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**Bhullan Vs. the Sarvodaya Vita Kavelu Kumbhar Kam Sahakari Audyogik Utpadak Sanstha Ltd. and ors.**

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**Court : Mumbai**

**Decided On : Nov-09-1977**

**Reported in : AIR1978Bom259; (1978)80BOMLR634; 1978MhLJ276**

**Judge : Dharmadhikari and ;Ginwala, JJ.**

**Acts : Maharashtra Minor Mineral Extraction (Vidarbha Region) Rules, 1966 - Rules 2(1), 4, 4(2), 5, 7, 8, 9, 33 and 34; Mines and Minerals (Regulation and Development) Act, 1957 - Sections 4 to 13, 14, 15(1) and 19; Maharashtra Co-operative Societies Act, 1960 - Sections 36 and 145; Banking Companies Act, 1959; Mineral Concessions Rules, 1960 - Rule 9(2); [Constitution of India](#) - Articles 39, 43 and 226**

**Appeal No. : Special Civil Appln. No. 447 of 1972**

**Appellant : Bhullan**

**Respondent : The Sarvodaya Vita Kavelu Kumbhar Kam Sahakari Audyogik Utpadak Sanstha Ltd. and ors.**

**Advocate for Def. : G.A. Paunikar, Asst. Govt. Pleader and ;S.C. Mehadia, Adv.**

**Advocate for Pet/Ap. : D.D. Deshraj and ;G.J. Ghate, Advs.**

**Judgement :**

## **Dharmadhikabi, J.**

1. The petitioner Pandit Bhullan alias Ram-shankar Tiwari who is carrying on business of manufacturing bricks filed an application bearing No. ML-274/67 to the Collector, Nagpur on 18-5-1967 for grant of mining lease for brick clay over 15.33 acres of land from survey No. 121/3 of village Rohna, Patwari Halka No. 53, tahsil Saoner, district Nagpur.

2. After filing of this application, the respondent No. 4 Bansilal Paliwal who is the Secretary of the Society known as Sarvodaya Vita, Kavelu Kumbhar kam Sahakari Audyogik Utpadak Sanstha Limited filed an application for mining lease for the same area on behalf of the society on 11-7-1967. This application came to be dismissed by the Collector according to the petitioner on the ground that the financial position of the said cooperative Society was not sound, whereas according to the respondents, on a technical ground of the absence of certificate from the District Deputy Registrar (Cooperative Societies), Nagpur, about the working of society. However, it is an admitted position that the said application of the society was rejected vide the order dated 21st of July 1967. After the said order of rejection was passed, vide order dated 9th August 1967, the Collector made the said area available to the petitioner excluding 150 feet distance from the river bed and 30 feet distance from the road and asked the petitioner if he was willing to proceed further with his mining lease application. He was also directed to furnish correct plans for the said purpose and it was also made clear that in case the reply of the petitioner was not received by the 25th of August 1967, it would be presumed that he was not willing to proceed further, In pursuance of this letter from the Collector, according to the petitioner, he submitted six correct copies of the plans and expressed in writing his willingness to take the mining lease vide his writing dated 23rd of August 1967.

3. According to the petitioner on 25th Sept. 1967 Paliwal obtained the solvency certificate of the value of Rs. 4,000/- on the basis of his personal properties, though the mining lease application was in the name of the Society and not in his own name. He also filed another incomplete mining lease application on 19-10-1967 bearing ML-361/67 in the name of the society. This application was

accompanied by the solvency certificate which was in the name of Shri Paliwal. The Collector by his order dated 31-10-1967 refused to grant the area to the society though there is some dispute about the reason for such a rejection. According to the petitioner thereafter his application was sent to the Tahsildar for report and recommendation.

4. After this report was received the Collector on the basis of the instructions issued by the Government reviewed his own order dated 31st Oct. 1967 whereby he rejected the application of the society and ultimately granted the mining lease to the society vide his order dated 5-12-1967. As a necessary consequence of this, the Collector executed a deed of mining lease in favour of the society on or about 5-1-1968.

5. Being aggrieved by this order of the Collector the petitioner preferred an appeal to the State Government. It appears that during the pendency of the hearing of the appeal, an ad interim stay was granted by the Government vide order dated 5-12-1967 (sic). However, ultimately the appeal filed by the petitioner came to be dismissed on 27th of March 1968.

6. Being aggrieved by these orders the petitioner filed a writ petition before this Court bearing Special Civil Appln. No. 489 of 1968. This Court vide its order dated 29-1-1969 allowed the said writ petition and made the rule absolute. The High Court remitted back the applications filed by the petitioner for reconsideration in advertence to the observations made in the judgment.

7. Consequent to the order of this Court the Collector was again seized of the applications of both the parties and thereafter the society cured the defect in their original application by submitting the solvency certificate on or before 12-8-1969. Thereafter the Collector ordered grant of mining lease for 5 years in favour of the petitioner over 10.80 acres of, land from Kihasra No. 121/3 of the village Rohna. By this order dated 24-12-1970 the Collector asked the petitioner to deposit a sum equal to 50 per cent of the annual dead rent in the Government Treasury and according to the petitioner this amount was duly credited. He also got the prescribed deed of mining lease embossed with the proper stamp from the Nagpur Treasury without prejudice to his claim that the mining lease should have been for

period of 10 years and with his own signature on it he submitted the papers along with the covering letter to the Collector dated 28-12-1970.

8. However, it appears that in the meantime the respondent No. 1 society approached the State Government by filing an appeal under R. 33 of the Maharashtra Minor Mineral Extraction (Vidarbha Region) Rules, 1966 (hereinafter referred to as the Extraction Rules). The State Government granted an ad interim stay of the operation of the order of the Collector and, therefore, obviously the mining lease could not be executed. Ultimately the matter was heard by the Hon'ble Minister for State (Revenue) and after hearing both the parties the State Government vide its order dated 6th of Dec. 1971 allowed the appeal filed by the respondent-Society and set aside the order of the Collector dated 24th Dec. 1970. The State Government further directed the Collector, Nagpur to consider the request of the Society on merits. In substance, therefore, the State Government again remitted back the matter to the Collector, Nagpur for deciding the application of the Society on its own merits. It is this order of the State Government which is challenged in the present petition on various grounds.

9. Shri Ghate, learned counsel appearing for the petitioner contended before us that sitting as an appellate Court the State Government had no power to set aside the order of the Collector unless it was shown that the Collector's order was contrary to law. According to him, the order of the State Government is based on extraneous consideration, that is, on a policy decision taken by the Government to encourage Co-operative Societies whereby large number of the people stand benefited. According to Shri Ghate this is wholly an extraneous consideration while deciding application for mining leases under the provisions of the Extraction Rules. He further contended that by oblique and indirect method the State Government has given a go bye to the decision of this Court namely, the judgment of this Court in Special Civil Application No. 489 of 1968, decided on 29-1-1969. Therefore, according to Shri Ghate the order passed by the State Government in appeal is wholly without jurisdiction, Shri Ghate further contended that the judgment of this Court in Special Civil Appln. No, 489 of 1968 was binding upon the parties. Under the rules it is the Collector who is empowered to grant mining leases. The Collector is expected to exercise his power of granting leases under rules 4 and 5

of the Extraction Rules after considering the applications filed by the parties under Rule 4 of the said rules. A discretion to grant or refuse the mining lease is vested in the Collector and the State Government has no power, jurisdiction or authority either to interfere with the said discretion or to direct as to how the said discretion should be exercised. According to Shri Ghate after considering the relevant provisions of the Extraction Rules the Collector passed the order granting the mining lease in favour of the petitioner and the State Government has exercised power not vested in it in setting aside the said well-considered order passed by the Collector.

10. According to the learned counsel for the petitioner the application filed by the Society was not accompanied by a certificate of financial standing of the applicant from a Revenue Officer as contemplated by Rule 4 (2) of the Extraction Rules. He further contended that the application itself was filed by the society in a different name. The name of the registered society bearing Registration No. 308 is Sarvodaya Vit-Kavelu Kumbhar kam Sahakari Audyogik Utpadak Sanstha Limited. The application was filed by the respondent-Society in the name of the Sarvodaya Vit-Kavelu Kumbhar kam Sahakari Sanstha Limited. Thus according to him, the words 'Audyogik Utpadak' were missing in the description of the society as found in the application for mining lease. Shri Ghate further submitted that this clearly indicates that the applicant who had filed the application for mining lease was a different and distinct entity and was not a society which was duly registered under the Co-operative Societies Act. He has further contended before us that in view of the provisions of Section 36 as well as Section 145 of the Maharashtra Co-operative Societies Act, the application filed by the respondent-society was neither proper nor legal. Therefore, according to Shri Ghate the application filed by the said society was not itself maintainable nor could it be considered by the Collector in view of the provisions of Rules 4 and 5 of the Extraction Rules as well as the provisions of the Maharashtra Cooperative Societies Act.

11. It was also contended by Shri Ghate that in any case if there are more than one applicant in the field then the general provisions governing the mining leases under the Mines and Minerals (Regulation and Development) Act, 1957 will apply and in that case the principle of priority will have to be followed by the Collector

while granting the mining leases. In substance, therefore, it is his contention that as the application filed by the petitioner was an earlier one, on the principle of priority he was entitled to get the mining lease in preference to the respondent No. 1-Society.

12. On the other hand in the return filed on behalf of the Society as well as the State Government and the Collector, it is contended by the respondents that the application filed by the society was in accordance with the rules. It was also contended in the return by the society that the society has also filed a recommendatory letter from the Assistant Registrar (Cooperative Societies), Nagpur dated 10-10-1967 whereby the Assistant Registrar had certified after inspection of the record of the society that the financial position of the society was sound. According to the respondents even the application filed by the petitioner on 18-5-1967 was not complete in all respect. It was treated complete on 6-6-1967. The Collector has also contended in his return that the initial application of the society was rejected on 23rd of Sept. 1967 because the District Deputy Registrar (Co-operative Societies) had not submitted his report by then. The respondents Collector and the State Government denied that the application filed by the Society on 19-10-1967 was in any way incomplete. According to them the said application was duly certified by the Registrar of Co-operative Societies, Nagpur. However, he was asked to submit the financial certificate under the Extraction Rules, which was subsequently submitted.

13. According to the respondents, the Collector completely misread the judgment of this Court in Special Civil Appln. No. 489 of 1968 and mechanically passed an order granting mining lease in favour of the petitioner. According to the respondents the Collector had not considered the applications of the petitioner or the society on their own merits and, therefore, the order passed by the Collector was obviously illegal. According to the respondents in appeal the Hon'ble Minister heard the counsel for both the sides and after considering the various contentions raised before him, rightly set aside the order passed by the Collector. According to the respondents the matter was not finally decided by the State Government but it has directed the Collector, Nagpur to consider the request of the society on merits. So far as the mistake in the name of the society is concerned, it was

contended by the respondents that the said mistake was not material. By virtue of this insignificant mistake, there was no difficulty in identifying the real applicant. The society is the one and the same and there is no other society in the field having the same name and registration number. It is further contended on behalf of the society that this is further clear from the fact that on an earlier occasion the petitioner had not raised such an objection at any time. Further the society is duly registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and bears a registration certificate. In this view of the matter, according to the respondents the application was filed by the proper society and was, therefore, rightly considered by the State Government at the appellate stage.

14. Shri Mehadia, learned counsel appearing for respondents 1 and 4 further contended before us that the provisions of Rule 4 (2) of the Extraction Rules are wholly directory and not mandatory. The obligation which is cast by the rules is to be satisfied at the time of the execution of the mining lease. Further it is quite clear from the bare reading of the rules as a whole that in cases of a society or some other persons the very condition relating to the solvency certificate may not apply. Even otherwise according to Shri Mehadia as the application is not yet finally decided, one way or the other and it was rejected by the Collector mechanically on the basis of the misreading of the earlier judgment of this Court, the State Government was right in setting aside the said order by exercising their power as an appellate authority under Rule 33 of the Extraction Rules.

15. For properly appreciating the controversy raised before us it will be useful if a detailed reference is made to the relevant rules. In exercise of the powers conferred by Sub-section (1) of Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957), the Government of Maharashtra made the rules which are known as Maharashtra Minor Mineral Extraction (Vidarbha Regional Rules, 1966. Under Rule 2 (1) (i) (c), the Collector of the district is declared a Competent Officer for the purposes of granting mining leases. It is not disputed before us that the applications filed by the Petitioner and the respondent-society were for the mining lease relating to the minor minerals. Rules 4 and 5 of the Extraction Rules deal with the applications for mining leases and their grant. The said rules read as under:

'4. Application for mining lease--(1) Every application for a mining lease in respect of any land in which the minerals belong to Government shall be made to the Competent Officer and shall contain the following particulars:

(a) (i) If the applicant is an individual. his name, nationality, profession and residence, and

(ii) if the applicant is a company, syndicate, partnership, or private firm its name, nature and place of business and place of registration of incorporation,

(b) a description illustrated by a map or plan showing as accurately as possible the situation, boundaries and area of the land in respect of which the mining lease is required.

(c) the minor mineral or minerals which the applicant intends to extract;

(d) the purpose for which the extracted minor minerals are to be used.

(e) the period for which the mining lease is required.

(f) the areas and minor minerals within the Vidarbha Region of State in respect of which the applicant or any person joint in interest with ton already holds a mining lease.

Explanation -- A map or plan referred to in item (b) shall give sufficient information to enable identification of the area in respect of which the lease is required.

(2) Every application shall be accompanied by a fee of Rs. 25/- and by certified copies of the relevant extracts of the Record of Rights pertaining to the lands in respect of which the mining lease is applied for and also by a certificate of financial standing of the applicant from a revenue officer not below the rank of a Tahsildar or from any banking company in this State as defined in the Banking Companies Act, 1959, or a co-operative bank registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960.

Provided that, an application for a mining lease for ordinary clay by village potters or makers of bricks or tiles shall, where the area of the lease does not exceed five

acres and the period thereof does not exceed five years be accompanied by a fee of Rs. 5/-.

5. Grant of mining lease and execution thereof -- (1) On receipt of an application under R. 4, the Competent Officer on making such enquiries as he deems fit may sanction the grant of a mining lease to the applicant or refuse to sanction it.

(2) Where a mining lease is granted under Sub-rule (1) the formal lease shall be executed within three months of the order sanctioning the lease, and if no such lease is executed within the period aforesaid, the order sanctioning the lease shall be deemed to have been revoked.

Provided that, where the Competent Officer is satisfied that the applicant for lease is not responsible for the delay in the execution of the formal lease, he may permit the execution of the formal lease after the expiry of the aforesaid period of three months.

(3) The mining lease shall be executed in form 'A' attached to these rules.' 16. By Rule 7 a provision is made for giving an intimation to the applicant in case of refusal of his application. Then by Rule 8 a Register of applications is maintained. By Rule 9 a security deposit is provided before the mining lease is granted and by the said Rule the applicant is enjoined to deposit as security a sum equal to 50 per cent of the annual dead rent fixed for the lease for due observance of the terms and conditions of the lease. Then comes Rule 33 which provides for an appeal against the order of the Competent Officer including the Collector. Any person aggrieved by an order of the Competent Officer (i) refusing to grant a mining lease or prospecting licence (ii) determining or cancelling such lease or licence and (iii) refusing to permit transfer of a mining lease, may within 2 months of the date of such order file an appeal to the Government. Then by Rule 34 a fee of Rs. 15/- is prescribed for filing such an appeal.

17. From the bare reading of these rules, therefore, it is quite clear that under Rule 5 it is the Competent Officer who is authorised to grant or to refuse the mining lease after making enquiry as it deems fit. However, this decision of the Competent Officer is subject to an appeal provided by Rule 33. It is contended by

Shri Ghate that in Rule 33 it is nowhere laid down that the appellate Court can interfere with the discretion of the Collector. Rule 33 does not provide for any guidelines as to on what grounds it is open to the appellate authority to interfere with the order passed by the Collector either sanctioning or refusing the grant. In substance, therefore, it is contended by Shri Ghate that while exercising its appellate power it is not open for the State Government to interfere with the discretion exercised by the Collector. In our opinion, this will not be the correct reading of Rule 33. By Rule 33 an appeal is provided to the Government.

18. As is well-settled an appeal is a creature of statute and the powers and jurisdiction of the appellate court must be circumscribed by the words of the statute itself. At the same time a court of appeal is a 'Court of error' and its normal function is to correct the decision appealed from and its jurisdiction should be co-extensive with that of the trial Court. It cannot, and ought not, to do something which the trial Court was not competent to do. There does not seem to be any fetter to its power to do what the trial Court could do.: (See S.K. Jadhav v. State of Maharashtra : 1971 CriLJ693 ). Further there is a vast difference between the revisional powers and the appellate powers. An appeal, as stated by Lord Davery in Ponnamma v. Arumogam 1905 AC 383, is a proceeding in which a question is whether the order of the Court from which the appeal is brought was right on the materials which the Court had before it. From this it would follow that an appellate Court has power to go not only into the questions of law, but has also the power to go into the questions of fact. Such power would further enable the appellate court to review or reassess the entire evidence and come to its own conclusion. As a matter of fact, the appellate Court is the final court of fact and, therefore, a litigant is entitled to a full, fair and independent consideration of the evidence and the material at the appellate stage. (See-- Provincial Transport Co. v. N.H. Mujumdar, 1957 Nag LJ 610. By Rule 33 a right of appeal is provided in very wide and general terms. Obviously, therefore, the appeal can lie both on questions of fact and law. The appellate authority has to decide the question as quasi-judicial authority. Therefore while exercising its jurisdiction under Rule 33 the State Government acts as an appellate authority which is a 'Court of error' and its normal function is to correct the decision appealed from and therefore its jurisdiction is co-extensive with that of the Competent Officer.

19. Therefore, in our opinion, it cannot be said that while exercising its appellate power the State Government cannot scrutinise the material on record independently, though it is no doubt true that the appellate Court or authority cannot act arbitrarily while exercising its appellate jurisdiction.

20. On an earlier occasion the matter arising out of the same applications had come before this Court in Special Civil Appln. No. 489 of 1968. The earlier order passed by the Government was set aside by this Court on the ground that the Collector had acted admittedly on the basis of the instructions and directions issued by the Government without any independent application of mind on his part. It appears from the record that the Government of Maharashtra has issued an order on 22nd of Sept. 1962 to the effect that with a view to give assistance to the working of industrial Cooperative Societies engaged in the manufacture of bricks and pottery articles, Government was pleased to direct that preference should be given to co-operative societies consisting of artisans only, over individuals or individual artisans while granting lease of the Government land for excavating clay for brick manufacture or pottery works. It further appears from the record that on an earlier occasion the Collector 'has granted a mining lease in favour of the respondent-society mechanically relying upon these executive instructions issued by the Government. It further appears that even the appellate authority had admitted in its return that it had instructed the Collector to prefer the cooperative society to individual while granting mining lease. Therefore, in the said decision this Court held that the Collector had acted only in accordance with the declared general policy of the State Government as incorporated in the instructions and had not exercised his jurisdiction independently as contemplated by Rules 4 and 5 of the Extraction Rules. In this context the Division Bench observed as under:

'The facts of the present case, however, go much further in so far as there is not merely a communication or declaration of Government's policy to that effect, but there is a positive direction which is headed as an order and the operative part of which really deprives the Collector who is a licensing authority of the discretion which is vested in him alone under Rule 5 of the Statutory rules in the present case. ...We hold that in the case before us the Collector failed to exercise the

discretion which vested in him under Rule 5 of the Rules in the matter of granting mining lease to the first respondent-society in so far as he followed the instructions dated 22nd Sept. 1962 which were given to him by the State Government. The order made by him granting mining lease to the first respondent cannot, therefore, be sustained and must be quashed.' However, the Division Bench agreed with the proposition that 'it was open to the Collector to prefer the first respondent on the ground that it was a co-operative society, if all other things were equal.' 14-11-1977.

21. It is further clear from the judgment in Special Civil Application No. 489 of 1968 that this Court refused to grant a mandatory injunction claimed by the petitioner Bhullan alias Ramashankar Tiwari directing the respondents 2 and 3 to execute the lease deed in favour of the petitioner, and therefore, the positive direction sought by the petitioner in that case was refused. In the view which was taken, therefore, the Division Bench quashed the orders issued by the respondents, namely, the Collector and the State Government. It was also observed by the Division Bench that it would be for the licensing authority to consider whether or not the petitioner is a fit and proper person for the grant of mining lease and whether he has fulfilled his statutory requirements in regard to grant of licence. Thus in substance the matter was remitted back to the Collector for reconsideration. However from the order passed by the Collector dated 24-12-1970, it is quite clear that the Collector misunderstood that he was directed by the High Court to grant the mining lease for extracting clay for manufacture of bricks from the year in question to the petitioner Bhullan Kamtaprasad Tiwari. From the tenor of the order it is quite clear that the learned Collector has not properly understood the observations made by this Court in the earlier decision and has misread the judgment. As a matter of fact, after the matter was remitted back to the Collector, before him there were two applications in the field, namely, one filed by the petitioner Tiwari and another by the respondent co-operative society. Therefore, it was the duty of the Collector to have considered both these applications on merits ignoring the directions given by Government in its order dated 22nd of Sept. 1962. Instead of doing this, the Collector thinking that it has been directed by the High Court to grant mining lease to the petitioner has passed the impugned order granting mining lease in favour of the petitioner Tiwari. In

substance, therefore, the Collector has not at all considered the application filed by the respondent-Society and has also not applied his mind independently to the application filed by the petitioner Tiwari. In this view of the matter, in our opinion, the learned appellate authority, namely, the State Government was right in coming to the conclusion that the order passed by the Collector was not in accordance with law as he had not exercised the discretion vested in him under Rules 4 and 5 after considering the applications before him in that behalf. It is further clear from the order passed by the State Government that it has again remitted back the case to the Collector for considering the application filed by the society on its own merits as the same was not considered by the Collector in its proper perspective.

22. However, it was contended by Shri Ghate that certain observations made by the Minister for State (Revenue) in his order dated 16th September 1971 are not correct. According to Shri Ghate, the observations made by the learned Minister that the Co-operative Society has already worked on the lease area and has spent some amount over it are not correct. It is not possible for us to verify the correctness or truthfulness of these observations at this stage because of the claim and counter-claim made before us at the time of hearing. However, as is clear from the order passed by the Government the matter is sent back to the Collector for considering the application of the society on its own merits and, therefore, obviously it is open to the petitioner to put forward his case in this behalf before the Collector and, therefore, in our opinion, it is not necessary to decide the said question at this stage.

23. It was further contended by Shri Ghate the learned counsel appearing for the petitioner that the said application filed by the Society was not accompanied by a certificate of financial standing from the competent Revenue Officer as contemplated by Rule 4 (2) of the Extraction Rules. The said application was not maintainable and, therefore, it is contended by Shri Ghate that the said application not being in accordance with the rules was liable to be excluded from consideration and then there was Only one application in the field and that was of the petitioner and hence the Government sitting in appeal committed an error in setting aside the earlier order passed by the Collector granting lease in favour of the petitioner.

24. On the other hand, it is contended by Shri Mehadia, learned counsel appearing for the Society, that the provisions of Rule 4 (2) of the Extraction Rules are wholly directory and not mandatory. By the said rules the only obligation cast upon the applicant is to satisfy the competent authority about its financial condition and that too at the stage of excitaion of a mining lease. According to Shri Mehadia in the present case necessary certificate from the District Deputy Registrar is on record. Further Shri Mehadia has drawn our attention towards the allegation made in the petition itself whereby it was admitted by the petitioner that the so-called society with a view to cure the defect in its application dated 19-10-1967 submitted a solvency certificate on or about 12th August 1969, obviously before 24-12-1970 when the Collector passed an order granting mining lease in favour of the petitioner Tiwari.

25. It is not necessary to deal with this question in detail in view of the latest decision of the Supreme Court in Krishna Kumar Mediratta v. Phulchand Agarwala : [1977]2SCR702 . In that case the Rule which fell for consideration before the Supreme Court was Rule 9 (2) of the Mineral Concessions Rules, 1960 read with Section 19 of the Mines and Minerals (Regulation and Development) Act, 1957. In the present case also Shri Ghate is strongly relying upon the provisions of Section 19 of the Mines and Minerals Regulation and Development) Act, 1957. According to Shri Ghate Rule 4 (2) of the Extraction Rules is mandatory and any application which is not in conformity with the said rules is liable to be dismissed under Section 19 of the said Act. After making a detailed reference to Rule 9 and Section 19 of the Act In para. 5 of the judgment the Supreme Court observed as under:

'All that we have here is the word 'shall' used to Rule 9 (2). But, this Courthas repeatedly held that the use of the word 'shall' in imposing a duty is not conclusive on the question whether the duty imposed is mandatory or directory, Moreover, that question was only incidentally involved here. It is not the breach of every mandatory duty in performing a prescribed act that could make an action totally ineffective or void ab initio. The filing of the application is one thing and completion of some annexed duty, which is legally separable is another unless the statute or a Rule provides otherwise.'

Then in para. 10 the Supreme Court further observed as under:

'There is no Rule whatsoever which says that failure to submit the correct fee at the time of the filing of the application will make the application void or invalid. Section 19 of the Act, however, says clearly:

'19. Any prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect.' Hence it is clear that the Act itself provides what is void and ineffective where that is the intention. It would have been provided at least by the Rules that an application not accompanied by the correct fee is void if that had been the intention behind them. Section 19 attaches voidness only to a grant made without due compliance with all rules. It is nowhere said that the act of making an application will be similarly void for a breach of rules.'

26. In our opinion, these observations will aptly apply to the present case also. In the case before us, it is an admitted position that even the application which was filed by the petitioner Tiwari was not complete when it was initially filed on 18th of May 1967. It was treated as complete on 6th June 1967. So far as the respondent society is concerned under some misunderstanding or otherwise it has initially submitted the solvency certificate in the name of its Secretary. It has subsequently produced a certificate issued by the Assistant Registrar. (Co-operative Societies), Nagpur dated 10th October 1967 regarding the financial soundness of the society. Further from the allegations made in the petition itself it is also clear that the respondent-society had duly submitted a solvency certificate on or before 12th August 1969, i.e. before the matter was considered by the Collector. In this view of the matter, in our opinion, having regard to the facts and circumstances of the present case, it will have to be held that there was a substantial compliance with the provisions of Rule 4 (2) of the Rules so far as the respondent-Society is concerned. Even otherwise it appears from the record that the application filed by the society was not rejected by the Collector on the ground that it was not accompanied by the solvency certificate. In this view of the matter, in our opinion, there is no substance in this contention also.

27. It was then contended by Shri Ghate that by virtue of Section 36 of the Maharashtra Co-operative Societies Act, 1960, a society which is registered under the said Act is a body corporate by the name under which it is so registered. The present application was not named by the society in the said name. On the other hand the word 'Udyogic Utpadak' and 'Limited' were wholly deleted by the said society while filing the application for grant of lease. Therefore, according to Shri Ghate the application of the so-called society given under the name which is not a registered one was liable to be rejected as there was no such society in existence. In our opinion, this contention is highly technical. From the omission of these two insignificant words, in our opinion, no prejudice has been caused to the petitioner or to anybody else. This is further clear from the fact that such a contention was not raised at any time in the earlier proceedings. It cannot be said that because of the omission of these two words, there was any difficulty in identifying the applicant, namely, the co-operative society. There is nothing on record also to indicate that there is any other society having the same name in the field. In our opinion, there is much substance in the explanation given by Shri Mehadia that as the registered name is a very long one, the Society has used the abbreviated form. It is not disputed before us that the registration number of the society is different or distinct. Therefore, if there is no dispute about the registration of the society, its registration number or the identity, in our opinion, only because there are omission of certain words in the application filed by the respondent-society, it cannot be said that the application was not filed in the name of a corporate body as registered under the Maharashtra Co-operative Societies Act, 1960. If there is any lacuna in this behalf and certain more particulars were called for obviously it was open for the Collector to have directed the applicant-society to furnish such particulars so as to establish the identity of the society. In this view of the matter, in our opinion, the contention raised by Shri Ghate in this behalf is wholly technical and is devoid of any substance.

28. It was then contended by Shri Ghate that in any case as there were two applicants in the field, namely the petitioner Tiwari and the respondent-society having regard to the general provisions governing the mining leases under the Mines and Minerals (Regulation and Development) Act, 1957 the Collector should have followed the principle of priority and on that basis the petitioner Tiwari alone

was entitled to the grant of mining lease. In the present case, we are dealing with an application for grant of lease relating to the minor minerals. The principle regarding the priority is not at all applicable to a case of minor mineral. As a matter of fact, by virtue of the provisions of Section 14 of the Mines and Minerals (Regulation and Development) Act, 1957, the provisions of Sections 4 to 13 (inclusive) will not apply to mining leases or other mineral concessions in respect of minor minerals. It is not necessary to deal with the question in detail in view of the decision of this Court in *Ramlal Lalchand v. H.G. Dange* : AIR1963 Bom117 . It is quite obvious that the provisions related to the priority which governed the major minerals and not to the minor mineral like clay.

29. It was then contended by Shri Ghate that the appellate authority, namely, the State Government has practically given a go bye to the earlier decision of the Division Bench and has again directed the Collector to consider the application of the society on the basis of its avowed policy to grant leases to the co-operative societies. According to Shri Ghate, this policy of the Government has no authority of law. Shri Ghate had further contended that it is well-settled that all executive actions of the Government must have some authority of law and as there is nothing in the Rule to indicate that while granting mining leases preference should be given to the co-operative societies, the so-called avowed policy of the Government has no authority of law and, therefore, the State Government committed an error in setting aside the order of the Collector on that basis. It is no doubt true that all executive action of the Government must have an authority of law. However, it is not correct to say that the avowed policy adopted by the Government in this behalf lacks any such authority of law. It is no doubt true that by its earlier decision this Court has held that the State Government cannot issue any directions or instructions to the Collector as to how he should exercise his discretion in this behalf and on that basis the earlier order passed by the Collector which was wholly based on the direction issued by the Government without any independent application of mind by the Collector as contemplated under Rule 5 of the Extraction Rules was set aside by the Division Bench of this Court. However, the observation of the Division Bench cannot be read torn from its context. Even while setting aside the order by the Collector which was wholly based on the directive issued by the Government, the Division Bench observed that-

'The proposition that it was open to the Collector to prefer the first respondent on the ground that it was a co-operative society, if all other things were equal can hardly be disputed.'

30. Even apart from these observations of the Division Bench, in our opinion, from the bare reading of the rules itself it is quite clear that certain concession was intended to be shown to the village potters or makers of bricks or tiles etc. This is in itself clear from the proviso to Rule 4 (2) of the Extraction Rules. In the matters of payment of fees these persons are given concession by the Rule itself and it is laid down that if their case is covered by the said proviso then they are required to pay a fee of Rs. 5/- only, whereas the normal fee is Rs. 25/-. From the record it appears that the respondent-society is a co-operative society consisting of artisans only and this was the common ground at least before the High Court when the matter was heard in Special Civil Appln. No. 489 of 1968 (Bom). It appears from the judgment of the Division Bench that it was a common ground that the respondent-society falls within Clause (1) of the Order impugned in the said writ petition, namely, the Order of 22nd September 1962 which dealt with the co-operative societies consisting of artisans only.

31. Further from the judgment of the Division Bench itself it is quite clear that other things being equal, preference could be given to a co-operative society. This is obviously in conformity with the directive principles of the State Policy as incorporated in Part IV of the Constitution. It is no doubt true that the provisions contained in this Part of the Constitution are not enforceable by any Court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it is the bounden duty of the State to apply these principles. Therefore, for adjudicating upon the validity of an executive action<sup>^</sup> Court can legitimately look to the directive principles for the light and guidance or at any rate to seek assurance. In any Case these directive principles can serve as an instrument of instructions to the Legislature and the Executive.

32. In this context, reference could be made to a decision of the Supreme Court in *Mumbai Kamgar Sabha v. Abdulbhai* : (1976)11LLJ186SC and particularly to the following observations in para. 29 of the said judgment:

'We have to bring in some legal philosophy into this linguistic problem as it incidentally involves doctrinal issues where the Constitution is not altogether non-aligned. Statutory interpretation, in the creative Indian context, may look for light to the lodestar of Part IV of the Constitution e.g. Article 39 (a) and (c) and Article 43. Where two judicial choices are available, the construction in conformity with the social philosophy of Part IV has preference.'

This is what precisely was observed by the Division Bench in the earlier decision when it said that it is open to the Collector to prefer the co-operative society if all other things were equal. If the respondent is a co-operative society consisting of artisans only then obviously other things being equal, a preference can be shown to it while deciding the competitive rights of an individual and such a co-operative society. If this is so, then in our opinion, it cannot be said that the observations made by the State Government in its appellate order dated 6th December 1971 are wholly irrelevant and extraneous to the controversy involved.

33. In any case, having regard to the provisions of Article 226 of the [Constitution of India](#), in our opinion, this is not a fit case wherein any interference is called for in the extraordinary jurisdiction of this Court at this stage. Ultimately the State Government has remitted back the matter to the competent authority, namely, the Collector for considering the application of the society on its merits. In this view of the matter, in our opinion, this is not a fit case wherein this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution.

34. In the result, therefore, the petition fails and is dismissed with costs.

35. Petition dismissed.