HIGH COURT OF MADHYA PRADESH: JABALPUR
(Division Bench)

Writ Petition No.15798/2016

M/s Limelight Industries & Another .... Petitioners

- V/s -

Union of India & Others .... Respondents

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Present:

Shri Permanand Dubey, Advocate for the petitioners.

Shri Sandeep K. Shukla, Advocate for respondent No.1/Union of India.

Shri Sanjay Dwivedi, Deputy Advocate General for respondents No.2 and 3/State.

Whether Approved for Reporting : **Yes**

Law Laid Down: Whether consent for transfer of lease hold rights under Rule 37 is an administrative function or a quasi-judicial function – It has been held that the consent for transfer of mining lease in terms of Section 37 of the Mineral Concession Rules, 1960, is an administrative order and is required to be authenticated and communicated before it becomes a decision of the State Government. A distinction between administrative functions and quasi-judicial functions discussed.

It is also held that an administrative order will take effect only from the date the same is communicated. The noting on the file is not an order which can be said to be an enforceable order.

Significant Paragraph Nos.: 11, 12, 13, 18 & 19

O R D E R (Oral)
(24-07-2017)

Per : Hemant Gupta, Chief Justice:

Petitioner No.2 – Prasanjeet Singh was granted a mining lease for limestone mineral over an area land measuring 8.068 hectares in Village Piprahat, Tehsil Maihar, District Satna for a period of 20 years, commencing from 31.03.2003 and ending on 30.03.2023. The said lessee intended to transfer the mining lease in favour of petitioner No.1 – M/s Limelight Industries. Petitioner No.1 - M/s Limelight Industries applied for transfer. Such request of petitioner No.1 for transfer of Mining lease was considered by the Minister, Department of Mineral Resources of State of Madhya Pradesh on 10.07.2014 (Annexure-P/4). The Minister recorded a note of recommendation of transfer of lease hold rights on 10.07.2014 and marked the file to the Secretary, Mining Department for further action. Before the order could be communicated to the petitioner, the provisions of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "Act of 1957") were amended. When Section 12A was inserted by Central Act No.10 of 2015, the amended provisions permitted transfer of mineral concessions only for those concessions which were granted through auction [Section 12A(6)]. On the basis of such provision, the request of petitioner No.1 for transfer was declined. Since the transfer of lease was not being approved, the petitioners invoked the writ jurisdiction of this Court.

2. In return, the stand of the State is that as per Section 12A

subsection (6), transfer of mineral concessions can be allowed which have been granted through auction. Since petitioner No.2 has not been allotted the mining lease through auction, therefore, his lease cannot be transferred in favour of petitioner No.1 in view of amended provisions of Section 12A(6) of Act of 1957.

3. Learned counsel for the petitioners has vehemently argued that the order passed by the Minister, copy of which is available as Annexure-P/4 on record, is an order passed in exercise of the quasi-judicial functions and therefore it is not required to be authenticated as is required under Article 166 of the Constitution of India. Reliance is placed upon Supreme Court judgment reported as **AIR 2003 SC 4688 (State of Maharashtra and others v. Basantilal and another)** and also the Division Bench judgment of this Court reported as **1968 MPLJ 854 (Raipur Transport Co. Pvt. Ltd., Raipur and another v. State of Madhya Pradesh and others)**. Learned counsel for the petitioners refers to another Supreme Court decision reported as **(2017) 2 SCC 125 (Bhushan Power and Steel Limited v. S.L. Seal, Additional Secretary (Steel and Mines), State of Odisha and others)** wherein, the expression "letter of intent" has been interpreted.

4. To appreciate the argument raised by the learned counsel for the petitioners, it would be appropriate to reproduce Section 12A of Act of 1957; Rule 37 and 37A of The Mineral Concession Rules, 1960 (for brevity "Rules of 1960"), which read as under:-

"12A. **Transfer of mineral concessions.—**(1) The provisions of this section shall not apply to minerals specified in Part A or Part B of the First Schedule.

(2) A holder of a mining lease or a prospecting licence-cum-mining lease granted in accordance with the procedure laid down in section 10B or section 11 may, with the previous approval of the State Government, transfer his mining lease or prospecting licence-cum-mining lease, as the case may be, in such manner as may be prescribed by the Central Government, to any person eligible to hold such mining lease or prospecting licence-cum-mining lease in accordance with the provisions of this Act and the rules made thereunder.

(3) If the State Government does not convey its previous approval for transfer of such mining lease or prospecting licence-cum-mining lease, as the case may be, within a period of ninety days from the date of receiving such notice, it shall be construed that the State Government has no objection to such transfer:

Provided that the holder of the original mining lease or prospecting licence-cum-mining lease shall intimate to the State Government the consideration payable by the successor-in-interest for the transfer, including the consideration in respect of the prospecting operations already undertaken and the reports and data generated during the operations.

(4) No such transfer of a mining lease or prospecting licence-cum-mining lease, referred to in sub-section (2), shall take place if the State Government, within the notice period and for reasons to be communicated in writing, disapproves the transfer on the ground that the transferee is not eligible as per the provisions of this Act:

Provided that no such transfer of a mining lease or of a prospecting licence-cum-mining lease, shall be made in contravention of any condition subject to which the mining lease or the prospecting licence-cum-mining lease was granted.

(5) All transfers effected under this section shall be subject to the condition that the transferee has accepted all the conditions and liabilities under any law for the time being in force which the transferor was subject to in respect of such a mining lease or prospecting licence-cum-mining lease, as the case may be.

(6) *The transfer of mineral concessions shall be allowed only for concessions which are granted through auction.*

Provided that where a mining lease has been granted otherwise than through auction and where mineral from such mining lease is being used for captive purpose, such mining lease may be permitted to be transferred subject to compliance of such terms and conditions and payment of such amount or

transfer charges as may be prescribed.

Explanation.— For the purposes of this proviso, the expression “used for captive purpose” shall mean the use of the entire quantity of mineral extracted from the mining lease in a manufacturing unit owned by the lessee.

(emphasis supplied)

Mineral Concession Rules, 1960

37. **Transfer of lease**. — (1) The lessee shall not, without the previous consent in writing of the State Government and in the case of mining lease in respect of any mineral specified in Part A and Part B of the First Schedule to the Act, without the previous approval of the Central Government—

(a) assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, or

(b) enter into or make any [bona fide] arrangement, contract or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by, any person or body of persons other than the lessee:

Provided further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for the lessee to obtain any such consent of the State Government.

(1A) The State Government shall not give its consent to transfer of mining lease unless the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease.

(2) Without prejudice to the provisions of sub-rule (1) the lessee may, transfer his lease or any right, title or interest therein to person who has filed an affidavit stating that he has filed an up-to-date income-tax returns, paid the income-tax assessed on him and paid the income- tax on the basis of self-assessment as provided in the Income-tax Act, 1961 (43 of 1961), on payment of a fee of five hundred rupees] to the State Government:

Provided that the lessee shall make available to the transferee the original or certified copies of all plans of abandoned workings in the area and in a belt 65 metres wide surrounding it:

Provided further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for any such institution or Bank or Corporation to meet with the requirement relating to income-tax:

Provided further that the lessee shall not charge or accept from the

transferee any premium in addition to the sum spent by him, in obtaining the lease, and for conducting all or any of the operations referred to in rule 30 in or over the land leased to him:

37A Transfer of lease to be executed within three months.—Where on an application for transfer of mining lease under rule 37, the State Government have given consent for transfer of such lease, a transfer lease deed in Form O or a form as near thereto, as possible, shall be executed within three months of the date of the consent, or within such further period as the State Government may allow in this behalf."

5. The transfer of lease is regulated by Rule 37 of Rules of 1960. Rule 37 as reproduced above shows that a lessee cannot without previous consent in writing of the State Government transfer any mining lease in respect of minerals specified in Part A and Part B of the First Schedule to the Act and without previous approval of the Central Government. The limestone in respect of which mining lease was granted to petitioner No.2 appears at Entry No.24 of Second Schedule, therefore, in terms of sub-clause (1) of Rule 37, the approval of the Central Government is not required as the consent for transfer is required to be granted by the State Government alone. It may be noticed that the Second Schedule has since been amended on 1st of September, 2014 and the limestone now appears at Entry No.26.

6. To appreciate the argument raised by the learned counsel for the petitioners, the first question required to be examined is as to whether the State Government is exercising administrative power to approve the mining lease or a quasi-judicial function of adjudication of rights which

may not require authentication in terms of Article 166 of the Constitution. If it is a quasi-judicial function, the authentication may not be necessary as the *lis* would be deemed to be decided by passing of the order by the Minister.

7. The State Government is not defined under the Act of 1957, therefore, the definition which is contained in Madhya Pradesh General Clauses Act, 1957 will be applicable. As per the said Act, the “State Government” or “Government” means the Government of the State of Madhya Pradesh. In addition, the M.P. Minor Mineral Rules, 1966 framed under the Act, also defines “State Government” to mean “Government of Madhya Pradesh”.

8. The question as to which function is an administrative function or a quasi-judicial function has been raised before the Hon'ble Supreme Court from time to time. In **AIR 1950 SC 222 [Province of Bombay v. Khushaldas S. Advani (since deceased)]**, the Constitutional Bench has delineated the distinction between the administrative order and quasi-judicial function. The Court observed as under:-

> “5. A discussion about the distinction between judicial and quasi-judicial functions is not useful in this case as the point for determination is whether the order in question is a quasi-judicial order or an administrative or ministerial order. In *Regina (John M 'Evoy) v. Dublin Corporation* (1878) 2 L.R.Ir. 371 at p 376, May C.J. in dealing with this point observed as follows:--
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> > " It is established that the writ of certiorari does not lie to remove an order merely ministerial, such as a warrant, but it lies to remove and adjudicate upon the validity of acts judicial. In this connection, the term 'judicial' does not necessarily mean acts of a

> judge or legal tribunal sitting for the determination of matters of law, but for the purpose of this question a judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances, and imposing liability or affecting the rights of others."

This definition was approved by Lord Atkinson in *Frome United Breweries Co. v. Bath Justices* (1926) A.C, 586 at p 602, as the best definition of a judicial act as distinguished from an administrative act.

6. A distinction between the nature of the two acts has been noticed in a series of decisions. This Irish case is one of the very early decisions. On behalf of the respondent it was contended that as stated by May C.J., whenever there is the determination of a fact which affects the rights of parties, that determination is a quasi-judicial decision and, if so, a writ of *certiorari* will lie against the body entrusted with the work of making such decision. As against this, it was pointed out that in several English cases emphasis is laid on the fact that the decision should be a judicial decision and the obligation to act judicially is to be found in the Act establishing the body which makes the decision. This point appears to have been brought out clearly in *The King v. The Electricity Commissioners* (1924) 1 K.B.171; (93 L.J.K.B.390), where Atkin L.J. (as he then was) laid down the following test:

> "Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

This passage has been cited with approval in numerous subsequent decisions and accepted as laying down the correct test. A slightly more detailed examination of the distinction is found in *The King v. London County Council* (1931) 2 K.B. 215 at p. 233; (100 L.J.K.B 760), where Scrutton L.J. observed as follows :--

> "it is not necessary that it should be a court in the sense in which this court is a court; it is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition; and it is not necessary to be strictly a court; if it is a tribunal which has to decide rights after hearing evidence and opposition, it is amenable to the writ of *certiorari*."

> Slesser L.J. in his judgment at p. 243 separated the four conditions laid down by Atkin L.J. under which a rule of certiorari may issue. They are: wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their. legal authority – a writ of *certiorari* may issue. He examined each of these conditions separately and came to the conclusion that the existence of each was necessary to determine the nature of the act in question....
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> 7. Learned counsel for the respondent referred to several cases but in none of them the dicta of Atkin L.J. or the four conditions analysed by Slesser L.J. have been suggested, much less stated, to be not the correct tests. The respondent's argument that whenever there is a determination of a fact which affects the rights of parties, the decision is quasi-judicial, does not appear to be sound. The observations of May C.J., when properly read, included the judicial aspect of the determination in the words used by him. I am led to that conclusion because after the test of judicial duty of the body making the decision was expressly stated and emphasized by Atkin and Slesser L.JJ. in no subsequent decision it is even suggested that the dictum of May C.J. was different from the statement of law of the two Lords Justices or that the latter, in any way, required to be modified........"

In a separate judgment penned by Hon'ble Justice Mukherjea, His Lordship has not agreed with the majority opinion on certain issues but in respect of quasi-judicial and or administrative function, it was observed thus:-

> 173. What are the principles to be deduced from the two lines of cases I have referred to? The principles, as I apprehend them, are: (i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a *lis* and *prima facie,* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and (ii) that if a statutory authority has power to do any act which will prejudicially

affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

174. In other words, while the presence of two parties besides the deciding authority will *prima facie* and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

9. The Constitutional Bench in another judgment reported as **AIR 1959 SC 308 (Gullapalli Nageswara Rao and others v. Andhra Pradesh State Road Transport Corporation and another)** was examining as to whether a sanction of Scheme under Section 68-C of the Motor Vehicle Act, 1939 is an administrative function or quasi-judicial function. The Court observed as under:-

"19. At the outset it would be convenient to consider the question whether the State Government acts quasi-judicially in discharging its functions under S.68-C of the Act. The criteria to ascertain whether a particular act is a judicial act or an administrative one, have been laid down with clarity by Lord Justice Atkin in Rex v. Electricity Commissioners; Ex Parte London Electricity Joint Committee Co., 1924-1 K B 171 elaborated by Lord Justice Scrutton in Rex v. London County Council; Ex Parte Entertainments Protection Association Ltd., 1931-2 K B 215 and authoritatively re-stated by this Court in Province of Bombay v. Khusaldas S. Advani 1950 S C R 621 : (AIR 1950 SC 222). They laid down the following conditions: (a) the body of persons must have legal authority; (b) the authority should be given to determine questions affecting the rights of subjects and (c) they should have a duty to act judicially. In the last of the cases cited supra, Das, J., as he then was, analysed the scope of the third condition thus at page 725 (of S C R) : (at p.260 of AIR):

> "(i) that if a statute empowers an authority not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and
> (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

In the case In re Banwarilal Roy, 48 Cal W N 766, Das, J., as he then was, said much to the same effect at page 800:

> " A judicial or quasi-judicial act, on the other hand, implies more than mere application of the mind or the formation of the opinion. It has reference to the mode or manner in which that opinion is formed. It implies 'a proposal and an opposition' and a decision on the issue. It vaguely connotes 'hearing evidence and opposition' as Scrutton, L. J., expressed it. The degree of formality of the procedure as to receiving or hearing evidence may be more or less according to the requirements of the particular statute, but there is an indefinable yet an appreciable difference between the method of doing an administrative or executive act and a judicial or quasi-judicial act."

21. The aforesaid three decisions lay down that whether an administrative tribunal has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder, and they clearly express the view that if an authority is called upon to decide respective rights of contesting parties or, to put it in other words, if there is a lis, ordinarily there will be a duty on the part of the said authority to act judicially......"

10. Another Constitutional Bench in **AIR 1960 SC 606 (Shivji Nathubhai v. Union of India and others)** was examining the provisions of Mines and Minerals (Regulation and Development) Act, 1948 in

respect of the nature of power of review conferred on the Central Government under the said Act and the Rules framed thereunder. The Court observed as under:-

> "7. It is on these principles which are now well-settled that we have to see whether the Central Government when acting under r. 54 is acting in a quasi-judicial capacity or otherwise. It is not necessary for present purposes to decide whether the State Government when it grants a lease is acting merely administratively. We shall assume that the order of the State Government granting a lease under the Rules is an administrative order. We have, however, to see what the position is after the State Government has granted a lease to one of the applicants before it and has refused the lease to others.
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> 8. …......At any rate, when the statutory rule grants a right to any party aggrieved to make a review application to the Central Government it certainly follows that the person in whose favour the order is made has also a right to represent his case before the authority to whom the review application is made. It is in the circumstances apparent that as soon as r. 52 gives a right to an aggrieved party to apply for review a lis is created between him and the party in whose favour the grant has been made. Unless therefore there is anything in the statute to the contrary it will be the duty of the authority to act judicially and its decision would be a quasi-judicial act."

11. In view of the judgments referred above, it is possible to arrive at a conclusion that a quasi-judicial act would be where (I) the body of persons have the legal authority; (ii) to determine the questions affecting rights of subjects; and (iii) must have the duty to act judicially, which is to decide disputes arising out of a claim made by one party under the statute and opposed by another party.

12. Coming to the fact of the present case, the consent of the State Government is required in terms of unamended provisions for

transfer of lease hold rights. While transferring the lease hold rights, there are no two parties nor is there any possibility of counter assertion of any fact by any other party. The transfer of lease is at the instance of original lease holder. Since he is a consenting party, the State Government is not deciding any lis which can be called a quasi-judicial function. Therefore, the power of approval or consent of transfer of lease hold rights is an administrative function.

13. The State Government is not a natural person; therefore, the power of the State Government can be exercised by the person in terms of the Rules of Business made by the Governor in terms of Clause (1) of Article 166 of the Constitution of India. The Rules of Business are not on record, but assuming that the Minister was a Competent Authority to consider the transfer of mining lease, the Minster is not exercising any quasi-judicial function but only an administrative function. Rule 37 enjoins a duty upon the lessee to seek consent in writing of the State Government before transfer of the mining lease. Such consent is not adjudication of any dispute between the parties nor there two parties before the Minister. Therefore, it will not be an exercise of quasi-judicial function but only an administrative duty of giving consent on behalf of the State Government. Since the consent of State Government in terms of Rule 37 is an administrative function, therefore, it was required to be authenticated in terms of Article 166 of the Constitution of India. Since authentication was not done before the Act was amended vide Central Act

No.10 of 2015 w.e.f. 12th January, 2015, therefore, the noting on file by the Minister cannot be deemed to be a valid order conferring right in favour of the petitioners. Such order was not communicated to the petitioners before the Act was amended on 12th of January 2015.

14. The Constitutional Bench in a judgment reported as **AIR 1963 SC 395 (Bachhittar Singh v. State of Punjab and another)** held that opinion about a particular matter at a particular stage is not an order of the State Government to make the opinion amount to a decision of the State Government, it must be communicated to the person concerned. The Court observed as under :-

> "10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of Pepsu provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh (till the abolition of the office by the Amendment of the Constitution in 1956), is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may

quote the following from the judgment of this Court in the *State of Punjab* v. *Sodhi Sukhdev Singh AIR 1961 SC 493 at p.512*:

> "Mr Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent."

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.

11. We are, therefore, of the opinion that the remarks or the order of the Revenue Minister, PEPSU are of no avail to the appellant."

15. Somewhat similar view was taken in the Constitutional Bench judgment reported as **AIR 1966 SC 1313 (State of Punjab vs. Amar Singh Harika)** wherein it has been held that mere passing of order of dismissal on file is not effective unless it is published and communicated to the officer concerned. The Relevant extract reads as under :-

> "11. ……..It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to

> modify its order. It may be that in some cases, the authority may feel that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned...."

16. The learned counsel for the petitioner has referred to a judgment of Supreme Court reported as **AIR 1955 SC 160 (P.Joseph John v. State of Travancore-Cochin)** wherein the order of punishment was challenged on the ground that it has not been authenticated in the manner contemplated under Article 166 of the Constitution. The Court held that the notice though not as expressed as required under Article 166 is not devoid of force. It was held that the requirements of Article 311 have been fully complied with. The said judgment does not address the issue whether the approval or consent of the State Government for transfer of the lease hold rights is an administrative or quasi-judicial function. **Basantilal's case** (supra) was a case where the Minister was sitting as a revisional authority under the statute. Since the Minister was exercising quasi-judicial function, it was not required to be authenticated or communicated. The passing of order was itself complete.

17. In **Bhushan Power and Steel Limited's case** (supra), the letter of intent was issued to the petitioner prior to amendment of Act of 1957 w.e.f. 12.01.2015. The grievance of the petitioners was that such letter of intent has to be given effect to by the State and the Central Government as such letter of intent was issued prior to amendment of the

Act. Such argued was negated. The said judgment does not advance the argument raised by the petitioners.

18. The Division Bench judgment in **Raipur Transport Co. Pvt. Ltd.** (supra) deals with the scheme under Section 68-D of the Motor Vehicle Act, 1939. The same issue has been discussed in **Gullapalli Nageswara Rao's case** (supra). The said judgment is not applicable to the facts of the present case in respect of decisions in regard to an administrative function or a quasi-judicial function.

19. Keeping in view of the judgments referred to above, we find that consent or approval of the State Government for transfer of lease hold rights is an administrative function as it is not deciding conflicting rights of the parties or affecting any right of any other person, which may require the State Government to act judicially.

20. Consequently, the order passed by the State Government under Rule 37 is an administrative order. The same was required to be communicated to the petitioners before it could be treated to be valid and binding upon the parties.

21. In view of the above, we do not find any merit in the petition. The same is **dismissed.**

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

Shukla