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Chena Ram and ors Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : Jul-31-2013

Appellant : Chena Ram and ors

Respondent : State and ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :JUDGMENT:

1. Federation of Sand Stone Mining Industries Association & Others Vs. State of Rajasthan & Others (D.B. Civil Writ Petition No.4241/2013) 2. Pukhraj Banjara Vs. State of Rajasthan & Others (D.B. Civil Writ Petition No.4242/2013) 3. Ganpat Singh Deval & Others Vs. State of Rajasthan & Others (D.B. Civil Writ Petition No.4209/2013) 4. Sakhawat Ali & Others Vs. State of Rajasthan & Others (D.B. Civil Writ Petition No.4216/2013) 5. Jheema Choudhary & Others Vs. State of Rajasthan & Others (D.B. Civil Writ Petition No.4217/2013) 6. Ganga Vishan & Others Vs. State of Rajasthan & Others (D.B. Civil Writ Petition No.4219/2013) 7. Chena Ram & Others Vs. State of Rajasthan & Others (D.B. Civil Writ Petition No.4223/2013

8. Raju Gehlot Vs. State of Rajasthan & Others (D.B. Civil Writ Petition No.3950/2013) 9. Babu Lal Meghwal Vs. State of Rajasthan & Others (D.B. Civil Writ Petition No.3951/2013) DATE OF JUDGMENT : July 31st, 2013 PRESENT HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS HON'BLE MR. JUSTICE V.K.

MATHUR _____ Mr. M.S. Singhvi, Sr. Advocate with Mr. Varun Singh/Mr. B.M. Bohra for the petitioners. Mr. P.S. Bhati/Mr. Rajesh Joshi for the petitioners. Mr. G.R. Punia, Addl. Advocate General, assisted by Mr. R.K. Soni and Mr. Mahendra Choudhary, for the respondents. BY THE COURT : (Per Hon'ble Mr. Vyas, J.) In D.B. Civil Writ Petitions No.4241/2013 and 4242/2013 the petitioners have challenged the amendment introduced by notification dated 03.04.2013 in sub-rule (10) of Rule 4 of the Rajasthan Minor Mineral Concession Rules, 1986 in so far as it rejects all pending applications up to 27.01.2011 in 3 respect of which sanctions have been issued but agreement could not be executed with the prayer to quash order/letter dated 10.04.2013 issued by the Director, Mines, Udaipur and to consider the pending applications of the petitioners as per notification dated 03.04.2013. In all other writ petitions almost same prayer has been made by the petitioners. In D.B. Civil Writ Petitions No.3950 and 3951 of 2013, in addition to the prayer for quashing of notification dated 03.04.2013 whereby sub-rule (10) of Rule 4 of the Rules of 1986 the petitioners are challenging Rule 7(3) of the Rajasthan Minor Mineral Concession (Third Amendment) Rules, 2013 and that the respondents may be directed to execute the lease- deed of mines in favour of the petitioners. For the sake of convenience we are taking the facts narrated in D.B. Civil Writ Petition No.4241/2013 into consideration to decide the controversy in question. The petitioner No.1 is an association of 4 persons/firms dealing with the business of excavation of mineral masonry stone/sand stone and petitioners No.2 to 25 are members of the federation. The petitioners are ventilating their grievance against the action of the State Government in not giving effect to the judgment dated 21.05.2009 rendered by the co-ordinate Bench of this Court in S.B. Civil Writ Petition No.6641/2007 and 12 other writ petitions decided on 21.05.2009. According to the petitioners, the grant of mining lease for mineral masonary stone the provisions contained in the Mines & Minerals (Development and Regulation) Act, 1957 (referred to hereinafter as the Act of 1957) and the Rajasthan Minor Mineral Concession Rules, 1986 (referred to hereinafter as the Rules of 1986) are applicable. As per facts of the State Government issued notification on 29.05.2003 inviting applications for grant of mining lease for mineral masonary stone in respect of plots which were covered by the mining 5 leases, cancelled and

unallotted and sanction lapsed for the plots available for mining lease in villages Bujhawar, Rohilla Kallan, Gangana and Chokha. The petitioners moved applications for grant of mining lease for mineral masonary stone in pursuance of the above notification dated 29.05.2003. The applications filed by the petitioners No.2 to 25 came to be rejected vide notification dated 24.04.2007 issued under Rule 65A of the Rules of 1986. Being aggrieved by the notification dated 24.04.2007 the petitioners preferred writ petitions before this Court and all those writ petitions came to be allowed by the co-ordinate Bench of this Court on 21.05.2009, leading case being S.B. Civil Writ Petition No.6641/2007, Deepak Gehlot Vs. State of Rajasthan & Others. Learned Single Judge of this Court vide aforesaid judgment quashed the notification dated 24.04.2007 and directed revival of the applications submitted by the petitioners and further directed for consideration of the applications in terms of the Rules 6 of 1986. The State Government did not challenge the said judgment, therefore, the judgment rendered by the learned Single Judge in the case of Deepak Gehlot (being S.B. Civil Writ Petition No.6641/2007) dated 21.05.2009 became final. When the aforesaid judgment was not complied with the petitioners filed contempt petition before this Court. However, when notice of contempt petition was issued by this Court the State Government took steps for compliance of the order dated 21.05.2009 and issued order dated 16.11.2011 (Annex.-5). By this order the applications of minerals masonary stone and sandstone which were pending on 24.04.2007 were ordered to be revived but such revival was restricted to the petitioners before this Court. As per the parameters laid down in clause (ii) of the order dated 16.11.2011, the applications of the masonary stone were ordered to be given priority over the applicants of sandstone in the event of any conflict, therefore, in continuation of and with reference to 7 order dated 16.11.2011 another order dated 28.11.2011 was issued by the State Government whereby it was clarified that masonary stone applicants will be required to pay royalty and dead rent of sandstone and will be sanctioned only if they agree to pay royalty and dead rent of sandstone. The State Government also issued notification dated 28.01.2011 whereby certain amendments were made in the Rules of 1986 and it was clearly stated that the applications pending on the date of issuance of the notification shall be decided in accordance with the Rules in force prior to the

notification dated 28.01.2011. Being aggrieved by the directions contained in the order dated 26.11.2011 writ petitions were filed before this Court, one of them being S.B. Civil Writ Petition No.12284/2011, Ram Prakash Sharma Vs. State of Rajasthan & Others. Those writ petitions were decided by this Court vide judgment dated 13.03.2013 by which the learned Single of this Court 8 quashed the order dated 16.11.2011 and order dated 28.11.2011 and, according to the petitioners, the learned Single Judge virtually set at naught the directions given by this Court in the judgment dated 21.05.2009 which became final. Appeals against the above order are pending separately. The petitioners contention is that the the State Government has come out with yet another amendment in the Rules of 1986 by issuing notification dated 03.04.2013 in which it is provided that all the applications pending upto 27.01.2011 stand rejected and prescribed a new mode for grant of mining lease. In pursuance of the said notification dated 03.04.2013 the Director, Mines & Geology, Government of Rajasthan issued an order on 10.04.2013 directing all the Mining Engineers and Assistant Mining Engineers to delineate the plots and act in accordance with notification dated 03.04.2013. According to the petitioners, no individual order rejecting the applications of the petitioners is issued 9 which were ordered to be revived by the judgment of this Court dated 21.05.2009 passed in S.B. Civil Writ Petition No.6641/2007. In the writ petition, it is stated by the petitioners that the applications were moved by the petitioners for grant of mining lease on various date in pursuance of the notification issued by the State Government. Those applications were sought to be rejected pursuant to notification issued on 24.04.2007 but the said notification dated 24.04.2007 was challenged before this Court and, in Deepak Gehlot's case (supra), the same was quashed and direction was issued to the respondents for preferential consideration of their applications in terms of Rule 7 of the Rules of 1986. But, to nullify the judgment of the learned Single Judge dated 21.05.2009 the State Government issued notification dated 03.04.2013 in the nature of subordinate legislation and snatched the right which accrued to the petitioners finally by virtue of the judgment of this Court, therefore, all the 10 petitioners are challenging the validity of notification dated 03.04.2013. The petitioners in rest of the writ petitions are not only challenging the amendment made in sub-rule (10) of Rule 4 but also challenging amendment made in sub-rule (3) of Rule 7 of the Rules of 1986.

Learned Senior Advocate Mr. M.S. Singhvi, assisted by Advocates Mr. Varun Singhvi, Mr. Rajesh Joshi, Mr. P.S. Bhati and Mr. B.M. Bohra, vehemently argued that the notification dated 03.04.2013 is illegal being ultra vires because by issuing the said notification the State Government cannot undo the mandate issued by this Court which became final; but, it appears from the facts that only to nullify and undo the judgment rendered by learned Single Judge in Deepak Gehlot's case (supra) the State Government exercised the power by giving retrospective effect to the amendment. The petitioners are challenging the action of the State Government on the ground that earlier by way of amendment and in pursuance of the 11 judgment of the learned Single Judge of this Court the right accrued to the petitioners for deciding their applications as per existing provisions of the rules but the State Government while exercising its pwer under Section 15 of the Mines & Minerals (Development & Regulation) Act, 1957 made amendment in the rules only to undo and nullify the directions issued by this Court, therefore, the amendment made under sub-rule (10) of Rule 4 and sub-rule (3) of Rule 7 of the Rules of 1986 deserve to be struck down. According to learned counsel for the petitioners, once specific provision was incorporated by way of amendment in the rules for deciding applications which were pending on 24.04.2007 and, subsequently, up to 27.01.2011, there was no question of snatching the accrued right for which the matter was already adjudicated by the learned Single Judge of this Court. Earlier under Rule 4(10) it was specifically provided that applications pending on 27.01.2011 shall be disposed of as per the prevailing rules prior to this 12 notification and notification was issued on 24.03.2011, then, obviously the right accrued to the petitioners by way of amendment in the rules cannot be snatched solely on the ground that the applications were not finally disposed of by the State Government. Learned counsel appearing on behalf of the petitioners in all the above writ petitions vehemently argued that sub-rule (10) of Rule 4 was brought to force by the notification dated 03.04.2013 which is wholly illegal and arbitrary and is clearly hit by the mandate of Article 14 of the Constitution of India because by this amended provision the right of consideration of applications created under the existing statute has been suddenly taken away by bringing amendment with retrospective effect. The right of first come first serve is the creation of the statute framed under Section 15 of the parent Act of 1957, therefore, the notification

issued by the State Government for amendment in sub-rule (10) of Rule 4 whereby general provision has been incorporated that 13 all those applications which are presented for allotment in government land up to 27.01.2011 shall stand rejected; meaning thereby, this provision is not only contrary to the judgment of this Court but it is a case in which the State Government has snatched the right of consideration of application which were pending up to 27.01.2011. According to learned counsel for the petitioners, the State Government cannot be permitted to first sit over the applications and subsequently reject the right of consideration. The provision can be made by exercising legislative power by the State Government but that cannot be given retrospective effect; but, here, in this case, on the one hand specific amendment was made on 24.03.2011 under Rule 4 (10) of the Rules of 1986 and it is specifically provided that all applications pending up to 27.01.2011 shall be disposed of as per the prevailing rules prior to this notification but it is very strange that by the impugned notification dated 03.04.2011 the State Government 14 snatched their right for which specific amendment was made. Therefore, it can be said that it is a case of colourable exercise of power only to undo the judgment passed by this Court. Learned counsel for the petitioners vehemently argued that notification dated 03.04.2013 completely frustrates the doctrine of legitimate expectation which is founded on the principle of reasonableness and fairness, so also, upon the principle of natural justice; but, here, in this case, once promise was given to the applicants by way of amending the rules that their applications which were pending up to 27.01.2011 shall be decided but by way of amended notification dated 03.04.2013 the State Government has snatched the right suddenly and rejected the applications which is not reasonable; more so, it is violative of the fundamental right of the petitioners. The State Government after issuing notification dated 03.04.2013 for making certain amendment passed an order on 10.04.2013 to treat all those 15 application rejected which were pending upto 27.01.2011; meaning thereby it is a case in which the provisions have been substituted only to nullify the effect of the judgment delivered by the learned Single Judge of this Court on 21.05.2009 and the amendment made on 24.03.2011 in the Rules of 1986 whereby it was clearly provided that those applications shall be disposed of as per the prevailing rules prior to this notification. With regard to challenge to Rule 7(3) of the Rules of 1986,

it is argued that the so called amendment vide notification dated 03.04.2013 is beyond the legislative competence of the State Government because under Section 15 of the Mines & Minerals (Development and Regulation) Act, 1957 no such power is left with the State Government to provide such provision for rejection of application. Learned counsel Mr. Rajesh Joshi invited attention of this Court towards Section 15(1A) of the Act of 1957 and submits that it provides about the matters for 16 which the rules can be amended. As per clauses (a) to (n) of Section 15 (1A) it does not prescribe for taking away the rights of the parties by rejecting all pending applications for grant of rights in a particular way. Therefore, it is submitted that sub-rule (3) of Rule 7 is de hors the legislative competence of the State Government and is ultra vires, therefore, the same deserves to be quashed. As per the petitioners, the State Government cannot be permitted to act arbitrarily to reject the applications which were said to be pending in pursuance of the existing provisions of the rules, therefore, it is prayed that notification dated 03.04.2013 is unconstitutional and violative of the principle of natural justice and it cannot be given retrospective effect to reject all those applications which were pending upto 27.01.2011. Learned counsel for the petitioners invited our attention towards certain judgments reported in (2007) 5 SCC 77.(2006) 3 SCC 62.and judgment of 17 this Court reported in 1990 (2) RLW 20.and submit that impugned notification so far as it relates to rejection of the applications of the petitioner may be quashed and respondent State may be directed to decide the applications of the petitioners in accordance with the existing rules which were prevailing as on the date of filing the applications. Per contra, learned Addl. Advocate General Mr. G.R. Punia, assisted by Mr. Mahendra Choudhary and Mr. R.K. Soni, vehemently argued that the amendment notification dated 03.04.2013 is perfectly in consonance with law and it is well within the competence of the State Government. For the arguments and grounds taken in the writ petitions with regard to challenge to Rule 4(10) and Rule 7(3) of the Rules it is submitted that the allegation of the petitioners' to undo the judgment rendered in Deepak Gehlot's case is totally unfounded because the respondent State by notification dated 03.04.2013 amended various provisions of the Rules of 1986 while 18 exercising power under Section 15 of the Act of 1957 for better development and regulation of the mineral uniformly throughout the State because the notification impugned in

Deepak Gehlot's case (S.B. Civil Writ Petition No.3167/2007), which came to be decided on 21.05.2009 as the lead case, was only relating to four villages and the Hon'ble writ Court while deciding the case of Ram Prakash Sharma Vs. State of Rajasthan & Others, S.B. Civil Writ Petition No.12284/2011 vide judgment dated 13.03.2012, observed in para 27 of the judgment that the impugned orders dated 16.11.2011 and clarificatory order dated 28.11.2011 are issued relating to only four villages whereas it is to be applied uniformly for the entire State. According to the learned counsel for the respondents the Hon'ble writ Court enumerated two principles for processing the applications, therefore, it was felt necessary to amend the Rules of 1986 and, as a consequence to that, notification dated 03.04.2013 was issued whereby various provisions of 19 the Rules of 1986 were amended for uniform application throughout the State. Learned counsel for the respondents further argued that pendency of applications does not create any accrued right to the petitioners or all those applicants because the State Government felt it necessary to apply uniform criteria for the entire State and, for that purpose, amended the rules vide notification dated 03.04.2013, in which, there is no illegality; more so, it is well within the legislative competence of the State Government. Learned Addl. Advocate General vehemently argued that allegation to undo the judgment of this Court in the cases of Deepak Gehlot and Ram Prakash Sharma is totally unfounded because the applications are required to be decided as per the existing rules and State Government felt it necessary to amend the Rules of 1986 to enable uniform application of the provisions for development and better governance of the mineral throughout the State. While refuting the allegation with regard to 20 retrospective application of the rules, it is submitted that there is power left with the Legislature to give effect to any rule retrospectively if it is in public interest. It is submitted that in the case of Ram Prakash Sharma decided on 13.03.2013, this Hon'ble Court laid down two principles for processing the applications and, in view of those principles and for better regulation of the mineral throughout the State, certain amendments were made vide notification dated 03.04.2013 while exercising power under Section 15 of the Act of 1957, in which, there is no illegality; more so, such amendment does not call for any interference at the time of judicial review. It is also submitted that the petitioner are mistaking and saying that their applications were to be accepted because the

applications were not yet proceeded with under the provisions of the Rules of 1986 because every application is required to be decided as per law applicable at the time of deciding the application and not as per rules which were in existence at the time of 21 filing the said application. The effect of the provision is to be seen from the date when it is applied for and, in this case, the provisions of the Rules of 1986 were amended vide notification dated 03.04.2013, therefore, all the pending applications were required to be decided as per the amended rules, therefore, it cannot be said that the notification dated 03.04.2013 is wrongly made applicable retrospectively. With regard to legislative competence it is submitted that Section 15 of the Act of 1957 clearly provides power to the State Government to prescribe method for deciding applications for allotment of mineral mines. The applicants have filed applications for grant of mining leases but the respondents never made any promise to any of the applicants at any stage whatsoever of any nature that their applications will be considered for grant of mining lease, therefore, there is no question of applicability of the doctrine of promissory estopple because to give effect to and comply the judgment dated 21.05.2009 passed by the 22 Hon'ble Court the respondents passed order dated 16.11.2011 and clarificatory order dated 28.11.2011 to evolve method of processing the pending applications but the same were challenged before the Court and, ultimately, vide judgment dated 13.03.2013 both the orders were quashed in S.B. Civil Writ Petition No.12284/2011 and learned Single Judge in para 27 of the judgment enumerated the principles and clarified that the rules are to be made applicable uniformly in the entire State, therefore, in view of the above direction the petitioners have again assailed the validity of the notification dated 03.04.2013 whereas the impugned notification dated 03.04.2013 was issued while exercising power by the State Government under Section 15 of the Act of 1957 for the better development and regulation of the mineral. Therefore, no case is made out for interference. Learned counsel for the respondents invited attention of this Court towards following judgments in support of his arguments :

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1. (1981) 2 SCC 205.State of Tamil Nadu Vs. M/s Hind Stone

2. (2001) 7 SCC 207.Basant Kumar Vs. State of Rajasthan

3. 1997

(2) WLC (Raj.) 511, Bihari Lal Paliwal Vs. State of Rajasthan

4. 1997

(3) WLC (Raj.) 156, Smt. Kamala Devi Vs. State of Rajasthan. While citing the above judgments, it is submitted by learned counsel for the respondents that no interference is called for in these writ petitions because the whole purpose of making amendment vide notification dated 03.04.2013 is to follow the directions for granting equal opportunity as ordered by the co-ordinate Bench of this Court in S.B. Civil Writ Petition No.12883/2011, Smt. Aruna & Another Vs. State of Rajasthan & others, decided on 13.03.2013, whereby, the co-ordinate Bench of this Court enumerated the principles and clarified that those principles cannot be made applicable for 4 villages and the same are to be made applicable in the entire State, therefore, the petitioners cannot challenge the 24 validity of notification dated 03.04.2013 impugned in these writ petitions. As per learned counsel for the respondents, the notification dated 03.04.2013 has rightly been issued amending certain provisions of the Rules of 1986 while exercising power under Section 15 of the Act of 1957 for better development and regulation of the mineral throughout the State. The petitioners have not been able to make out any case so as to get the notification struck down, therefore, these writ petitions may be dismissed. After hearing learned counsel for the parties, first of all, it is very necessary to observe that the dispute with regard to allotment of mines on the basis of pending applications is pending since long. In the case of Deepak Gehlot and Others Vs. State of Rajasthan, S.B. Civil Writ Petition No.3167/2007, the co-ordinate Bench of this Court rendered judgment dated 21.05.2009, in which, following directions were issued :

25. Consequently, all the writ petitions are allowed. The notification dated 24.4.2007 is hereby quashed. The order rejecting the applications of the petitioners is also quashed and the applications filed by the petitioners are revived. The respondents now shall consider and decide the applications filed by the

petitioners for grant of mining lease and pass appropriate order in accordance with law. Stay petitions also stand disposed of. Admittedly, no appeal was filed against the said judgment. Therefore, the said judgment became final. However, when the judgment was not complied with, the petitioners covered by the judgment dated 21.05.2009 filed contempt petition before this Court and, upon contempt petition when notices were issued, the State Government took steps for compliance of the judgment and issued order dated 16.11.2011 which is available on record as Annex.-5. Annex.-5 is as follows : Government of Rajasthan Mines (Gr.II) Department not F.20(63)Mines/Gr.II/2005 Jaipur, dated 16 NOV 201.26 Director, Mines & Geology Department, Udaipur. Sub: Allotment of mining leases in respect of villages Bhuzawad, Rohilakallan, Gangana and Chokha as per order dated 21-05-2009 passed by Hon'ble High Court in S.B.C.W.P. No.6641/07 Deepak Khanna V/s State, andother similar petitions. Ref: Your letter No. /.6(1)/ /672/07/345 dated 21-05-2010. Sir, As directed, In the subject matter the following course of action is to be taken : Step A: Directorate should prepare a list of the applications of masonry stone and sand stone which were pending in respect of these 4 villages as on 24-04- 2007 and which were rejected as a consequences of the notification of 24- 04-2007. Step B: Out of the above applications, a list of such applications may be prepared which were filed by the petitioners in High Court orders in SB Civil Writ Petitions (list enclosed). Step C: The applications sorted out as per Step-B can be disposed of as per the rules prevalent before issue of notification of 24-04-2007. All other applications may be rejected. The following guidelines may be adopted to 27 dispose of the applications sorted out as per Step-B above. (i) The applications may be disposed on First come First Serve Basis Thorough scrutiny of applications must be conducted before sanction. In case any irregularity or deficiency is detected in any of applications, the same may be rejected. (ii) In case there is a conflict between the application of masonry stone and sand stone then the masonry stone application filed before 04-2004 will have a priority. (iii) Masonry Stone applications will be required to pay royalty of sand stone and will be sanctioned only if they agree to pay royalty of sand stone. (iv) The masonry stone applications field after 03-12-2004 may be rejected. (v) Sand stone applications of 4 hectares filed between 04-12-2004 and 23-04-2007 may be sanctioned on first come first serve basis provided that these applications do not

clash with masonry stone applications field before 04-12-2004. (vi) All applications field on or after 24-04-2007 should also be rejected. (vii) In the interests of clean governance, all applications made in the name of any serving or retired employees of Mines & Geology Department or in the name of following relatives of employees of Mines & Geology Department ought to be rejected. (a) Spouse (b) Father (c) Mother (d) Brother (e) Brother's wife (f) Sister 28 (g) Sister's husband (h) Son (i) Daughter-in-law (j) Daughter (k) Son-in-law The above categories of applications may be identified separately and rejected. The reasons for rejections may be conveyed under Rule 9 of MMCR, 1986. Yours faithfully, Sd/- Dy. Secretary to Govt. Upon perusal of the above order Annex.-5, it is revealed that the applications of the mineral masonry stone and sand-stone which were pending on 24.04.2007 were ordered to be revived but such revival was restricted to the petitioners who preferred the writ petitions. As per clause (ii) of the order dated 16.11.2011, the applications of masonry stone were ordered to be given priority over the applications for sand-stone in view of any conflict. Another order was issued on 28.11.2011 by which it was clarified that masonry stone applicants will be required to pay royalty and dead rent of sandstone and will be sanctioned only if they agree to pay royalty and dead 29 rent of sandstone. Annex.-6 issued by the State Government on 28.11.2011 is as follows : Government of Rajasthan Mines (Gr.II) Department not F.20(63)Mines/Gr.II/2005 Jaipur, dated 28.11.2011 Director, Mines & Geology Department, Udaipur. Sub: Allotment of mining leases in respect of villages Bhuzawad, Rohilakallan, Gangana and Chokha as per order dated 21-05-2009 passed by Hon'ble High Court in S.B.C.W.P. No.6641/07 Deepak Khanna V/s State, and other similar petitions. Sir, With reference to clause (iii) of this department order no.F.20(63)Mines/Gr.II/2005 dated 16-11-2011, it is clarified that masonary stone applications will be required to pay royalty and deadrent of sand stone and will be sanctioned only if they agree to pay royalty and deadrent of sand stone. Yours faithfully, Sd/- Dy. Secretary to Government. It is also worthwhile to observe that the State Government issued notification dated 28.01.2011 whereby certain amendment in the Rules of 1986 were 30 made for the applications pending on the date of issuing notification and it was provided that those applications will be decided in accordance with the rules in force prior to notification dated 28.01.2011. Aggrieved by some directions contained in order

dated 16.11.2011 certain writ petitions were filed before this Court, one of them being S.B. Civil Writ Petition No.12284/2011, Ram Prakash Sharma Vs. State of Rajasthan & Others, in which, the co-ordinate Bench of this Court decided some petitions vide judgment dated 13.03.2013 the matter and gave following directions :

30. Therefore, while quashing the impugned order Annex.11 dated 16/11/2011 and Annex.13 dated 28/11/2011, all these writ petitions are disposed of with the following directions:- (i) That the respondent State shall undertake the exercise of delineating, demarcating and specifying all the mining areas available for the Sandstone and Masonry Stone within a period of six months as undertaken by 31 the learned Addl. Advocate Generals,on behalf of the State. (ii) Thereafter, the State Government will re-notify such delineated areas for grant of mining leases for sandstone and masonry stone, as the case may be, with the stipulation & conditions that payment of Royalty and dead rent applicable for the sandstone in case sandstone is also found available in the mining lease granted for masonry stone. (iii) That all the applications hitherto filed for such mining lease shall be treated as revived and with further applications, which may now be filed upon such re- notification of delineated areas available for grant of mining leases for sandstone and masonry stone. The earlier applicants will be at liberty to withdraw their earlier applications & file fresh applications also in pursuance of such renotification. (iv) That as per the submission of State Government vide para 10 (viii) above that 32 State has not taken any action in pursuance of the impugned orders so far, it is directed that no mining leases for sandstone & masonry stone will be granted in pursuance of the impugned orders Annex.11 dated 16/11/2011 and Annex.13 dated 28/11/2011 till all such applications are decided as per the directions given in this judgment. (v) That all the applications will be decided within one year from today in accordance with the amended Rule 7(3) of the MMCR, 1986 on the basis of lottery or by way of auction, as may be considered appropriate by the State Government but not on the basis of 'first come first served' principle. Upon perusal of the above adjudication made by the co-ordinate Bench, a direction was issued to the Mining Department that the State Government shall follow the directions in the forthcoming consideration of applications. The first direction was that as far as possible the area for mining

should be well defined, demarcated and delineated so that only specific areas 33 are made available for grant of mining leases for sandstone and masonry stone. However, the second principle was that all the applications deserve to be considered as per the amended position of Rule 7(3) of the MMCR 198 viz., on the basis of auction or lottery so as to give a fair, reasonable and equal chance to all applicants, who apply before the given cut off date; meaning thereby, in the case of Ram Prakash Sharma Vs. State of Rajasthan & Others, S.B. Civil Writ Petition No.12884/2011, the co-ordinate Bench enlarged the scope of the earlier judgment rendered in Deepak Gehlot's case (supra). In the subsequent judgment it is nowhere stated that all the applications pending may be rejected. It is very strange that instead of making compliance the impugned notification dated 03.04.2013 is issued in which not only sub-rule (10) of Rule 4 is substituted but virtually the State Government by amending sub- rule (3) of Rule 7 took decision that all the applications for grant of mining lease shall be deemed 34 to have been rejected and application fee in respect of such applications shall be forfeited. Upon perusal of the amendment under challenge it is revealed that the amendment has been made only to undo the judgment rendered by the co-ordinate Bench of this Court in which specific order was passed to decide the applications as per the existing Rule 7(3) of the Rules of 1986. In the amendment impugned dated 03.04.2013 the State Government has not only substituted the existing sub-rule (3) of Rule 7 but also substituted existing sub-rule (10) of Rule 4 of the Rules of 1986 whereby it is specifically provided that all the applications which were presented in government land up to 27.01.2011 except the applications presented by persons having preferential right under Rule 3N or sub-rule (1) of Rule 11, in respect of which lease deed as per Rule 19 has not been executed shall be rejected. In the opinion of this Court prior to amendment dated 03.04.2013 all the applications which were 35 pending since long were to be decided as per the existing provisions of Rule 4(10) and Rule 7(3) of the Rules of 1986. But, it appears from the facts of the case that only to nullify the adjudication made by this Court in S.B. Civil Writ Petition No.3167/2007, Deepak Gehlot & Others Vs. State of Rajasthan & others, decided on 21.05.2009, the amendment dated 03.04.2013 has been issued. In the opinion of this Court, there is legitimate expectation of the citizens of the State from the Government that their applications should be decided as per the existing law.

Here, in this case, not only on the principle of legitimate expectation but also on the ground that two judgments were delivered by different Bench for deciding the pending applications as per the rules and certain directions were also issued, then, obviously no amendment was required in the existing rules; but, from perusal of the amendment notification dated 03.04.2013 it appears that the intention of substituting sub-rule (10) of Rule 4 and Rule 7, in 36 which complete procedure is substituted has been issued to snatch the existing right of the applicants whose applications were pending. On the one hand, in compliance of the judgment given in the case of Deepak Gehlot (supra) an amendment was made vide notification dated 28.01.2011 but the said notification was not given effect to and, on the other hand, in the garb of subsequent judgment delivered in Ram Prakash Sharma's case (supra) the impugned notification dated 03.04.2013 has been issued. In view of the above, we are of the opinion that although there is power left with the State Government to amend the rules as per Section 15 of the Act of 1957 but, here, in this case, the intention of making amendment under sub-rule (1) of Rule 4 and under Rule 7 vide impugned notification dated 03.04.2013 is totally against the principle of natural justice and, so also, against the principle of legitimate expectation of the citizens from the State. On the one hand, necessary instructions were issued by the 37 State Government to make compliance of the judgments rendered by the co-ordinate Benches of this Court in the case of Deepak Gehlot and Ram Prakash Sharma (supra) but, on the other hand, the impugned amendment has been made to nullify the judgments rendered by the co-ordinate Benches of this Court. In view of above discussion, we are of the opinion that amendment vide notification dated 03.04.2013 in sub-rule (10) of Rule 4 and sub-rule (3) of Rule 7 of the Rules of 1986 to the extent of rejection of pending applications is not in consonance with the basic principles of law and those provisions cannot be made applicable for applications pending up to 27.01.2011. We have perused the judgment of the Hon'ble Supreme Court in the case of State of Tamil Nadu Vs. M/s Hind Stone, reported in (1981) 2 SCC 205.in which, Hon'ble Supreme Court held that there is power left with the State to amend the rules and made 38 following adjudication :

12. The next question for consideration is whether Rule 8C is attracted when applications for renewal of leases are dealt with. The argument was that Rule 9

itself laid down the criteria for grant of renewal of leases and therefore rule 8C should be confined, in its application, to grant of leases in the first instance. We are unable to see the force of the submission. Rule 9 makes it clear that a renewal is not to be obtained automatically, for the mere asking. The applicant for the renewal has, particularly, to satisfy the Government that the renewal is in the interests of mineral development and that the lease amount is reasonable in the circumstances of the case. These conditions have to be fulfilled in addition to whatever criteria is applicable at the time of the grant of lease in the first instance, suitably adapted, of course, to grant of renewal. Not to apply the criteria applicable in the first instance may lead to absurd results. If as a result of experience gained after watching the performance of private entrepreneurs in the mining of minor minerals it is decided to stop grant of leases in the private sector in the interest of conservation of the particular mineral resource, attainment of the object sought will 39 be frustrated if renewal is to be granted to private entrepreneurs without regard to the changed outlook. In fact, some of the applicants for renewal of leases may themselves be the persons who are responsible for the changed outlook. To renew leases in favour of such persons would make the making of Rule 8C a mere exercise in futility. It must be remembered that an application for the renewal of a lease is, in essence an application for the grant of a lease for a fresh period. We are, therefore, of the view that Rule 8C is attracted in considering applications for renewal of leases also. 13.Another submission of the learned counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of G.O.Ms. No. 1312 (December 2. 1977) should be dealt with as if Rule 8C had not come into force. It was also contended that even applications for grant of leases made long before the date of G.O.Ms. No. 1312 should be dealt with as if Rule 8C had not come into force. The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8C 4.notwithstanding the fact that the applications had been made long prior to the date on which Rule 8C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable tune clothes an applicant for a lease with a

right to have the application disposed of on the basis of the rules in force at the time of the making of the application. None has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of G.O.Ms. No. 1312 should be dealt with as if Rule 8C did not exist. In our opinion, there is no dispute with regard to the above adjudication made by the Hon'ble Supreme 41 Court because in this matter the question of jurisdiction is not in question but the issue is whether any amendment can be made to nullify the judgment rendered by this Court for deciding the pending applications. We have examined the controversy from the angle of legitimate expectation of the citizens also. In the Rule of Law, it is the obligatory duty of the State to follow the adjudication when it becomes final. Admittedly, the judgment rendered by the co-ordinate Bench of this Court in the case of Deepak Gehlot & Others (supra) the State Government accepted the judgment and, later on, in the case of Ram Prakash Sharma (supra), another co-ordinate Bench expanded the relief and, before that, in compliance of the judgment in Deepak Gehlot's case an amendment was made while making amendment in the rules vide notification dated 28.01.2011. It is very strange that inspite of making amendment, the amendment was not given effect to 42 and, thereafter, after the judgment rendered in Ram Prakash Sharma's case on 13.03.2013, in which, the scope of relief given in Deepak Gehlot's case was expanded with certain directions, the State Government issued the impugned notification dated 03.04.2013 whereby it is provided that all the applications pending shall stand rejected. In our opinion, as per the judgment of the Hon'ble Supreme Court in Ram Pravesh Singh & Others Vs. State of Bihar & Others, reported in (2006) 8 SCC 381.every citizen has legitimate expectation that the judgment of the Court will be followed when it has attained finality and non-acceptance of the judgment may lead to challenge in appeal. But, it appears from the conduct of the respondent State that since 2007

inspite of judicial pronouncements and amendment made on 28.01.2011 the State Government is adamant not to decide the pending applications. In the case of Ram Pravesh Singh (supra) Hon'ble Supreme Court made following 43 adjudication in para 15 and 17 of the judgment which reads as under :

15. What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term 'established practice' refers to a regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a 'legitimate expectation' of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. 44 As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above 'fairness in action' but far below 'promissory estoppel'. It may only entitle an expectant : (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, courts may grant a direction requiring the Authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bonafide reason given by the decision-maker, may be sufficient to negative the 'legitimate expectation'. The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognized legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings

with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the 45 doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly.

17. This Court also explained the remedies flowing by applying the principle of legitimate expectation : (SCC pp.546-47, para

33) " It is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is 46 contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of 47 hearing before the decision affecting

such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors. (emphasis supplied). Therefore, in our considered opinion, the answer is in the negative to the question whether any amendment can be made to nullify the judgment rendered by this Court for deciding the pending applications because large number of applicants are litigating before this Court since long but, for one or the other reason, the State Government is not deciding the pending applications; and, at last, in two different judgments rendered by this Court in the cases of Deepak Gehlot (supra) and Ram Prakash Sharma (supra) specific directions were issued for deciding applications and it was legitimately expected from the State Government to make compliance of the said judgments; but, till today, no compliance has been made and, on the contrary, to 48 undo the judgments the impugned amendment has been made under sub-rule (10) of Rule 4 and under sub-rule (3) of Rule 7 of the Rules of 1986. Therefore, we hold that the amendment made to the extent indicated above vide impugned notification dated 03.04.2013 is unconstitutional because it is an attempt to nullify the judicial verdict given by the Court. Therefore, impugned amendment dated 03.04.2013 made in sub-rule (10) of Rule 4 and Rule 7(3) of the Rules of 1986 are hereby declared illegal to the extent of rejection of the pending applications and it is directed that all the pending applications filed up to 27.01.2011 shall be decided in accordance with law prevailing prior to issuance of impugned notification dated 03.04.2013. It is made clear that we are not expressing any opinion with regard to inter se dispute in between the petitioners of the case of Deepak Gehlot (supra) and of the case of Ram Prakash Sharma (supra), therefore, the petitioners in 49 both the above cases will be at liberty to pursue their remedy for their dispute in accordance with law, if so advised. These writ petitions are allowed in the above terms. (V.K. Mathur) J.

(Gopal Krishan Vyas) J.

Ojha, a.

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