04.2007।

विषयांतर्गत खनिपट्टा में आपके द्वारा प्रस्तुत नवकरण आवेदन दि.  
19.11.1997 संदर्भित आदेश द्वारा निरस्त कर दिया गया है। इस कारण अब  
खनिपट्टा क्षेत्र में खनन सक्रियाएं करने की पात्रता समाप्त हो चुकी है। अतः  
प्रकरण में निम्नानुसार कार्यवाही सुनिश्चित किया जावे—

1. यदि खनिपट्टा पर खनन कार्य किया जा रहा है तो तत्काल खदान पर कार्य करना बंद कर दे।
2. खनिपट्टा क्षेत्र का कब्जा संबंधित खनि. निरीक्षक/ खनि सर्वेयर को एक सप्ताह के अंदर सौंप देवें।
3. खनिपट्टा के लंबित कर निर्धारण अविलंब कराने हेतु अभिलेख संबंधित खनि. निरीक्षक के समक्ष प्रस्तुत करें तथा तदनुसार यदि बकाया देयी हो तो जमा करें।

कलेक्टर

जिला- सतना(म.प्र.)

सतना दिनांक”

**3.** The petitioner thereafter approached the Tribunal, Ministry of Mines by way of Revision Petition No.16(43)/2007-RC-II. That revision petition was dismissed by the Tribunal vide order dated 09.03.2011 (Annexure P-10). Against this decision, the petitioner first carried the matter before the Delhi High Court by way of W.P. (Civil) No.2900/2011 which, however, was withdrawn on 07.01.2015 - in view of the Full Bench decision

of that High Court. Pursuant to the liberty given by the Delhi High Court the petitioner has approached this Court to challenge the impugned orders, by filing the present writ petition on 22.03.2015. In the interregnum, however, the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 was introduced amending some of the relevant provisions of the Mines and Minerals (Development and Regulation) Act, 1957.

**4.** As aforesaid, the petitioner has called in question the letter issued by the Collector, Satna dated 10.05.2007 (Annexure P-5) and the order of the Tribunal dated 09.03.2011 (Annexure P-10).

**5.** Notably, the communication (Annexure P-5) dated 10.05.2007, issued under the signature of Collector, District Satna, refers to the order passed by the Under Secretary, Mines and Minerals Department, Government of M.P. dated 09.04.2007 - rejecting the petitioner's application for renewal of mining lease. However, the order dated 09.04.2007 passed by the Appropriate Authority has not been challenged by the petitioner, as such.

**6.** Assuming that the argument of the petitioner that the said order dated 09.04.2007 has merged in the order passed by the

Tribunal dated 09.03.2011 (Annexure P-10) is to be accepted, it may be useful to advert to the said order dated 09.04.2007 (Annexure P-4), which reads thus:-

“मध्यप्रदेश शासन  
खनिज साधन विभाग  
मंत्रालय  
//आदेश//

भोपाल, दिनांक 09/04/07

कम्रांक-एफ-3-21/21/07/12/1 :: यह कि जिला सतना के विभिन्न ग्रामों में संलग्न सूची में उल्लेखित 19 आवेदकों द्वारा उनके नाम के समक्ष दर्शाये गये ग्राम/क्षेत्र एवं दिनांक को पूर्वक्षण अनुज्ञप्ति/खनिपट्टा स्वीकृत करने हेतु आवेदन पत्र प्रस्तुत किये गये है।

2. यह कि आवेदकों को आवेदन पत्रों की कमी की प्रतिपूर्ति करने के लिये सूचित करने के उपरांत भी आवेदन पत्र की प्रतिपूर्ति नहीं की गई और न ही कोई जवाब दिया गया। इससे स्पष्ट हुआ कि आवेदकों की आवेदन पत्रों के प्रति कोई रुचि नहीं है।

3. अतः राज्य शासन द्वारा पूर्ण विचारोपरांत पैरा-2 में उल्लेखित कारण से संलग्न सूची में उल्लेखित पूर्वक्षण अनुज्ञप्ति/खनिपट्टा स्वीकृत करने संबंधी 19 आवेदन पत्र इस शर्त के साथ निरस्त किये जाते है कि यदि संलग्न सूची में अंकित 19 आवेदनों में से कोई आवेदन पत्र पूर्व में किसी अन्य आदेश से निराकृत/निरस्त हो गये हो तो इन आवेदन पत्रों के संबंध में पूर्ववर्ती आदेश ही प्रभावशील होगा।

मध्यप्रदेश के राज्यपाल के नाम से  
तथा आदेशानुसार

(एस के शिवानी)

अवर सचिव,

म.प्र.शासन, खनिज साधन विभाग

भोपाल, दिनांक 9-4-07”

(emphasis supplied)

7. We may also usefully refer to the plea taken by the petitioner in the revision filed before the Tribunal against the aforesaid order. In the factual narration of the case, the petitioner stated thus:-

“6. That, the State Govt. has again erred in passing the order. Reference is invited in para 2 of the said order which forms the basis of the order “**That the applicant has not shown interest**”. It is noteworthy that the **applicant has filed the renewal application in time.**”

7. That, the State Govt. of M.P. has passed the order in contravention of **Rule 26 (1) of MCR 1960** which clearly states to pass an order not before giving an opportunity of being heard.

**No such opportunity of being heard was given to the applicant which is against the basis principle of natural justice and principles of MMRD Act, 1957 and MCR 1960.**

8. That, the State Govt. of M.P. again **violated the provisions of Rule 26 (2) of MCR 1960** whereby it **can’t refuse the renewal on the ground that Form 1 is incomplete.”**

(emphasis supplied)

**8.** In the grounds for revision petition, the petitioner stated thus:-

“B. For that the Ld. Authority below has grossly erred in not giving any opportunity of being heard to the petitioner before rejection of his application for renewal of the ML. That it is submitted in this regard that if granted an opportunity to explain the reason for non-submitted in this regard that if granted an opportunity to explain the reason for non-submission of the documents in time the petitioner would have explained the same to the authority below.

C. For that the Ld. Authority below has grossly erred in not complying with the provisions of the Rule 26 of the Mineral Concessions Rules, 1960 in not giving a reasonable opportunity of being heard before rejecting his application for renewal of the ML. it is submitted in this regard that Rule 26 categorically prescribes that the State Govt. can exercise its power towards rejection of the renewal application, only after giving an opportunity of being heard to the applicant.

D. For the Ld. Authority below grossly erred in not appreciating that it was only a renewal application and as

such most of the documents sought from the applicant has already been with the authority as filed at the time of grant of the ML. That this gains significance from the provisions of sub rule (2) of Rule 26 which provides that a renewal application should not be rejected merely for want of non-submission of certain documents.

E. For that the Ld. Authority below grossly erred in not appreciating that non-submission of documents has never been prescribed as a reason towards rejection of a renewal application of the ML and that too without giving any reasonable opportunity of being heard. That if finds pertinence to mention here that the provisions of Sub Rule (3) of Rule 26 are directory in nature in that no consequences has been prescribed if the required documents are not submitted within the given period of 30 days. As such the State Govt. also responded to the renewal application of the petitioner, as filed in the year 1997, only in the year 2001 and, therefore, the Ld. Authority should have appreciated that the documents required from the petitioner being those which were to be obtained from the other Govt. agencies, it took some time for the petitioner to obtain the same, and thus, non-submission of the required documents within time should have been considered with leniency especially in view of the fact that the case of the petitioner has been that of renewal of the ML and not that of fresh ML.”

(emphasis supplied)

9. We may also refer to the relevant extract of the order of the Tribunal referring to the only contention raised on behalf of the petitioner and answered by the Tribunal, which reads thus:-

“4. The State Government in the comments dated 20.03.10 and 19.11.10 has reiterated its stand and stated that all the 19 applications including that of renewal of ML of Limestone of the Revisionist were rejected due to the reason that despite the notice the applicants did not complete/rectify their applications hence rejected. The application of the Revisionist has been rejected with the reasons mentioned in the impugned order. Thus the provisions of Rule 12 of MCR have been complied with. As per Andhra Cement Ltd. Government of AP 2000 (1)

ALD 388 the Opportunity of being heard does not necessarily mean that an opportunity of oral hearing is to be provided. In the Revision application the revisionist has mentioned regarding the MOU executed with the TRIFAC on 16.02.08 but the impugned order was issued before that. In view of the above, the impugned order has been passed as per rules and the instant RA is liable to be rejected.

5. The case was heard for final argument on 23.11.10. Shri Manas Mahapatra Sr. Advocate along with other colleagues appeared on behalf of Revisionist Shri V.K.Austin, Jt. Director and Shri J.P. Shrivastava Asst.Geologist appeared on behalf of State Govt. Both reiterated their stand. The order was reserved.

6. The Revisionist only contention is that he has not been heard and notice is required under Rule 26 (1) of MCR and not under Rule 12 of MCR. I observe that Revisionist has accepted the basis issue of non-completion of his application and also not rectified the deficiencies and also not responded to the notice of the State Govt. He is contending more on the technicalities of the notice and that he has not been orally heard. The fact that he has accepted the basic issue, the contention of non sending notice of hearing/non-hearing etc. has no basis and I thus agree with the contention of the State Govt. that the opportunity of hearing does not necessarily mean that oral hearing is necessarily required to be given in the circumstances stated above. I pass the following order.

#### ORDER

I do not find any infirmity in the impugned order dated 09.04.07 of the State Govt. Madhya Pradesh and reject the Revision Application.”

(emphasis supplied)

**10.** The correctness of the aforesaid order is put in issue in the present writ petition. The petition has been resisted by the respondents on the basis of the findings recorded by the State Authority and considered by the Tribunal. Counsel for the



respondents additionally submitted that no relief can be granted to the present petitioner in the light of the amended provisions initially introduced in the form of Ordinance on 12.01.2015; and subsequently because the Act made by the Parliament. In that, the request of the petitioner for renewal of the mining lease was duly considered and rejected by the State Government and as a result of which, there was no subsisting lease in favour of the petitioner when the amended provisions came into force. Further, assuming that the application for renewal of lease was to be considered if the petitioner were to succeed in this writ petition, being a case of renewal of lease, it will be a case of fresh grant in view of the observation of the Supreme Court in **M.C. Mehta vs. Union of India, reported<sup>1</sup>**. In para 76, the Court observed thus:-

“In Rural Litigation and Entitlement Kendra v. State of U.P. (1989 Supp (1) SCC 594), agreeing with views expressed in Ambica Quarry Workers, it was held that the FC Act applies to renewals as well and even if there was a provision for renewal in the lease agreement on exercise of lessee’s option, the requirement of the Act had to be satisfied before such renewal could be granted. In State of M.P. and others v. Krishnadas Tikaram (1995 Supp (1) SCC 587), these two decisions were relied upon and it was held that even the renewal of lease cannot be granted without the prior concurrence of the Central Government. It is settled law that the grant of renewal is a fresh grant and must be consistent with law.”

(emphasis supplied)

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<sup>1</sup> AIR 2004 SC 4016

Relying on these observations it is contended that, if it is a case of fresh grant, it cannot be entertained after coming into force of the amended Act as the Authorities are duty bound to conduct public auction in respect of the subject Mine. Hence, the request for renewal cannot be considered, in law. Even for this reason, the petition deserves to be dismissed.

**11.** Having considered the rival submissions, we may first analyse the reasons stated by the State Authority in rejecting the application for renewal filed by the petitioner dated 13.11.1997, vide order dated 09.04.2007. The principal reason for which the petitioner's application has been rejected is of having filed incomplete application and also for having failed to cure the defects inspite of opportunity given in that behalf and for not even responding to the said communication. On that finding the Authority assumed that the petitioner was not interested in pursuing the application as was the case of other applications, disposed of by the same order.

**12.** In the revision application filed by the petitioner before the Tribunal, although the petitioner specifically assailed the

opinion of the State Authority that the applicant has not shown interest in pursuing the application; but has failed to question the correctness of the finding recorded in the order dated 09.04.2007 that : (1) application for renewal filed by the petitioner was incomplete; (2) inspite of giving opportunity, the petitioner did not cure the deficiencies in the application; (3) petitioner did not make any response to the communication sent to the petitioner for taking steps to cure the defects. What has, however, been asserted in the revision application, is, that no notice was served on the petitioner as per Rule 26 (1) of the Mineral Concession Rules, 1960 and the order passed by the State Government being violative of Rule 26 (2) of the same Rules.

**13.** During the consideration of the revision application, the only contention raised was that notice under Rule 26 (1) was not given to the petitioner. Instead notice under Rule 12 of the MCR Rules was given. After adverting to these facts, the Tribunal has then clearly recorded, in paragraph 6 of the order that, the petitioner has accepted the basic issue of non-completion of his application and also of having failed to rectify the deficiencies and also not responding to the notice of the State Government.

In this backdrop, the Tribunal then proceeded to notice the decision of Andhra Pradesh High Court in the case of **Andhra Cement Ltd. Vs. State of A.P. and others**<sup>2</sup> and agreed with the State Government that opportunity of hearing does not necessarily mean that oral hearing must be given. Accordingly, the revision application has been dismissed.

14. In the first place, the petitioner has not challenged the order passed by the State Authority dated 09.04.2007. Secondly, the stated reasons recorded by the State Authority have not been specifically assailed in the revision or for that matter in the writ petition as filed. The factual foundation laid in paragraph 5 dealing with the facts of the case, nowhere deals with this aspect. The grounds urged in the writ petition are again relevant to other matters, but not specific to the reasons stated by the State Authority and dealt with by the Tribunal. The nearest ground of challenge of that factual aspect can be traced to ground No.6.8 which reads thus :-

“6.8 For that, Rule 26 (3) makes it mandatory for the State to give a notice to the applicant for making good any short comings in the application and remove the defects accordingly. It is submitted that, in absence of such notice, the renewal cannot be rejected with has been done in the instant case by the State Government and further the same has been wrongly affirmed by the

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<sup>2</sup> AP 2000 (1) ALD 388

impugned order. Further Hon'ble Madras High Court, in Gem Granites Pvt. Ltd. Vs. State of TamilNadu, 2009 (5) CTC 422, has held that failure to afford opportunity to the applicant while refusing the renewal shall amount to violation of principles of nature justice.”

Without successfully assailing the finding recorded by the State Authority in the order dated 09.04.2007 and noticed by the Tribunal, we fail to understand as to how the petitioner can succeed in pursuing the argument any further.

**15.** The challenge before the Revisional Authority in the context of non-compliance of Rule 26 (1) of the Rules, 1960 is an independent aspect which is not ascribable to the opportunity to be given under Rule 26 (3) of the same Rules. The petitioner can be justified in contending that being a case of application for renewal of mining lease, notice issued by the Authority under Rule 12 is of no consequence. The Authority, however, was obliged to give notice under Rule 26 (1) before refusing the request for renewal of mining lease made by the petitioner. The Tribunal has, however, discarded that argument on the finding that it is a technical argument. The Tribunal could have negated that plea on recording the finding that no prejudice has been caused to the petitioner because of the misdescription of the notice received by the petitioner - as the

substance for the notice sent by the State Government clearly disclosed that it intended to proceed to decide the application for non-compliance of mandatory formalities inspite of giving opportunity in that behalf. Merely saying that the argument of the petitioner is an argument of technicalities was not enough; as atleast substantial compliance of Rule 26 (1) of giving opportunity of being heard before refusing to grant renewal, is indispensable. At best, the petitioner may succeed to that limited extent and can be relegated before the Tribunal for reconsideration of the revision application afresh on that matter.

**16.** However, we will have to answer the argument of the respondent/State which is founded on the amended provisions of the Act of 1957, as amended in 2015. But, before that, we may usefully advert to the procedure regarding processing of application for renewal of mining lease. The relevant provisions before the amendment of 2015 and as applicable to the present case, when the application for renewal was filed by the petitioner and came to be rejected by the State Government on 09.04.2007, must be adverted to. Section 8 reads thus :-

**“8. Periods for which mining leases may be granted or renewed.-**

[ [ (1) The maximum period for which a mining lease may be granted shall not exceed thirty years:

Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.]

(2) A mining lease may be renewed for [a period not exceeding twenty years].]

[\*\*\*]

[(3) Notwithstanding anything contained in sub-section (2), if the State Government is of the opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, authorize the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case.

(4) Notwithstanding anything contained in sub-section (2) and sub-section (3), no mining lease granted in respect of mineral specified in Part A or Part B of the First Schedule shall be renewed except with the previous approval of the Central Government.]”

17. Notably, at the relevant time Section 8-A was not on the statute book. It has been introduced only by the Act 10 of 2015 w.e.f. 12.01.2015. We will advert to that provision a little later. The provision regarding renewal of mining lease can be then traced to the Mineral Concession Rules, 1960 as applicable at the relevant time. Rule 24-A as inserted by G.S.R. 86 (E), dated 10<sup>th</sup> February, 1987 and substituted by G.S.R. 56 (E), dated 17<sup>th</sup> January, 2000 and further amended by G.S.R. 21 (E), dated 11<sup>th</sup> January, 2002 reads thus :-

**“[24A. Renewal of mining lease. –** (1) An application for the renewal of a mining lease shall be made to the State Government in Form J, at least twelve months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf.

[(2) The renewal or renewals of a mining lease

granted in respect of a mineral specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government with the previous approval of the Central Government.]

[(3) The renewal or renewals of a mining lease granted in respect of a mineral not specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government;]

[Provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of a mining lease:

Provided further that in case a report is not received from Controller General, Indian Bureau of Mines in a period of three months of receipt of the communication from the State Government, it would be deemed that the Indian Bureau of Mines has no adverse comments to offer regarding the grant of the renewal of mining lease.]

[\*\*\*]

[(6) If an application for renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon.]

[\*\*\*]]

[(8) Notwithstanding anything contained in sub-rule (1) and sub-rule (6) an application for the first renewal for a mining lease, so declared under the provisions of section 4 of the Goa, Daman and Diu Mining Concession (Abolition and Declaration as Mining Lease) Act, 1987, shall be made to the State Government in Form J before the expiry of the period of mining lease in terms of sub-section (1) of section 5 of the said Act, through such officer or authority as the State Government may specify in this behalf:

Provided that the State Government may, for reasons to be recorded in writing and subject to such conditions as it may think fit, allow extension of time for making of such application upto a total period not exceeding one year.]

[(9) If an application for first renewal made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government



passes orders thereon.]

[(10) The State Government may condone delay in an application for renewal of mining lease made after the time limit prescribed in sub-rule (1) provided the application has been made before the expiry of the lease.]

(emphasis supplied)

Rule 26 as applicable “at the relevant time” reads thus :-

**“26. Refusal of application for grant and renewal of mining lease:-**

[(1) [The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.]

[(2) An application for the grant or renewal of a mining lease made under rule 22 or rule 24A, as the case may be, shall not be refused by the State Government only on the ground that Form I or Form J, as the case may be, is not complete in all material particulars, or is not accompanied by the documents referred to in sub-clauses (d), (e), (f), (g) and (h) of clause (i) of sub-rule 22.]

[(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents, without delay and in any case not later than 1[thirty days] from the date of receipt of the said notice by the applicant.

2[“(4) Notwithstanding anything contained in sub-rule(1) where an applicant for renewal of mining lease under rule 24A is convicted of illegal mining, and there are no interim orders of any court of law suspending the operation of the order of such conviction in appeals pending against such conviction in any court of law the State Government may after giving such applicant an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to renew such mining lease”]”

**18.** By the amending Act 10 of 2015 not only Section 8 has been amended but also Section 8-A has been inserted. The

amended Section 8 and newly inserted Section 8-A, read thus :-

**“[8. Periods for which mining leases may be granted or renewed.-**

(1) The provisions of this section shall apply to minerals specified in Part A of the First Schedule.

(2) The maximum period for which a mining lease may be granted shall not exceed thirty years:

Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.

(3) A mining lease may be renewed for a period not exceeding twenty years with the previous approval of the Central Government.]

**[8-A. Period of grant of a mining lease for minerals other than coal, lignite and atomic minerals.-** (1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the First Schedule.

(2) On and from the date of the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be granted for the period of fifty years.

(3) All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be deemed to have been granted for a period of fifty years.

(4) On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act.

(5) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where minerals is used for captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31<sup>st</sup> March, 2030 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been

extended up to a period ending on the 31<sup>st</sup> March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(7) Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.

(8) Notwithstanding anything contained in this section, the period of mining leases, including existing mining leases, of Government companies or corporations shall be such as may be prescribed by the Central Government.

(9) The provisions of this section, notwithstanding anything contained therein, shall not apply to a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or which has been determined, or lapsed.]”

(emphasis supplied)

**19.** In the same Chapter III under title “Procedure For Obtaining Prospecting Licenses or Mining Leases in respect of Land In Which the Minerals Vest In The Government”, Section 10 and newly introduced Section 10-A and Section 10-B provide as follows :-

**“10. Application for prospecting licenses or mining leases.** – (1) An application for [a reconnaissance permit, prospecting license or a mining lease] in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee.

(2) Where an application is received under sub-section (1), there shall be sent to the applicant an acknowledgement of its receipt within the prescribed time and in the prescribed form.

(3) On receipt of an application under this section, the State Government may, having regard to the provisions of this Act and any rules made thereunder, grant or refuse to grant the [permit, license or lease].

**[10-A. Rights of existing concession holders and applicants.-** (1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.

(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 :-

(a) applications received under section 11-A of this Act;

(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be, -

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government;

(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(iii) has not become ineligible under the provisions of this Act; and

(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government;

(c) Where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development

and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfillment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this subsection except with the previous approval of the Central Government.

**10.B. Grant of mining lease in respect of notified minerals through auction.** – (1) the provisions of this section shall not be applicable to cases covered by section 10-A or section 17-A or to minerals specified in Part A or Part B of the First Schedule or to land in respect of which the minerals do not vest in the Government.

(2) Where there is inadequate evidence to show the existence of mineral contents of any notified mineral in respect of any area, a State Government may, after obtaining the previous approval of the Central Government, grant a prospecting licence-cum-mining lease for the said notified mineral in such area in accordance with the procedure laid down in section 11.

(3) In areas where the existence of mineral contents of any notified mineral is established in the manner prescribed by the Central Government, the State Government shall notify such areas for grant of mining leases for such notified mineral, the terms and conditions subject to which such mining leases shall be granted, and any other relevant conditions, in such manner as may be prescribed by the Central Government.

(4) For the purpose of granting a mining lease in respect of any notified mineral in such notified area, the State Government shall select, through auction by a method of competitive bidding, including e-auction, an applicant who fulfils the eligibility conditions as specified in this Act.

(5) The Central Government shall prescribe the terms and conditions, and procedure, subject to which the auction shall be conducted, including the bidding parameters for the selection, which may include a share in the production of the mineral, or any payment linked to the royalty payable, or any other relevant parameter, or any combination or modification of them.

(6) Without prejudice to the generality of subsection (5), the Central Government shall, if it is of the opinion that it is necessary and expedient to do so,

prescribe terms and conditions, procedure and bidding parameters in respect of categories of minerals, size and area of mineral deposits and a State or States, subject to which the auction shall be conducted:

Provided that the terms and conditions may include the reservation of any particular mine or mines for a particular end-use and subject to such condition which allow only such eligible end users to participate in the auction.

(7) The State Government shall grant a mining lease to an applicant selected in accordance with the procedure laid down in this section in respect of such notified mineral in any notified area.”

(emphasis supplied)

**20.** Corresponding with the amendment to the provisions of the Act of 1957, even the Rules of 1960 have been amended.

Rule 24-A and Rule 26 of the Rules as amended read thus :-

**“[24-A. Renewal of mining lease.-** [(1) An application for renewal of a mining lease shall be made to the State Government in Form J, at least twenty four months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf:

Provided that in cases where the mining lease is due to expire on or before the 7<sup>th</sup> January, 2017, the application for renewal shall be made at least twelve months before the date on which the lease is due to expire.]

[(2) The renewal or renewals of a mining lease granted in respect of a mineral specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government with the previous approval of the Central Government.

(3) The renewal or renewals of a mining lease granted in respect of a mineral not specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government:]

[Provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of the mining lease:

Provided further that in case a report is not received from Controller General, Indian Bureau of Mines in a period of three months of receipt of the communication from the State Government, it would be deemed that the Indian Bureau of Mines has no adverse comments to offer regarding the grant of renewal of mining lease.]

[\*\*\*]

[(6) If an application for first renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period of two years or till the State Government passes order thereon, whichever is earlier:

Provided that the leases where applications for first renewal of mining lease have been made to the State Government and which have not been disposed of by the State Government before the date of expiry of lease and are pending for disposal as on the date of notification of this amendment, shall be deemed to have been extended by a further period of two years from the date of coming into force of this amendment or till the State Government passes order thereon or the date of expiry of the maximum period allowed for first renewal, whichever is the earliest:

Provided further that the provisions of this sub-rule shall not apply to renewal under sub-section (3) of section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957).]

[\*\*\*]

[(8) Notwithstanding anything contained in sub-rule (1) and sub-rule (6), an application for the first renewal of a mining lease, so declared under the provisions of section 4 of the Goa, Daman and Diu Mining Concession (Abolition and Declaration as Mining Lease) Act, 1987, shall be made to the State Government in Form J before the expiry of the period of mining lease in terms of sub-section (1) of section 5 of the said Act, through such officer or authority as the State Government may specify in this behalf:

Provided that the State Government may, for reasons to be recorded in writing and subject to such conditions as it may think fit, allow extension of time for making of such application upto a total period not exceeding one year.]

[(9) If an application for first renewal made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been

extended by a further period till the State Government passes orders thereon [ or the date of expiry of the maximum period allowed for first renewal, whichever is earlier].]

[(10) The State Government may condone delay in an application for renewal of mining lease made after time limit prescribed in sub-rule (1) provided the application has been made before the expiry of the lease.]

**26. Refusal of application for grant and renewal of mining lease:-**

[(1)] [The State Government may, after giving an opportunity of being heard and] for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.]

[(2) An application for the grant or renewal of a mining lease made under rule 22 or rule 24-A, as the case may be, shall not be refused by the State Government only on the ground that Form I or Form J, as the case may be, is not complete in all material particulars, or is not accompanied by the documents referred to in sub-clauses (d), (e), (f), (g) and (h) of clause (i) of sub-rule 22.]

[(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents, without delay and in any case not later than [thirty days] from the date of receipt of the said notice by the applicant.]

[(4) Notwithstanding anything contained in sub-rule (1) where an applicant for renewal of mining lease under rule 24-A is convicted of illegal mining, and there are no interim orders of any Court of law suspending the operation of the order of such conviction in appeals pending against such conviction in any Court of law, the State Government may, after giving such applicant an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to renew such mining lease.]”

**21.** The argument of the respondent/State, is that, by virtue of provisions of the amending Act of 2015, the State Authorities have no option but to grant mining lease only by way of public auction. Renewal of lease in respect of the subject mines and



minerals is impermissible, as the lease was not a subsisting lease on the date of coming into force of the amending Act. The benefit of extended lease period by operation of law is only in respect of a valid and subsisting lease on the date of coming into force of the amended provisions. We find force in this submission.

**22.** On a bare reading of Section 8A, it is noticed that period of grant of mining lease and renewal has been specified. It is well settled position that grant of lease can be only a matter of contract or at best by operation of law. Regarding renewal of lease, the Supreme Court in the case of **M.C.Mehta** (supra) has held that it is well settled law that the grant of renewal is a fresh grant and must be consistent with law. So long as the State Government has not renewed the lease period, it cannot be a case of contractual rights and obligations.

**23.** Therefore, we may have to examine whether the provisions of Section 8-A can come to the aid of the petitioner. Admittedly, the lease in favour of the petitioner expired on 18.11.1998. No doubt the petitioner applied for renewal of lease period on 13.11.1997, within the specified time. That application, for some inexplicable reasons, was rejected by the

State Government only on 09.04.2007. By virtue of the deeming provision applicable at the relevant time - as per Rule 24-A of Rules, 1960, the lease period stood extended by further period till the State Government passed an order on the application, i.e. on 09.04.2007. No doubt the petitioner challenged that order first before the Tribunal and thereafter by way of writ petition before the Delhi High Court, which writ petition was later on withdrawn on 07.01.2015. It is, however, not possible to countenance the argument of the petitioner that during the pendency of the said writ petition, being proceedings in continuation of the order passed by the State Government on the application for renewal filed by the petitioner, the lease period would automatically get extended by operation of law. Inasmuch as - be it sub-Rule (6) or (9) of Rule 24-A, as applicable at the relevant time - the deeming provision elongates the lease period only for a further period "till the State Government passes an order" on the renewal application (which in the present case is 09.04.2007) and not thereafter.

**24.** Thus, on the date when the amending Act came into force – firstly – by Ordinance on 12.01.2015, the renewal application was not pending but already stood rejected by the

State Government on 09.04.2007. In our opinion, no proceeding, in fact, was pending with reference to the said order (09.04.2007) on 12.01.2015. For, the petitioner had already withdrawn the writ petition from the Delhi High Court on 07.01.2015 and presented this writ petition only on 22.03.2015. Liberty granted by the Delhi High Court to the petitioner to file this petition before this Court will be of no avail to the petitioner. As a result, by virtue of the amended provisions of 2015, the State Authority would be bound to deal with the subject mine only by way of public auction and cannot entertain application for renewal of lease.

**25.** Reverting to Section 8-A of the Amending Act, it is noticed that the period of lease is extended by operation of law, in respect of specified leases and not apply to leases in respect of which application for renewal is already rejected or the lease is determined or lapsed. That position has been made amply clear by sub-Section (9) of Section 8-A of the provisions inserted by way of amendment. Sub-Section (9) contains non-obstante clause and it envisages that all provisions in the preceding clauses of that Section have been made inapplicable to cases covered by sub-Section (9).

**26.** The facts of the present case persuade us to hold that it would not only be a case of rejection of renewal application vide order dated 09.04.2007; but also of lapsing of the lease period on that date, which was extended till that date, by virtue of the deeming provision applicable at the relevant time. As noted hitherto, the benefit of extended period or renewal of lease by operation of law in respect of specified mines and minerals is made applicable only to valid and subsisting leases as on the date of coming into force of the amendment on 12.01.2015. Taking any other view would mean that the amended provisions will have to be given retrospective effect and more so sub-Section (9) of Section 8-A will become otiose.

**27.** If the lease period has already lapsed before coming into force of the amendment Act, by virtue of amendment such lease would not get renewed or extended. Similarly, if the lease has been determined before coming into force of the amendment Act, the other provisions of amendment Act (Section 8-A in particular) will have no application, muchless to resurrect the lapsed lease. Same logic would apply to renewal applications which have been rejected by the State Government before 12.01.2015. Relying on the first proviso to sub clause (6) of

Rule 24-A of the amended Rules, it was contended by the counsel for the petitioner that the provisions of amended Section 8-A extending the lease period in the case such as the present one will be attracted. The purport of the first proviso to clause (6) of Rule 24-A reinforces the position expounded by us that extension of lease period by operation of law (amended provisions) will be only in respect of valid and subsisting lease as on the date when the amended provisions came into force. Further, the first proviso to clause (6) of Rule 24-A must be construed as complementary or subservient to sub-Section (9) of Section 8-A.

**28.** The question as to whether the decision of the State Government would come into effect on attaining finality of the revision application or writ petition, as the case may be, need not be examined in the fact situation of the present case. Inasmuch as, on the date when the amending Act came into force w.e.f. 12.01.2015, neither any renewal application made by the petitioner was pending nor any revision or writ petition challenging the order passed on renewal application by the State Government was pending. In that, the petitioner had already withdrawn the writ petition on 07.01.2015 from the Delhi High

Court. The fact that liberty was given to the petitioner by the Delhi High Court to file the present writ petition does not mean any proceedings were pending in relation to the rejection order dated 09.04.2007, on 12.01.2015. Taking any other view would be virtually rewriting Section 8-A and sub-Section (9) thereof, in particular.

**29.** Taking any view of the matter, therefore, we are of the considered opinion, that no fruitful purpose would be served by relegating the petitioner before the Tribunal for recording a specific finding on the contention about no service of notice under Rule 26 (1) of Rules of 1960 as applicable at the relevant time or about the substantial compliances thereof.

**30.** Counsel for the petitioner had relied on the decision of the Supreme Court in the case of **Krishna Kumar Mediratta Vs. Phulchand Agarwala and others**<sup>3</sup> in support of the argument that non-curing of defect regarding deficit Court Fees accompanying the application does not render the application void and is a curable defect. In the first place, the reason recorded by the State Authority for rejecting the renewal application is not specific to non-payment of fees or deficit fees

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<sup>3</sup> (1977) 2 SCC 5

accompanying the renewal application; but is generally about the filing of defective or incomplete application and also of not taking steps to cure the defects inspite of opportunity given in that behalf. In any case, for the reasons already noted, no relief can be granted to this petitioner.

**31.** Learned counsel for the petitioner had also relied on the unreported order of the Division Bench of this Court passed in Writ Petition No.4909/2012 dated 22.06.2015. However, that decision is in respect of non-supplying of material documents to the petitioner which was the basis to form opinion by the Competent Authority. The observations made in the said decision may have to be understood in the context of the fact situation of that case and the finding recorded about non-observance of principles of natural justice. The issues answered in the present case have not been dealt with or considered in that decision.

**32.** While parting, we may invite attention of the Secretary, Mines and Minerals Department, Government of Madhya Pradesh to the fall out of not having decided the renewal application expeditiously. In the present case, the lease period had expired on 18.11.1998 but the petitioner continued to enjoy

the minerals by virtue of deeming provision because of the pendency of the renewal application till 09.04.2007, which is almost over 9 years, without compensating the revenue of fair royalty amount. If this is the trend in respect of all the renewal applications, that should certainly be a matter of concern for the Department. For, it would inevitably result in loss of and burden on the State exchequer. The Secretary of the Department must, therefore, take corrective measures in the event any renewal applications filed prior to the coming into force of the amended provisions are still pending for decision; and more particularly in cases where no renewal request can be entertained, in law. The Authorities must act with utmost dispatch in all such matters. If the Secretary of the Department finds that any particular official or set of officials have shown inertia in deciding such applications in a time bound manner, must proceed against him/them by way of departmental action and take the same to its logical end including for recovery of the loss caused to the public exchequer from all concerned responsible for the situation. Copy of this decision be brought to the notice of the Secretary, Mines and Minerals Department, Government of Madhya Pradesh, forthwith. The Registry may additionally



forward copy of the decision to the Secretary by e-mail, for information and necessary action.

**33.** For the reasons already recorded, we decline to entertain this petition and the same is, therefore, **dismissed**.

**(A.M. Khanwilkar)**  
**Chief Justice**

**(Sanjay Yadav)**  
**Judge**

AM.