CASE NO.:
Appeal (civil) 800 of 2005

PETITIONER:
Doiwala Sehkari Shram Samvida Samiti Ltd.

RESPONDENT:
State of Uttaranchal and Ors

DATE OF JUDGMENT: 12/12/2006

BENCH:
Dr. AR. Lakshmanan & Tarun Chatterjee

JUDGMENT:
J U D G M E N T
WITH

CIVIL APPEAL NOs.678 & 679 OF 2005

Dr. AR. Lakshmanan, J.

Civil Appeal No. 800 of 2005 was filed against the order passed by the learned single Judge dismissing the writ petition filed by the appellant challenging the order of the District Magistrate refusing to grant lease to the appellant as well the Policy dated 17.10.2002 of the State of Uttaranchal whereby the State created monopoly in respect of mining of minor minerals.

Civil Appeal No. 678 of 2005 was filed by Maya Ram against the final judgment and order dated 3.12.2003 passed by the High Court of Uttaranchal in W.P. No. 258(M/B) of 2003 vide which the writ petition filed by the appellant was dismissed.

Civil Appeal No. 679 of 2005 was filed by one Yograj Singh against the judgment and order dated 3.12.2003 passed by the High Court of Uttaranchal in Writ Petition No. 70(M/B) of 2003 whereby the High Court dismissed the writ petition filed by the appellant.

The respondents in all the appeals are one and the same.

The appellant in Civil Appeal No. 800 of 2005 is Doiwala Sehkari Shram Samvida Samiti Ltd. which is engaged in mining business and has vast experience of minor minerals with expertise, applied for grant of lease for mining of minor mineral under Rule 9-A of the U.P. Minor Minerals (Concession) Rules, 1963 for a period of ten years in respect of 25 acres in Lot No. 2 on Tons River in Kalsi Block and 28.42 acres in Lot No.3 Block No.1 village Rampur Mandi, District Dehradun. According to the appellant, the Samiti is the discoverer of the aforesaid two areas and entitled for preferential treatment under the Rules. The District Magistrate after finding the application of the appellant complete in all respect vide order dated 3.8.1998 directed the sub-Divisional Magistrate, Division Forest Officer and Deputy Director, Geology and Mining to submit their report on the application. The Divisional Forest Officer, sub-Divisional Magistrate and the Deputy Director, Mining and Geology submitted their report dated 22.8.1998, 9.9.1998 and 11.9.1998 respectively recommending the grant of lease in favour of the appellant for ten years. The Divisional Forest Officer, in pursuance of Notification No. 2380 dated 5.6.1997 which requires the decision on the application to be taken by a Committee headed by District Magistrate and consisting of Divisional Forest Officer and Deputy Director, Mining and

Geology, wrote a letter dated 4.12.1998 to constitute the committee to take a decision on the application as delay was causing monetary loss to the Forest Department. Despite these recommendations, no Committee was constituted by the District Magistrate as required for decision on the application of the appellant. The appellant preferred an appeal under Rule 77 of the Rules before the Court of Commissioner, Garhwal for constitution of the Committee. The appeal was allowed vide order dated 9.8.2001 by reviving the applications of the appellant and directed the District Magistrate to decide the application of the appellant for grant of lease. While the appeals of the appellant were pending, the State of U.P. passed order dated 4.9.1999 granting lease to the U.P. Forest Corporation for ten years. The appellant challenged the order for grant of lease before the High Court of Allahabad by filing a writ petition. The High Court vide order dated 25.9.2002 directed the District Magistrate to consider the application of the appellant. On 30.4.2001, the erstwhile State of U.P. was bifurcated and the area under question fell under the newly formed State of Uttaranchal which exercising power under Section 87 of the U.P. Reorganisation Act, 2000 extended the U.P. Minor Minerals (Concession) Rules 1963 with certain modification/amendment to the newly formed State of Uttaranchal. On 17.10.2002, a new policy creating complete and general ban of mining of minor mineral by private persons was introduced by the State executive. The salient features of the policy decision are as under:

"In the State of Uttaranchal, the Mineral Policy, 2001 dated 30.04.2001 was formulated to ensure the mining of various mineral by modern methods, to conserve the environment and to explore new mineral by modern Techniques and also to do away the monopoly in excavation/ mining of minor minerals.

(2) That having considered the necessity of extensive review of mineral the policy 2001 of the State in view of impeding needs of Environment conservation, Revenue income easy availability of minor minerals at proper rate to the consumers and development institutions and to create opportunity of employment for the local people. The Government has taken following decision to make the present mineral policy more effective and development oriented in respect of the minerals available in the State :

2.1 To remove the possibility of monopoly in respect of mining for the areas full of minor minerals and for ensuring the conservation of environment and for the mining/excavation work by scientific method.

2.2 As far as possible the lease for excavation/mining shall be granted to the Government corporations on river wise basis so as to ensure better co-ordination and control. For this purpose lease for mining/excavation in respect of all areas in district Dehradun shall be granted to Garhwal Commissionary Development Corporation and in respect of all areas in River Gola shall be granted to Uttaranchal Forest Development Corporation. But because of excessive availability areas full of minor mineral in District Haridwar, the lease of excavation/mining in forest areas shall be granted to Uttaranchal Forest Development Corpn. and in revenue areas to Garhwal Commissionary Development Corporation.

2.3 The excavation/mining work in respect of the left out areas under the Mineral Policy 2001, that is, Tanakpur (Sharda), Ram Nagar, Kotdwar Satpuli and Shrinagar (Alaknanda) shall also be carried out by the aforesaid Corporation. The concerned District Magistrate in respect of these rivers/areas is required to consult with the officers of Forest Development Corporation/Garhwal Commissionary Development Corporation/Kumayun Commissionary Development Corporation and submit a proposal to the Government forthwith.

2.4 The small lots of minor minerals in Hill and plan regions where excavation/mining was being done and it is possible to do such excavation/mining but is not being carrying out because of absence of permission from the Government of India under the Forest Conservation Act, 1980, than district wise proposals shall be prepared by the concerned Corporations or Uttaranchal State Cooperative Distribution Organisation and through the District Magistrate same shall be communicated to the Government of India for permission. In the event of permission from the Government of India under the Forest Conservation Act, 1980 for excavation/mining in the said areas the excavation shall be carried out by the Government Corporations/Uttaranchal State Cooperative Distribution Organisation. If for some reasons aforesaid institutions are not in a position to carry out mining activities themselves than same shall be ensured by aforesaid institutions with the help of local people/institutions after obtaining the consent of the Government.

2.5 The land of private measurements except the land mentioned in aforesaid paras 2.2. and 2.3 or for grant of licence for mining of minor \026 minerals/lease for mining/short term mining, it is compulsory to get prior permission from the Govt.

2.6 In addition to the aforesaid paras 2.2 and 2.3 in any other condition the prior approval from the Government shall be necessary for the grant of lease/short time permit for excavation mining of minor minerals on the district level.

2.7 With the object to prevent misuse of minor minerals and loss of revenue, the District Magistrate shall ensure time to time checking of the quantity of minor minerals into stone crushers and the entering of goods prepared and effective invigilation on exit of minor minerals from the stone crushers.

2.8 \005\005\005\005\005\005\005\005\005\005\005\005.

2.9 \005\005\005\005\005\005\005\005\005\005\005\005\005

2.10 \005\005\005\005\005\005\005\005\005\005\005\005..

Sd/-
(illegible)
S.Krishnan
Chief Secretary"

Pursuant to the order dated 25.9.2002, the District

Magistrate decided the application and rejected the same in view of policy dated 17.10.2002. The rejection Order reads as follows:

From : District Magistrate.
Dehradun.

To

Sri Sushil Kumar,
President,
Doiwala Sahakari Shram Samvida Samiti Ltd.,
Markhand Grand, P.O. Doiwala,
District Dehradun.

Sub: Regarding Applications dated 3.8.98 for excavation lease of minor minerals, available in Lot No. 2 & 3 of Chakrata Forest Division.

Sir,

In compliance of order, passed on Writ Petition No. 1206/MB/2001 dated 25.09.2002, filed by you in Hon'ble High Court Nainital, on the subject mentioned above, it is to inform you that an amendment has been made in mineral policy vide Uttaranchal State G.O. No. 3498/O.V./22-kha/2001 dated 17.10.2002.

According to paras 2.1 and 2.2, in respect of all the areas of District Dehradun, lease of excavation has to be granted to Garhwal Mandal Vikas Nigam. In the light of above order both of your applications for excavation lease dated 3.8.98 has been dismissed.

Sincerely,

Sd./-

(Illegible)

(Radha Ratani)
District Magistrate
Dehradun."

We heard Mr. L.N. Rao, learned senior counsel assisted by Mr. Amit Kumar and Mr. Amit Anand Tiwari, learned counsel and Ms. Shobha, learned counsel appearing for the appellants and Mr. Avtar Singh Rawat, learned Additional Advocate General for the State of Uttaranchal and Mr. Jatinder Kumar Bhatia and Mr. Irshad Ahmad, learned counsel appearing for the respondents.

Mr. L.N. Rao, learned senior counsel appearing for the appellant in C.A.No. 800 of 2005 submitted that the High Court has failed to appreciate that the State in exercise of its executive powers cannot put a complete and general ban of mining of all minor mineral by private persons. He submitted that the complete and general ban of mining of all minor mineral by private persons would require legislative sanction. For this proposition, he relied on the judgment of this Court in State of Tamil Nadu vs. M/s Hind Stone & Ors. (1981) 2 SCC 205 and in State of T.N. & Anr. vs. P. Krishnamurthy & Ors. (2006) 4 SCC 517.

Learned senior counsel further submitted that the policy of the State imposing complete ban and creating monopoly is without any legislative sanction, against the provisions of Statute. Moreover under Section 17A(2) of the Minor Mineral Development Regulation Act, 1957, the State before reserving

any area exclusively for itself has to obtain approval from the Central Government which has not been done in the present case. Therefore, the policy does not conform with the requirements as stipulated by the statute as well as law laid down by this Court and, therefore, the same is ultra vires. For this proposition, he relied on the judgments of this Court in Indian Express Newspapers (Bombay) Private Ltd. & Ors. vs. Union of India & Ors., (1985) 1 SCC 641 and Union of India & Anr. vs. International Trading Co. & Anr. (2003) 5 SCC 437. He further submitted that the State Government is not competent to create monopoly by a policy decision exercising its powers as delegated authority under Section 15 of MMDR Act, 1957. The policy decision would not have come in the way of grant of lease to the appellants as their right was fructified much before the policy came into being. He submitted that this Court has held consistently that the ordinary rule of law is that the rights of the parties stand crystalised on the date of commencement of litigation and right of relief should be decided by reference to the date on which the appellant entered the portals of the Court as held in Beg Raj Singh vs. State of U.P. & Ors. (2003) 1 SCC 726. Since in the present case, the appellants were consistently prosecuting their case with diligence, the subsequent policy could not have prevented the grant of lease to the appellants. Arguing further, learned senior counsel submitted that the High Court upheld the policy solely on the ground that the policy is in public interest. It was submitted that the policy which do not conform to the requirement of law laid down by this Court was bad. He also submitted that the High Court failed to appreciate that the State by creating monopoly through a policy decision had rendered Rule 9A of the Rules giving preferential rights to certain private persons, otiose and hence the policy is contrary to the statute.

Ms. Shobha, learned counsel appearing for the appellant in Civil Appeal No. 678 of 2005 after adopting the arguments of Mr. L.N. Rao submitted that the view taken by the High Court is contrary to the consistent view taken by this Court that the executive orders can be issued to fill up the gaps in the Rules if the Rules are silent on the subject provided the same is not inconsistent with the Statutory Rules already framed as was held in the case of Indra Sawhney & Ors. vs. Union of India & Ors., 1992 Suppl.(3) SCC 217 and in Laxman Dhamanekar & Anr. Vs. Management of Vishwa Bharata Seva Samiti & Anr., 2001(8) SCC 378. She also submitted that the statutory Rules cannot be overridden by executive orders or executive practice and merely because the Government had taken a decision to amend the Rules does not mean that the Rule stood obliterated and till the rule is amended, the Rule applies as observed in K. Kuppusamy & Anr. vs. State of T.N. & Ors., (1998) 8 SCC 469.

The High Court though found force in the submission of the appellant that the earlier Notification dated 30.4.2001 does not impose a complete ban over grant of lease to private persons, but despite this failed to appreciate that if that is so then no such ban can be imposed by way of a Government Order issued in contradiction to the said Gazette Notification. She also invited our attention to the rejection order dated 21.5.2003 wherein it has been stated that in view of Government Order No. 3498/Industrial Development-22 Kha/2001 dated 17.10.2002 in connection with the amendment of Mining Policy-2001 issued by the Government in continuation of Uttaranchal Minor Mineral Concession Rules, 2001 that mining work from the rivers/lots situated in the District be carried out by Garhwal Mandal Development Corporation Dehradun and in the forest areas the said work

should be got done through Uttaranchal Forest Development Corporation alone. The Additional District Magistrate, therefore, rejected the application made by the appellant for grant of mining lease for ten years and informed the appellant to take back his application fee and preliminary expenses of Rs.3000/-. She also submitted that the State before reserving any area exclusively has to obtain approval from the Central Government which has not been done in the present case.
Mr. Avtar Singh Rawat, learned Additional Advocate General, in reply to the arguments, submitted that the State Government amended the Rules and the policy decision of the Government is in bona fide exercise of executive power of the State Government and not in its misuse to advance its own self interest. It was submitted that the State Government has a power to change the policy by executive action when it is not trammeled by any statute or rule. He further submitted that the Government has constituted a Committee of Cabinet Council for making recommendations for amending the Mining Policy 2001 and after accepting the recommendations by the Uttaranchal Council of Ministers the amendment has been made in the Mining Policy 2001 by the Government Order No. 3498 dated 17.10.2002. It was further contended that the State Government has not misused any of its rights for establishing the monopoly of the Government Companies/Corporations in the mining sector. The factual position is that under para 2.5 of the amendment dated 17.10.2002 the provision has been made to grant mining permits/mining lease to the private parties on their private lands also. The learned Additional Advocate General further submitted that the recommendations by the Council of Ministers constituted for amendment in Mining Policy 2001 have been approved and admitted and that the State Government while exercising the powers conferred under section 87 of the U.P. Reorganisation Act, 2000 and the U.P. sub-Mineral (Remission) Regulations, 1963 has been adapted by the Council of Ministers by making the same conformable/adaptable in the light of Uttaranchal State, in sequence of which itself, Government's Order No. 1187 dated 30.4.2001 has been issued by which Uttaranchal sub-Mineral (Remission) Regulation has been made. It was further submitted that by exercising the powers conferred under Section 87 of the U.P. Reorganisation Act, 2000, the U.P. Sub-Mineral (Remission) Regulation 1963 has been formulated.
Section 87 of the U.P. Reorganisation Act, 2000 reads as under:
"87. For the purpose of facilitating the application in relation to the State of Uttar Pradesh or Uttaranchal of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation \026 In this section, the expression "appropriate Government" means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government."

Relying upon Section 87, learned Additional Advocate General submitted that under the above Section, U.P. Sub-Mineral (Remission) Regulation, 1963 has been formulated by

the Council of Ministers while making the same adaptable in the light of the Uttaranchal State. It was further submitted that the State Government while exercising the powers conferred under Section 87 of the Reorganisation Act has adopted the U.P. Upkhanij (Parihar) Niyamavali, 1963 in the perspective of the State of Uttaranchal, in pursuance whereof the Government Order No. 1187 dated 30.4.2001 has been issued by which the Uttaranchal Upkhanij (Parihar) Niyamavali has been formulated. As already stated, the policy decisions were taken by the Council of Ministers and after approval of Council of Ministers, the mining policy 2001 has been amended by Government Order No. 1031 dated 30.4.2001 and the Government Order No. 3498 dated 17.10.2002 has been issued and any general and full restriction has not been imposed on the mining of the Upkhanijs.

We have carefully considered the rival submissions made by the parties with reference to the records, the Government Orders and annexures filed in these appeals.

The Parliament has enacted the Mines and Minerals (Regulation & Development) Act, 1957. Section 4 of the Act prohibits all prospecting or mining operation except under a licence or a lease granted under the Act and Rules made thereunder. 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 mineral and purposes connected therewith. Pursuant to the powers vested in it under Section 15 of Mines and Minerals (Regulation & Development) Act, 1957 the State of U.P. has made U.P. Minor Mineral (Concession) Rules, 1963 which has been adopted by the State of Uttaranchal with certain modifications on 30.4.2001 exercising power under Section 87 of U.P. Reorganisation Act, 2000. The State of Uttaranchal further amended its policy decision on 17.10.2002 whereby it was decided that as far as possible the lease for excavation/mining shall be granted to the Government Corporations on river wise basis so as to ensure better coordination and control. This decision was taken keeping in view the excavation of the minor mineral with the modern techniques, to do away with the monopoly in the excavation/mining and for the purpose of the conservation and development of minor mineral available at the reasonable rate as also to increase the employment opportunity apart from the aspect of revenue. However, the provision was included if for some reasons the Government Institutions are not in a position to carry out mining activities themselves then the same shall be ensured by the Institutions with the help of local people/institutions after obtaining the consent of the Government. Thus it was submitted that no policy decision has been taken by the State Government against the Rules and the Act. It was also submitted that the High Court is fully justified in upholding the policy and that the policy is not contrary to Rules and the provisions of the Act. It is pertinent to notice that an argument advanced by the learned counsel that the High Court fell in error in holding that the State Government is competent to frame a policy creating a monopoly in favour of Government Companies/Corporations exercising delegated legislative power conferred by the Parliament under Section 15 of the Mines and Minerals (Regulations) Act, 1957. This argument, in our view, is without any basis. The State Government, in the instant case, has not amended the mining policy for creating any monopoly of the Government company or Government Corporation.

The Government has not made any exclusive provision for State/Companies/Corporations etc. in the mineral policy

under the amended Mineral Policy dated 17.10.2002. In this context, our attention was drawn to Para 2.5 of the amended Mineral Regulation dated 17.10.2002 reproduced in paragraph supra.

In paragraph 2.5 provisions have been made for sanction mining/collection leases/short term mining licenses on private "NAAP" land under which short term mining leases/temporary mining licenses have been sanctioned in the different Districts in Uttaranchal State. In our view, no monopoly of mining of minerals in favour of the Government Corporations/Departments has been created, nor have the fundamental rights as enshrined under the Constitution been violated. As already noticed, by Government Order No. 3498 dated 17.10.2002 in paragraph 2.5 there is a provision for grant of license permitting private parties for mining of the minerals and nowhere the general and full restriction has been imposed. In the instant case, the State Government has exercised its right as conferred under Section 87 of the U.P. Reorganisation Act, 2000 for the first time and U.P. Sub-Minerals Remission Regulation (Exemption), 1963 were adapted and in sequence of which the Government's order No. 1187 dated 30.4.2001 has been issued. The newly created Uttaranchal State in view of making Mineral Policy more effective and developing for ensuring the mining/collection work of sub minerals available in the State in a scientific manner while keeping the environment preserved and for ruling out the possibility of monopoly in mining area covered with the sub-minerals as far as practicable, provisions are made to sanction river wise mining/collection leases to the Government Corporations so that better coordination and control might be ensured. The Mineral Policy, 2001 of Uttaranchal State has been declared by the Government Order dated 30.4.2001under which in the Forest Areas, keeping in view the Forest Conservation, provisions have been made for getting the work of mining and collection of the sub-minerals, done through Uttaranchal Forest Development Corporation. The area in question applied for by the appellant is concerned with forest area.

We may also usefully reproduce the Notification dated 30.4.2001 issued by the Government in pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India. The Notification reads as under:

"In pursuance of the provision of clause (3) of Article 348 of the Constitution of India the Governor is pleased to order the publication of the following English translation of the notification No. 1187/Ind. Dev./2001-22Kha/2001 Secretariat, Dehradun dated April 30, 2001 for general information.

Notification

Whereas under the provision of the Section 86 of the Uttar Pradesh Reorganisation Act, 2000 the Uttar Pradesh Minor Mineral (Concession) Rules, 1963 is applicable to the State of Uttaranchal. Now, therefore, in the exercise of the power conferred under Section 87 of the Uttar Pradesh, Reorganisation Act, 2000 (Act No. 29 of 2000), the Governor of Uttaranchal is pleased to direct that the Uttar Pradesh Minor Mineral (Concession) Rules, 1963 shall have applicability to the State of Uttaranchal subject to the provisions of the following order :-

The Uttaranchal Minor Mineral (Concession) Rules, 2001 (Adaptation and Modification) Order, 2001.

1. Short title and commencement

(i) This order may be called the Uttaranchal Minor Mineral (Concession) Rules, 2001 (Adaptation and Modification) Order, 2001.
(ii) It shall come into force at once.

2. Uttaranchal to be read in place of Uttar Pradesh :

In the Uttar Pradesh Minor Mineral (Concession) Rules, 1963 wherever the expression "Uttar Pradesh" occurs, it shall be read as "Uttaranchal".

In the sub-Rule (5) of Rule 1 of the above amended Uttaranchal Minor Mineral (Concession) Rules, 2001 the following shall be added:
"In the sub-rule (5) of the Rule 1 of the above amended Uttaranchal Minor Mineral (Concession) Rules, 2001, the following shall be added :-

"This rule shall not affect the right of the Government to get the mining activities done by the Government Departments, Government Corporations or Judicial Corporations".

In the sub rule (2) of the rule 3 of the above amended The Uttaranchal Minor Mineral (Concession) Rules, 2001 before the word "any" the following shall be added :-

"Excluding where the mining activities are done by the Government Departments, Government Corporations or Judicial Corporations".

It is thus seen that under the above amended Rule, the rights of the Government to get the mining activities done by the Government Departments, Government Corporations etc. was not affected. The rights of the Government, as already noticed, mining trade in respect of the minor minerals and lease is regulated by Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 under which the State Government has been empowered to make Rules to give effect to the provisions of the Act. There is no restriction under the Act that the minor minerals lease would be confined to State or its agencies and as such the policy decision of the State of Uttranchal which creates an embargo on the right of the appellant is ultra vires the provisions of 1957 Act and the Rules. The right to trade is guaranteed under Article 19(6) of the Constitution of India and that can only be regulated by means of a valid law and not by the notification, which has been done by the State of Uttranchal in the present case. It is also seen from the Notification dated 30.4.2001 that it did not deprive the appellants' right of consideration of his application as no monopoly or right was created excluding any private person.
It was argued by the learned senior counsel that the appellant has preferential right of consideration under Rule 9(a) of 1963 Rules and the District Magistrate while rejecting the application has not considered this aspect. To appreciate the argument of Mr. L.N. Rao, it will be proper to mention certain provisions of 1957 Act and the Rules of 1963.
Section 15 of the Mines and Minerals (Regulation & Development) Act, 1957 gives power to State Government to make rules in respect of minor minerals.
The State of U.P. framed the U.P. Minor Minerals (Concession) rules 1963 under Section 15 of the Mines and Minerals (Regulation & Development) Act, 1957.

Rule 3 Sub-clause 1 of the rules provides that no person shall undertake any mining operation in any area within the State except under and in accordance with the terms and conditions of a mining lease or mining permit granted under these Rules. Rules 3 sub-clause II speaks that no mining lease or mining permit shall be granted otherwise than in accordance with the provisions of the Rules. Rule 9(A) gives preferential right to certain persons in respect of mining lease for sand etc. Rule 27 provides procedure for grant of lease by auction. Under Rule 72 if any area, which was held under a mining lease, under Chapter-II or as reserved under Section 17(A) of the Act becomes available for re-grant on mining lease, the District Officer shall notify the availability of the area through a notice inviting for applications for grant of mining lease specifying a date. Rule 77 provides appeal before Divisional commissioner against the order of District Officers Committee passed under the Rules. Thereafter under Rule 78 revisions shall lie before the State Government.

Under Section 86 of U.P. Re-organization Act, 2000, the U.P. Mining Minerals (Concession) Rules, 1963 are applicable in the State of Uttaranchal. The State of Uttaranchal exercising power under Section 87 of U.P. Re-organisation Act. 2000 issued notification on 30.02.2001 amending the rules by adding rule 1 Sub-Rule 5 as under :-

"This rule shall not affect the right of the Government to get the mining activities carried out by the Government Departments, Government Corporations or Judicial Corporations".

Further before Rule 3 Sub rule 2, the following was added :-

"Excluding where the mining activities are done by the Government Departments, Government Corporation or Judicial Corporation".

We have already reproduced the relevant clauses of the amended Policy and noticed that the effect of Amendment of 2000 is that it does not completely exclude the private persons from getting lease. The effect of the Amendment is that the Rule shall not have any application on the right of State Government to get the mining work done through Government Departments, Government or statutory Corporations. It was further argued by learned senior counsel appearing for the appellant that several other persons have been granted mining lease, however, the appellant has been refused on the ground of change of policy by the State Government. Therefore, the action of the State Government is violated to Art. 14 of the Constitution of India.

This Court in Union of India & Anr. vs. International Trading Company & Anr. (supra) has held that two wrongs do not make one right. The appellant cannot claim that since something wrong has been done in another case, directions should be given for doing another wrong. It would not be setting a wrong right but could be perpetuating another wrong and in such matters, there is no discrimination involved. The concept of equal treatment on the logic of Art. 14 cannot be pressed into service in such cases. But the concept of equal treatment pre-supposes existence of similar legal foothold. It does not countenance repetition of a wrong action to bring wrongs at par. The affected parties have to establish strength of their case on some other basis and not by claiming negative quality. In view of the law laid down by this Court in the above matter, the submission of the appellant has no force. In case, some of the persons have been granted permits wrongly, the appellant cannot claim the benefit of the wrong done by the Government.

After the Amendment, the amended Rules reads as

under:
"Rule 1, Sub-rule 5:- These rules will have no application on the right of State Government to get the excavation of minor mineral done through Government Department, Government Corporations or Statutory corporations.

Amended Rule 3, Sub-rules 2 :- Except where the mining is being done by Government Departments, Government Corporations or Statutory Corporations no mining lease or mining permit shall be granted otherwise than in accordance with the provisions of these rules."

We are of the opinion that the Rules amended and the policy decision of the Government are in bona fide exercise of executive power of the State Government and not in its misuse to advance its own self interest. This Court in State of Tamil Nadu vs. M/s Hind Stone & Ors., (supra) has held that in case, the Rule has been 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 cannot be considered a misuse of the rule making power merely because it advances the interest of a State, which really means the people of the State. In State of Tamil Nadu vs. M/s Hind Stone & Ors., this Court while allowing the appeals and upholding the validity of the Rule held as under:
"(1) Reading Section 15 in the context of Sections 4-A, 17 and 18 of the Act it is clear 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. However, this does not mean that making a rule which is perfectly in order is to be considered a misuse of the rule-making power, if it advances the interest of a State, which really means the people of the State.

(2) Monopoly in favour of State Government can be created even by subordinate legislation. It is not possible to accept the contention that monopoly, even in favour of a State Government, can only be created by plenary power and that 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.

(3) G.O. Ms. No.1312 dated December 2, 1977, which introduced Rule 8-C, cannot be said to have involved a major change of policy. 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. 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."

It is also well settled law that the Government has a right to denial. This Court in 1982 All Law Journal 582 has held that it cannot be disputed that the Government has a right to denial of its policy from time to time according to the demands of the time and in the public interest.
The judgment in the case of Union of India & Anr. vs. International Trading Co. & Anr., (supra) was relied on by the learned senior counsel appearing for the appellant for the applicability of the doctrine "Legitimate expectation". According to Mr. L.N. Rao, by grant of lease to the appellant

their right was fructified much before the policy came into being and, therefore, their rights of mining cannot be taken away before the expiry of the period in view of the policy decision.

This Court held in the above case that change in policy decision must not be arbitrary, unreasonable, irrational, perverse and in public interest and change in policy, if founded on Wednesbury reasonableness, can defeat a substantive legitimate expectation and the reasonableness of restriction must be determined from the standpoint of general public interest. This Court further held on facts of that case that doctrine of legitimate expectation or promissory estoppel is not attracted on non-renewal of permits to private parties.

The judgment in the case of Beg Raj singh vs. State of U.P. & Ors., (supra) was cited by Mr. L.N. Rao. The mining lease was granted for one year in accordance with the policy decision and when the renewal was sought for another two years, the lease was granted only for one year when it should have been for a minimum period of three years. Meanwhile, the State Government decided to hold an auction of the mining rights setting aside the order of Collector. This Court held that Government having incurred obligation to grant lease for three years in accordance with its own policy decision, it cannot decline to enforce the same merely because a little more revenue could be earned by resort to auction. This Court further held that the relief cannot be denied solely because of loss of time in prosecuting proceedings in judicial or quasi-judicial forum. If a litigant was found entitled to right to relief, he should ordinarily be resorted to the position in which he would have been done to him. This Court further observed that where the petitioner was wrongfully disallowed to operate the mining lease for the full lease period but the lease remained inoperative and no third-party right created, held, petitioner must be allowed to operate the mine for the full period of lease subject to adjustment for the period for which he has already operated.

This Court further observed that a litigant though entitled to relief in law, may yet be denied relief in equity having regard to subsequent or intervening events between commencement of litigation and date of decision and that the rights of parties get crystalised on the date of commencement of litigation and, therefore, right to relief should be decided accordingly.

In the instant case, the lease was granted to the appellant in Civil appeal No. 800 of 2005 for a period of ten years on 14.7.1998 and the appellant's appeal before the Commissioner for constitution of Committee which was allowed by order dated 9.8.2001 by reviving the application of the appellant and directed the District Magistrate to decide the application of the appellant for grant of lease. While the appeals of the appellant were pending, the State of U.P. passed an order on 4.9.1999 granting lease to the U.P. Forest Corporation for 10 years. The appellant challenged the order for grant of lease before the High Court. The High Court dismissed the writ petition.

As pointed out by Mr. L.N. Rao, in our opinion, he is right in his submission. The policy decision would not have come in the way of grant of lease and fructified much before the policy came into being.

As pointed out by this Court in the judgment of this Court in Beg Raj Singh vs. State of U.P. & Ors. (supra), the appellant would be entitled to have the lease till the expiry of ten years from the date of the grant of lease in their favour. The rights of the appellants get crystalised on the date of commencement of the litigation and, therefore, the appellant is

entitled to the relief of continuing the lease till the expiry of the lease for ten years. The appellant, in our opinion, must be allowed to operate the mine for the full period of lease subject to adjustment for the period for which he has already operated and subject to the payment of lease amount and other dues etc.

We, therefore, allow C.A.No. 800 of 2005 only to the above extent and not otherwise. The appellant shall not be entitled to continue the lease or renewal thereof after the expiry of the period of ten years.

In State of T.N. & Anr. vs. P. Krishnamurthy & Ors. (supra), there is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon the party who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution.

(c) Violation of any provision of the Constitution.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the Court might well say that the legislature never intended to give authority to make such rules).

The Court considering the validity of a subordinate legislation will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the Court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the Court should proceed with caution before declaring invalidity.

In Govind Prasad vs. R.G. Parsad & Ors. (1994) 1 SCC 437, this Court held that administrative order containing policy decision of the government to change the conditions of promotion could not be given effect to unless suitable provisions were incorporated in the statutory rules.

As already noticed, the Uttaranchal Minor Mineral (Concession) Rules, 2001 (Adaptation & Modification) Order, 2001 was issued in pursuance of the provisions of clause (3) of Article 348 of the Constitution of India the Governor ordered publication of the Notification dated 30.4.2001 for general information. Sub-Rule (5) of rule 1 of the above amended Rules of 2001 has already reproduced in paragraph supra. Therefore, the changed conditions can be given effect to since suitable provisions were incorporated in the statutory rules.

This Court in the case of Union of India and Another Vs. International Trading Company and Another (supra) in para 15 while dealing with the executive power of State Government in respect of change of policy has held as under :-

"While the discretion to change the policy in exercise of the executive power, when not trammeled by any statute or rule is wide enough what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and

should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does really satisfy the test of reasonableness."

Thus it is clear that the State Government has a power to change the policy under executive power only when it does not preamble by any statute or rules.

For the aforesaid reasons, we partly allow C.A. No. 800/2005 as indicated in paragraph supra and dismiss C.A. Nos. 678 and 679 of 2005. No costs.