Suryakant S/o Vasantlal D. Minawala, Bombay

Vs

State of Maharashtra and Others

Writ Petition (Criminal) No. 482 of 1980

(R. S. Sarkaria, P. S. Kailasam JJ)

11.09.1980

JUDGMENT

SARKARIA, J. –

1. This is a petition under Article 32 of the Constitution of the issuance of a writ of habeas corpus.

2. Vasantlal D. Minawala (hereinafter referred to as 'the detenu') resides in Bombay, and carries on business as a gold dealer in partnership in the name and style of "Jewellers Danabhai Minawala" at 252/58, Zaveri Bazar, Bombay - 2.

3. On December 24, 1979, an order, dated December 18, 1979, issued under Section 3(1) of the COFEPOSA, by Shri S. D. Deshpande, the Deputy Secretary, government of Maharashtra, Home Department (Special), expressed in the name of the Government, was served on the detenu. On the same date, the ground of detention were served on the detenu.

4. On January 9, 1980, on behalf of the detenu, his Advocate addressed a letter to the Deputy Secretary, Government of Maharashtra, Home Department (Special), copies of which for immediate action were endorsed to (1) the Chief Minister, Government of Maharashtra, Bombay (R & I), COFEPOSA Cell 1, Bombay. In this letter, the Advocate requested the addressees to be furnished with copies of all the material documents and statements referred to and relied upon in the grounds of detention, to enable the detenu to make to effective representation against the impugned order of detention.

5. By his reply, dated February 1, 1980, addressed to the detenu's Advocate, Shri S. M. Sule, the Under - Secretary, Government of Maharashtra, Home Department (Special), State that since the grounds of detention served on the detenu were clear, elaborate and precise, the request of the detenu for supply of copies of all statements, Panchanamas and other documents relied upon in the grounds of detention, it was regretted, could not be granted. This refusal was conveyed to the detenu about 23 days after he had made, through his counsel, a request for the supply of the basic documents.

6. On January 25, 1980, the detenu was served in the prison with a notice, dated January 23, 1980, issued by the Assistant Collector of Customs, calling upon the detenu to show cause why the seized goods, referred to in the grounds of detention, be not confiscated and why penal action should not be taken against him and the others.. A similar notice was served on the writ-petitioner, Suryakant who is the son of the detenu. The son of the detenu, thereupon, approached the Customs Authorities and asked for the copies of the statements of the persons and the other documents referred to in the

notice.

7. Pursuant to his request, on February 1, 1980, copies of all the statements of those persons, referred to in the show-cause notice, were furnished to the writ-petitioner by the Customs Authorities. The writ-petitioner made these copies available to the detenu, who thereafter, on February 5, 1980, submitted a representation addressed to the detaining authority and to the Chairman of the Advisory Board.

8. By a latter, dated March 13, 1980, the detenu was informed by the deputy Secretary to the Government of Maharashtra that his representation, dated February 5, 1980, had been declined by the government, Thus, it took 37 days for the government to dispose of the representation of the detenu.

9. Mr. Soil J. Sorabjee, appearing for the writ-petitioner, challenges the validity of the Decision on these grounds :

> (1) By refusing to supply the copies of the documents and statements relied upon or referred to in the grounds of detention - which was not a refusal under Article 22(6) - the authorities had violated the constitutional imperative in Article 22(5) of the Constitution. Even if the copies supplied to the son of the detenu are deemed to be supplied to him, then also, there was an unreasonable delay of 22 days in supplying the same, as a result of which, the detention stood vitiated.
>
> (2) There was an inordinate and unreasonable delay of 37 days in considering the representation of the detenu, which amounted to an infringement of Article 22(5) and 21 of the Constitution.
>
> (3) The power of detention under COFEPOSA has been missed and exercised illegally inasmuch as the order of preventive detention is based on a solitary incident that the detenu and his alleged associates has all declared was that they had understated the value of those goods. There was nothing clandestine about this activity of the detenu which could be dubbed as snuggling.
>
> (4) There was non-application of mind on the part of the detaining authority and the actions based on non-communicated and non-disclosed material.

10. It appears to us, there is a good deal of force in grounds (1) and (2) urged by Mr. Sorabjee. For the purpose of this petitions, we do not think it necessary to deal with all the points canvassed by the learned counsel. because the detaining authority had intransigently and unreasonably refused to furnish the detenu with copies of all the documents relied upon in the grounds of detention and subsequently after a delay of more than three weeks, it reluctantly supplied some copies to the son of the detenu.

11. In the counter-affidavit filed by Shri Sule, Under - Secretary to the Government of Maharashtra, it is said that the detenu's request for supply of the copies of all the statements, Panchanamas and other documents was rejected by the government in the light of the comments received from the Collector of Customs. The detenu had made a request through his Advocate for the supply of the copies by a letter of January, 9, 1980. The copies, according to the affidavit of Shri Sule, after the initial refusals, were supplied some time on or before February 5, 1980. It is not alleged that the records of which the copies were sought, were voluminous or that there was any physical

impediment to the prompt supply of the copies. On the contrary, the position taken is that the detenu had no right to be furnished with these copies when the grounds of detention served on him were elaborate and full.

12. Time and again, this Court has pointed out that under article 22(5) of the Constitution the detenu has got a two-fold right. First, the detenu has a right to be served with the grounds of detention as soon as practicable. (Under sub-section (30 of Section 3 of COFEPOSA. Such grounds must be communicated to the detenu within five days, and in exceptional cases, for reasons to be recorded, within 15 day of his detention.) The second right of the detenu, which is implicit in Article 22(5), is that he should be furnished with all the basic facts and materials, with reasonable expedition, which have been relied upon in the grounds of detention. The unreasonable delay of more than three weeks in supplying the detenu with copies of those basic documents had infringed this constitutional imperative, and had stultified and impeded his constitutional right to make a speedy and effective representation.

13. It was on this short ground that we had by our Order dated May 2, 1980, allowed this writ petition and directed the release of the Detenu.

STATE OF TAMIL NADU, APPELLANT v. M/S. HIND STONE AND OTHERS, RESPONDENTS.

Civil Appeals Nos. 2602 to 2604 of 1980 (Appeals by Special Leave from the Judgment and Order dated June 20, 1980 of the Madras High Court in Writ Petitions Nos. 4467 of 1977 and 2933 & 4793 of 1978), decided on February 5, 1981.

JUDGMENT

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. - Entry 23 of List II of the Seventh Schedule to the Constitutions is : "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union." Entry 54 of List I of the Seventh Schedule is : "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". Thus while 'regulation of mines and mineral development' is ordinarily a subject for State legislation, Parliament may, by law, declare the extent to which control of such regulation and development by the Union is expedient in the public interest, and, to that extent, it becomes a subject for parliamentary legislation. Parliament has accordingly enacted the Mines and minerals (Regulation and Development) Act, 1957. By Section 2 of the Act it is declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent thereafter provided. It is now common ground between the parties that as a result of the declaration made by Parliament, by Section 2 of the Act, the State legislatures are denuded of the whole of their legislative power with respect to regulation of mines and mineral development and that the entire legislative field has been taken over by Parliament. That this is the true position in law is clear from the pronouncements of this is the true position in law is clear from the pronouncements of this Court in Hingir-Rampur Coal Co. Ltd. v. State of Orissa, State of Orissa v. M. A. Tulloch & Co. and Baijnath Kedia v. State of Bihar Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957, defines various expression occurring in the Act. Section 3(e) defines 'minor minerals' and it includes any mineral declared to be a minor

mineral by the Central Government by a notification in the official Gazette.'Black granite' has been so notified by the Central Government as a minor mineral. Section 4 to 9-A are grouped under the heading "General Restrictions on Undertaking Prospecting and mining Operations". These provisions as well as Section 10 to 13 are made inapplicable to 'minor minerals' by Section 14. Section 4 prohibits all prospecting or mining operations except under a licence or a lease granted under the Act and the rules made thereunder. Section 4-A(1) enables the State Government on a request made by the Central Government in the interest of regulation of mines and mineral development to terminate a mining lease prematurely and grant a fresh mining lease in favour of a Government company or corporation owned or controlled by government. Perhaps because Section 4-A(2) is inapplicable to minor minerals because of the provisions of Section 14, Section 4-A(2) has been expressly enacted making somewhat similar provision, as in Section 4-A(1), in respect of 'minor minerals' also. Section 4-A(2) enables the State Government, after consultation with the Central Government, if it is of opinion that it is expedient in the interest of regulation of mines and mineral development so to do, to prematurely terminate a mining lease in respect of any minor mineral and grant a fresh lease in respect of such mineral in favour of a Government company or corporation owned or controlled by government. Section 5 imposed certain restrictions on the grant of prospecting licences and mining leases. Section 6 prescribes the maximum ares for which a prospecting licence or mining lease may be granted. Section 7 prescribes the period for which prospecting licences may be granted or renewed. Section 8 prescribes the period for which mining leases may be granted or renewed. Section 9 provides for the payment of royalty and Section 9-A for the payment of dead rent. Sections 10,11 and 12 constitute a group of sections under the title "Procedure for Obtaining Prospecting Licences or Mining Leases in Respect of Land in Which the Minerals Vest in the Government. Section 10 provides for making applications for prospecting licences or mining leases in respect of any land in which the minerals vest in the government. Section 11 provides for certain preferential rights in favour of certain persons in the matter of grant of mining leases. Section 12 prescribes the register of prospecting licences and mining leases to be maintained by the State Government. Section 13 empowers the Central Government to make rules for regulating the grant of prospecting licences and mining leases. In particular we may mention that Section 13(2) (a) empowers the Central Government to make rules providing for "the persons by who, and the manner in which, applications for prospecting licences or mining leases in respect of land in which the minerals vest in the government may be made and the fees to be paid therefore". Section 13(2) (f), we may add, empowers the Central Government to maker rules providing for, "the procedure for obtaining a prospecting licence or a mining lease in respect of any land in which the minerals vest in a person other than the government and the terms on which, and the conditions subject to which, such a licence or lease may be granted or renewed". Section 14 makes the provisions of Section 4 to 13 inapplicable to minor minerals. Section 15 empowers the State Government to make rules for regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and purposes connected therewith. Section 15(3) provides for the payment of royalty in respect of minor minerals at the rate prescribed by the rules framed by the State Government. Section 16 provides for the modification of mining leases granted before October 25, 1949. Section 17 enables the Central Government, after consultation with the State Government to undertake prospecting or mining operations in any area not already held under any prospecting licence or mining lease, in which event the Central Government shall publish a notification in the official Gazette giving the prescribed particulars. The Central Government may also declare that no prospecting licence or mining lease shall be granted fin respect of any land specified in the notification. Section 18 casts a special duty on the Central Government to take all necessary steps for the conservation and development of minerals in India. Sections 19 to 33 are various miscellaneous provisions with which we are not now concerned.

2. Pursuant to the power vested in it under Section 15 of the mines and Minerals (Regulation and Development) Act, 1957, the Government of Tamil Nadu has made the Tamil Nadu Minor Mineral Concession Rules, 1959. Section II of the Rules consisting of Rules 3 to 16 is entitled "Government Lands in Which the Minerals Belong to the government". Rule 8 prescribes the procedure for the lease of quarries to private persons. The ordinary procedure is to publish a notice in the district Gazette inviting applications, thereafter to hold an auction and finally to grant a lease to the highest bidder. Rule 8-A which was introduced by way of an amendment in 1972, provides for a special procedure for the sanctioning of leases in favour of applicants who require the minerals for their existing industries or who have an industrial programme for the utilisation of the mineral in their own industry. Rule 8-B was introduced in 1975 making specials provision for the grant of leases for quarrying black granite. The rule is as follows :

8-B. Lease of quarries in respect of black granite to private persons :- (1) Notwithstanding anything to the contrary contained in Rules 8 and 8-A, the authority competent to grant leases in respect of quarrying black granite shall be the State Government.

(2) An application for the grant of a quarrying l ease in respect of any land shall be made to the collector of the District concerned in the prescribed form in triplicate and shall be accompanied by a fee of Rs. 100. The Collector shall after scrutiny, forward the application along with his remarks to the Director of Industries & commerce who shall technically scrutinise the industrial programme given by the applicant and forward the application with his remarks to the government. (G. O. Ms. 993 Industries dated August 25, 1975) Rule 8-C was introduced by G. O. Ms. No. 1312 Industries dated December 2, 1977. By this rule leases for quarrying black granite in favour of private persons are banned. Leases can only be granted in favour of a corporation wholly owned by the State Government. It is the vires of this Rule which was under challenge before the High Court and is also under challenge now. It will be useful to extract the same. It is as follows :

8-C. Lease of quarries in respect of black granite to Government Corporation, etc.-(1) Notwithstanding anything to the contrary contained in these Rules, on and from December 7, 1977 no lease for quarrying black granite shall be granted to private persons.

(2) The State Government themselves may engage in quarrying black granite or grant leases for quarrying black granite in favour of any corporation wholly owned by the State Government :

provided that in respect of any land belonging to any private persons, the consent of consent of such person shall be obtained for such quarrying or lease.

3. Rule 9 provides for renewal of leases and it is in the following terms :

9. Renewal of lease. - (1) The Collector may on application renew for a further period not exceeding the period for which the lease was originally granted in each case if he is satisfied that -

(i) such renewal is in the interests of mineral development, and

(ii) the lease amount is reasonable in the circumstances of the case.

(2) Every application for renewal shall be made to Collector, sixty days prior to the date of expiry of the lease :

Provided that a lease, the period of which exceeds ten years shall not be renewed except with the

sanction of the Director of Industries and Commerce.

A proviso was added to Rule 9(2) in 1975 and it said : "Provided also that the renewal for quarrying black granite shall be made by the government".

4. Several persons who held leases for quarrying black granite belonging to the State Government and whose leases were about to expire, applied to the Government of Tamil Nadu for renewal of their leases. In some of the cases application were made long prior to the date of G. O. Ms. No. 1312 by which Rule 8-C was introduced. Some application were made after Rule 8-C came into force. There were also some applications for the grant of fresh leases for quarrying black granite. All the applications were dealt with after Rule 8-C came into force and all of them were reject din view of Rule 8-C. Several writ petitions were filed in the High Court questioning the vires of Rule 8-C on various grounds. Apart from canvassing the vires of Rule 8-C, it was contended that Rule 8-C did not apply to grant of renewals of lease at all. It was also argued that in any event, in those cases in which the applications for renewal had been made prior to he coming into force of Rule 8-C, their applications should have been dealt with not accepting some of the contentions raised on behalf of the applicants, struck down Rule 8-C on the ground that it exceeded the rule-making power given to the State Government under Section 15 which, it was said, was only to regulate and not to prohibit the grant of mining leases. As a consequence all the applications were directed to be disposed of without reference of Rule 8-C. it was also observed that even if Rule 8-C was valid it applied only to the grant of fresh leases and not to renewals. It was also held that it was not open to the government to keep the applications pending for a long time and then to dispose them of on the basis of a rule which had come into force later. The State Government has come in appeal against the judgment of the Madras High court while the respondent-applicants have tried to sustain the judgment of the Madras High Court on grounds which were decided against them by the Madras High Court.

5. The learned Attorney-General who appeared for the Government of Tamil Nadu submitted that the approach of the High Court was vitiated by its failure to notice the crucial circumstance that the minerals belonged to the government and the applicants had no vested or indefeasible right to obtain ad lease or a renewal to quarry the minerals. There were good reasons for banning the grant of leases to quarry black granite to private parties and in the light of those reasons the government could not be compelled to grant leases which would result in the destruction of the mineral resources of the country. Shri. K. K. Venugopal, learned counsel who led the argument for the respondents submitted that the question of ownership of the minerals was irrelevant. In making the ruled the State Government was acting as a delegate and not as the owner of the minerals. He submitted that it was not open to the State Government to exercise its subordinate legislative function in a manner to benefit itself as owner of the minerals, nor we it open to the State Government to create a monopoly by such mean. According to Shri. Venugopal creation of a monopoly in the State was essentially a legislative function and was incapable of delegation. It was claimed that there was violation of Articles 301 and 303 of the Constitution. It was further claimed that Section 15 of the Mines and Minerals (Regulation and Development) Act 1957, enabled the State Government to make rules to regulate the grant of leases and not to prohibit them. In any case it was said that rule 8-C had no application to renewals and that in any event it would not have the effect of affecting applications made more than 60 days before it came into force.

6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the

best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957. We have already referred to its salient provisions. Section 18, we have notices, casts a special duty on the Central Government to take necessary steps for the conservation and development of minerals in India. Section 17 authorises the Central Government itself to undertake prospecting or mining operations in any area not already held under any prospecting licence or mining lease. Section 4-A empowers the State Government on the request of the Central Government, in the case of minerals other then minor minerals, to prematurely terminate existing mining leases and grant fresh leases in favour of a Government company or corporation owned or controlled by government, if it is expedient in the interest of regulation of mines and mineral development to do so. In the case of minor minerals, the State Government is similarly empowered, after consultation with the Central Government. The public interest which induced Parliament to make the declaration contained in Section 2 of the Mines and Minerals (Regulations and Development) Act. 1957, has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of miners. Parliaments' policy is clearly discernible from the provisions of the Act. It is the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community. There are clear signposts to lead and guide the subordinate legislating authority in the matter of the making of rules. Viewed in the light shed by the other provisions of the Act, particularly Section 4-A, 17 and 18, it cannot be said that the rule-making authority under Section 15 has exceeded its powers in banning leases for quarrying black granite in favour of private parties and in stipulating that the State Government themselves may engage in quarrying black granite or grant leases for quarrying black granite in favour of any corporation wholly owned by the State Government. To view such a rule made by the subordinate legislating body as a rule made to benefit itself merely because the State Government happens to be the subordinate legislating body, is, but, to take too narrow a view of the functions of that body. The reasons that prompted the State Government to make Rule 8-C were explained at great length in the common counter-affidavit filed on behalf of the State Government before the High Court. We find no good reason for not accepting the statements made in the counter-affidavit. It was said there :

I submit that the leases for black granite are governed by the Tamil Nadu Minor Mineral Concession Rules, 1959 under which originally there was scope for auctioning of quarries of minor minerals. In amendment issued in the G. O. dated December 6, 1972, under Rule 8-A it was indicted that the Collector may sanction leases in favour of applicants, who are having an industrial programme to utilise the minerals in their own industry. This provisions so applicable to all minerals including black granites. However, it was found that there were several cases where lessees who obtained the black granite areas on lease by auction were not quarrying in a systematic and planned manner taking into consideration the Welfare and safety measures of the workers as well as the conservation of minerals.. Even after the introduction of the amendment under rule 8-A in most cases, the industry set up was of a flimsy nature more to circumvent the rule than to really introduce industry including mechanised cutting an polishing. The lessees were also interested only in obtaining the maximum profit in the shortest period of time without taking into consideration the proper mining and development of the mineral. There was also considerable wastage of new materials due to wasteful mining. Therefore, government issued a further amendment as Rule 8-B wherein the competent authority to grant leases in respect of the quarrying black granite was transferred from the collector to the State government level. They also prescribed a standard form and an application fee to be paid with the application. The amendment states that the director of Industries and

Commerce shall technically scrutinies the industrial programme given by the applicant while forwarding the same to government. At the same time, in the G. O. issued along with amendment, it was stated that of any of the State Government organizations like Tamil Nadu Small Industries Corporation Limited, Tamil Nadu small Industrial Development Corporation Limited is interested to obtain a lease for black granted in a particular area, preference will be given to Government undertaking over other private entrepreneurs for granting the lease applied for by them. However, in spite of these amendments to regulate the grant of mining lease, there were a large number of lessees (exceeding 140), who were engage do mining without proper technical guidance or safety measures etc., of the workers. These lessees made a strong representation to the then government in 1976 expressing that though they had given assurance to set up industries to use the granites, they were not able to do so for various reasons. They also represented that they should be allowed to export the raw blacks of black granites. Therefore, government had issued a Government Order dated February 15, 1977 relating to relaxation of the ban of export of raw blocks and provision for setting up a polishing or finishing unit was not made a prerequisite. They have also stated that the terms ad conditions for the existing leases would remain in force. However, on an examination of the performance of the lessees over the past several years, it has been found that excepting in a very few cases, none of the lessees had set up proper industries or developed systematic mining of the quarries. The exports continue to be mainly on the raw block granite materials and not cut an polished slabs. A large number of the leases were not operating either due to speculation or lack of finance from the lessees. Therefore, government decided that there should be no further grant of lease to Private entrepreneurs for black granite. This was mentioned in G. O. Ms. No. 1312 Industries dated December 2, 1977.

We are satisfied that rule 8-C was made in bona fide exercise of the rule-making power of the State Government and not in its misuse to advance its own self-interest. We however guard ourselves against being understood that we have accepted the position that making a rule which is perfectly in order is to be considered a misuse of the rule-making power, if it advance the interest of a State, which really means the people of the State.

7. One of the submissions on behalf of the respondents was that monopoly was a distinct legislative subject under Entry 21 of List III of the Seventh Schedule to the Constitution and therefore monopoly, even in favour of a State Government can only be created by plenary and not subordinate legislation. Parliament not having chosen to exercise its plenary power it was not open to the subordinate legislating body to create a monopoly by making a rule. Our attention was invited to H. C. Naraynappa v. State of Mysore, where it was held that the expression 'commercial and industrial monopolies' in Entry 21 of List III of the Seventh Schedule to the Constitution was not confined to legislation to control of monopolies but was wide enough to include grant of creation of commercial or industrial monopolies in favour of the State Government also. We are unable to agree with Shri Venugopal's validity of a scheme for nationalisation of certain routes made pursuant to the powers conferred by Chapter IV-A of the Motor Vehicles Act was under attack in that case. One of the grounds of attack was that.

by Chapter IV-A of the Motor Vehicles Act, 1939, Parliament had merely attempted to regulate the procedure of entry by the States into the business of motor transport in the State, and in the absence of legislation expressly undertaken by the State of Mysore in that behalf, that State was incompetent to enter in the arena of motor transport business to the exclusion of private operators;

Sustenance of the submission was sought to be drawn the language of Article 19(ii) which provides that nothing in Article 19(1) (g) shall prevent the State from making any law relating to the carrying

on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service. Whether to the exclusion, complete or partial of citizens or otherwise. The argument was that a State or a Corporation owned or controlled by the State could carry on a trade, business, only if the State made a law relating to it. The argument was repelled by the court in these words :

The plea sought to be founded on the phraseology used in Article 19(6) that the State intending to carry on trade or business must itself enact the law authorising it to carry on trade or business is equally devoid of force. The expression 'the State' as defined in Article 12 is inclusive of the Government and parliament of India and the Government and the Legislature of each of the States. Under Entry 21 of the concurrent List, the parliament being competent to legislate for creating commercial or trading monopolies, there is nothing in the Constitution which deprives to of the power to create a commercial or trading monopoly in the constituent States. Article 19(6) is a mere saving provision : its function is not to create a power but to immunise from attack the exercise of legislative power falling within its ambit. The right of the State to carry on trade or business to the exclusion of others does not arise by virtue of Article 19(60. The right of the State to carry on trade or business is recognised by Article 298; authority to exclude competitors in the filed of such trade or business is conferred on the State by entrusting power to enact laws under Entry 21 of List III of the Seventh Schedule, and the exercise of that power in the context of fundamental rights is secured from attack by Article 19(6).

In any event, the expression 'law' as defined in Article 13(3) (a) includes any ordinance, order, bye-law, rule, regulation, notification, custom etc., and the scheme framed under Section 68-C may properly be excluding private operators from notified routes or notified areas and immune from the attack that it infringes the fundamental right guaranteed by Article 19(1) (g).

8. Earlier in Rai Sahib Ram Jawaya Kapur v. State of Punjab, before the Seventh Amendment of the Constitution by which the present Article 298 was substituted for the old Article, the question arose whether it was beyond the competence of the executive Government to carry on a business without specific legislative sanction. The answer was that it was not. What was said by the court in that case was incorporated in the seventh amendment of the Constitution. In that case the facts were that the State of Punjab, by a series of executive orders had established for itself a monopoly in the business of printing and selling textbooks for use in schools. The argument that legislative sanction was necessary to unable the State Government to carry on the business of printing and publishing textbooks was repelled and it was held that no fundamental right of the petitioners who had invoked the jurisdiction of the court had been infringed.

9. Another of the submissions of the learned counsel was that G. O. Ms. No. 1312 dated December 2, 1977 involved a major change of policy, which was a legislative function and therefore, beyond the competence of a subordinate legislating body. We do not agree with the submission. Whenever there is a switch over from 'private sector' to 'public sector' it does not necessarily follow that a change of policy requiring express legislative sanction is involved. It depends on the subject and the statute, For example, if a decision is taken to impose a general and complete ban on private mining of all minor minerals, such a ban may involve the reversal of a major policy and so it may require legislative sanction, But if a decision is taken to ban private mining of a single minor mineral for the purpose of conserving it, such a ban, if it is otherwise within the bounds of the authority given to the government by the statute, cannot be said to involve any change of policy. The policy of the Act remains the same and it is, as we said, the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community. Exploitation of

minerals by the private and/or the public sector is contemplated. If in the pursuit of the avowed policy of the Act, it is though exploitation by the public sector is best and wisest in the case of a particular mineral and, in consequence, the authority competent to make the subordinate legislation makes a rule banning private exploitation of such mineral, which was hitherto permitted we are unable to see any change of policy merely because hat was previously permitted is not longer permitted.

10. One of the arguments pressed before us was that Section 15 of the Mines and Minerals (Regulation and Development) Act authorised the making of rules for regulating the grant of mining lease and not for prohibiting them as Rule 8-C sought to do, and, therefore, Rule 8-C was ultra vires Section 15. Well known cases on the subject right from municipal corporation of the City of Toronto v. Virgo and Attorney-General for Ontario v. Attorney-General of the Dominions up to state of U. P. v. Hindustan Alluminium Corporation Ltd., where brought to our attention. We do not think that 'regulation' has that rigidity of meaning as never to take in 'prohibition. Much depends on the context in which the expression is used in the stature and the object sought to be achieved by the contemplated regulation. It was observed by Mathew, J. in G. K. Krishnan v. State of Tamil Nadu : "The word 'regulation' has no fixed connotation. It meaning differs according to the nature of the thing to which it is applied". In modern statues concerned as they are with economic and social activities, 'regulation' must, of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to public sector from the private sector. More so in a welfare State. It was pointed out by the privy Council in Commonwealth of Australia v. Bank of New South Wales and we agree with what was rated therein that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down that in no circumstances and it might be that in regard to some economic activities and at some stage of social development, prohibition with a view to state monopoly was the only practical and reasonable manner of regulation. The statute with which we are concerned, the Mines and Minerals (development and Regulation-Act, is aimed, as we have already said more than once, at the State conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of as care mineral, to permit exploration by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 the Act.

11. The submission of the learned counsel that the impugned rule contravened Article 301 and 303 of the constitution is equally without force. Now, "the restrictions freedom from which is guaranteed by Article 301 would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade" (Atiabari Tea Co. Ltd. v. State of Assam), and, "regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of restrictions contemplated by Article 301"."They are excluded from the purview of the provisions of Part XIII of the Constitution for the simple reason that they do not hamper, trade, commerce or intercourse but rather facilitate them" (Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan). The Mines and Minerals (Regulation and Development) Act is, without doubt a regulatory measure, Parliament having enacted of for the express purpose of "the regulation of mines and the development of minerals.". The Act and the rules properly made thereunder are, therefore, outside the purview of Article 301. Even otherwise Article 302 which enables Parliament, by law, to impose such restrictions on the freedom of trade, coerce or intercourse between on Estate and another or within any apart of the territory of India as may be required in the public interest also furnished an answer to the claim based on the alleged contravention of Article 301. The Mines and

Minerals (Regulation and Development) Act is a law enacted by parliament and declared by Parliament to be expedient in the public interest. Rule 8-C has been made by the State Government by notification in the official Gazette, percent to the power conferred upon it by section 15 of the Act. A statutory rule, while ever subordinate to the parent statute, is, otherwise, to be treated as part of the statute and as effective. "Rules made under the statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction or obligation" (State of U. P. v. Babu Ram Upadhya, see also Maxwell : INTERPRETATION OF STATUTES, 11th Edn., pp. 49-50). So, statutory rules made pursuant to the power entrusted by parliament are law made by Parliament within the meaning of Article 302 of the Constitution. To hold otherwise would be to ignore the complex demands made upon modern legislation which necessitate the plenary legislating body to discharge its legislative function by laying down broad guide-lines and standards, to lead and guide as it were, leaving it to the subordinate legislating body to fill up the details by making necessary rules and to amend the rules from time to time to meet unforeseen and unpredictable situations, all within the frame work of the power entrusted to it by the plenary legislating body. State of Mysore v. H. Sanjeeviah was cited to us to show that rues did not become part of the statute. That was a case where by reference to section 77 of the Mysore Forest Act which declared the effect of the rules, it was held that the rules when made did not become part of the Act. That was apparently because of the specific provisions of section 77 which while declaring that the rules would have the force of law stopped short of declaring that they would become part of the Act. In the absence of any express provision, as now, the ordinary rule as enunciated in Maxwell and State of Utter Pradesh v. Babu Ram Upadhya would perforce apply.

12. The next question for consideration is whether Rule 8-C 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 8-C Should be confined, in its application, to grant of leases in the first instance. We are unable to see therefore 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 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 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 lease in the private sector in the interest of conservation of the particular mineral resource, attainment of the object sought will be frustrated changed outlook. In fact, some of the applicants for renewal of leases To renew leases favour of such persons would make the making of Rule 8-C 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 of a fresh period. We are, therefore, of the view that Rule 8-C is attracted in consideration 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 8-C 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 9-C 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 8-C notwithstanding the fact that the applications had been made long prior to the date on which rule 8-C 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 time clothes an applicant of 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. No one has a vested right to the grant or renewal of a lease and none can claim a vested tight 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 tights in anyone, an application for a lease had necessarily top 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 th 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 8-C did not exist.

14. In the view that we have taken on the several questions argued before us all the appeals arising out of applications for the grant or renewal of leases for quarrying black granite in Government lands are allowed ad the writ petitions filed in the High Court are dismissed. Special leave is granted in cases in which leave had not been previously granted. The appeals are allowed and disposed of in the same manner.

15. There are, however, a few appeals in which the applications were not for the grant or renewal of leases to quarry black granite in Government lands but were for permission to quarry black granite in Patta lands in which the with to minerals belonged to the applicants-private owners themselves. Apart from the fact that rule 8-C occurs in a group of rules in Section II which bears the head "Government lands in Which the Minerals Belong to the Government" while the rules relating to lands in which the right to minerals belongs to private owners are dealt with in Section III. The language of rule 8-C is clear in that it cannot have any application to lands in which the right to minerals belongs to the applicants themselves. Rule 8-C is only concerned with leases for quarrying black granite ad it cannot, therefore, have any application to cases whether no lease is sought from the government. In the case of lands in which the right to minerals belongs to private owners and those owners seek permission to quarry black granite the applications will have to be dealt with under the relevant rules in Section III of the Tamil Nadu Minor Mineral Concession Rules, Rule 8-C, it may be noted, does not impose a general ban on quarrying black granite but only imposes a bar on the grant of leases for quarrying black granite. Appeals and special leave petitions which arise out of applications for the grant of permission to quarry black granite in the Patta The result is, Special Leave petitions 9257, 9259, 9260, 9271, 9273 to 9282 and 9284 of 1980 are dismissed and Special Leave Petitions 9234 to 9248, 9250 to 9256, 9258, 9261, to 9270, 9283, 9285, 9286, 9288,9289 and 9290 of 1980 are granted and appeals allowed. Civil Appeals 2602 to 2604 of 1980 are allowed. There will be no order as to costs.

</html