IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 22284 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 22411 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

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Approved for Reporting	Yes	No
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VASAVA BALUBHAI MANGABHAI
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR PATHIK M ACHARYA(3520) for the Petitioner(s) No. 1
VAIBHAV SHARMA AGP for the Respondent(s) No. 1,2,3,4

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CORAM:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

Date : 30/03/2026

COMMON JUDGMENT

1. Rule returnable forthwith. Learned Assistant Government Pleader waives service of notice of rule on behalf of the respondents – authorities.

2. With the consent of learned counsel appearing for both the sides, the present petitions are taken up for final hearing.

3. The present petitions under Articles 226 and 227 of the

Constitution of India have been filed by the petitioners challenging impugned orders dated 24.01.2018 passed by Appellate Authority , Deputy Secretary Industries and Mine Department Gujarat and the orders dated 04.03.2023 passed by the Collector.

4. The short question arises in both the petitions is with regard to granting quarry lease.

5. As both the petitions are relating to the same issue, both the petitions have been tagged and the same are disposed of by this common judgment by treating Special Civil application No.22284 of 2022 as lead matter.

6. The facts of the present case are that the petitioners have filed an application for grant of quarry lease for the ordinary sand from Narmada River Belt before the Collector, which came to be rejected on the ground that (i) applied area was not included in blocks, (ii) no opinion was received from Talati Cum Mantri and (iii) no positive opinion was received from the concerned Gram Panchayat for allotting quarry lease in their area through block system. It is contended that the concerned Gram Panchayat has given no objection in providing quarry lease to the present petitioners and against the order of Collector, the petitioners approached before Deputy Secretary (Appeal) Industries and Mines Department by filing revision applications. It is contended that the Deputy Secretary (Appeal) rejected the revision applications on the ground that as per introduction of the Gujarat Mines and Minerals Concessions Rules 2017 since 24.05.2017 all the mining activity shall be undertaken only through the public auction and hence this petition.

7. Heard learned counsel for the petitioners and learned Assistant Government Pleader for the respondents at length. Perused the material on record.

6. In the case of ***State Of Gujarat Vs. Giganbhai Nathubhai Karotara*** reported in ***2023 (0) GUJHC 54127 : 2023 (0) JX(Guj) 823***, the Hon'ble Division Bench of this Court has held and observed in para – 5 and 6 as under:-

> *"5. In the setting of the above facts, three main questions arise for consideration.*
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> *5.1 Firstly, whether in view of the statutory Rules called Gujarat Minor Mineral Concession Rules, 2017, having come into force on 24.05.2017, learned Single Judge could have directed the authorities to decide the applications for grant of quarry lease, uninfluenced by the said Rules. Whether statutory Rules could be ignored or deviated from in considering the applications.*
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> *5.1.1 Secondly, whether the State Government irrespective of operation of the Rules, could have by way of clarificatory circular carved out category of 'saved cases' to provide that in respect to the pending undecided applications dealt with by the Revisional Authorities, the applications could be processed for grant of quarry lease;*
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> *5.1.2 The third aspect required to be considered, as was contended, is whether on account of other persons stated to be similarly situated in another district, came to be granted quarry lease, the present petitioners could claim equal treatment with them to be given the quarry lease.*
>
> *5.2 Noticing the statutory Rules of 2017, before proceeding further, the statutory Rules may be referred to.*
>
> *5.2.1 In the aforesaid Rules, under Chapter VI, titled as Grant of Quarry Lease pursuant to Existing*
>
> *Approval, Rule 29 figures. The said Rule upto sub-rule (3) is reproduced hereinbelow,*
>
> *(1) All applications for grant of a quarry lease received prior to the*

date of commencement of these rules shall become ineligible.

(2) Without prejudice to sub-rule (1), where the Government has communicated a prior written approval for grant of a quarry lease or if a letter of intent has been issued in writing by the Government to grant a quarry lease, before the commencement of these rules, the quarry lease shall be granted in accordance with the provisions of sub-rules (3) to (6) (inclusive):

(3) The Government shall issue an order in writing for grant of a quarry lease to the holder of a letter of intent upon satisfaction of the following conditions within a period of two years from the date of commencement of these rules, failing which the right of such an applicant for grant of a quarry lease
shall be forfeited automatically and in such cases, the Government would not be required to issue any order for this purpose:

(a) fulfilment of the conditions of the prior approval or the letter of intent;

(b) the holder of letter of intent having obtained all consents, approvals, permits, no-objections and the like as may be required under applicable laws for commencement of mining operations;

(c) the holder of letter of intent having satisfied the conditions specified in Chapter VIII with respect to a mining plan (including the mine closure plan);

(d) furnishing financial assurance as specified in rule 64:

Provided that upon receipt of a written application, stating reasons for non fulfilment of the conditions within a period of two years, the Government may, for reasons recorded in writing, extend the period of two years by an additional period of not more than six months:

Provided further that, save for the right to receive a quarry lease pursuant to the prior approval or the letter of intent, these rules shall apply to quarry lease granted pursuant to the prior approval or the letter of intent."

5.2.2 Sub-rule (1) of Rule 29, as could be eminently noticed, provided that all applications for grant of quarry lease received prior to the date of commencement of the Rules shall become ineligible. According to sub-rule (2), in the cases where the Government has communicated a prior written approval or Letter of Intent has been issued before the commencement of the Rules, quarry lease shall be granted in accordance with the provisions of sub-rule (3) to sub-

rule (6), all inclusive.

5.2.3 Sub-rule (4) and sub-rule (5) are in respect of bank guarantee, whereas sub-rule (6) says that any Letter of Intent granted pursuant to auction process in the State shall continue to govern by the tender documents. As per sub-rule (7), date on which the duly executed quarry lease deed is registered, shall be the date of commencement.

5.3 Rule 4 of the aforesaid Rules of 2017 regarding grant of quarry lease provided that a quarry lease shall be granted by the Government through electronic auction process. The procedure was prescribed for submitting the bids and about the prerequisites to be observed for conduct of auction. A detailed procedure was laid down in the new Rules as to how, by process of auction, the quarry lease have to be granted. Rule 5 stated about bidding parameters. Rule 6 is about notice inviting tender and tender document. Rule 7 deals with the auction process and so on. In other words, introduction of Gujarat Minor Mineral Concession Rules, 2017, brought about the major change in respect of process of granting quarry leases. The applications pending on the date of coming into force were also treated in Rule 29 to provide that all will be rendered ineligible unless prior approval is granted or Letter of Intent is issued to the applicant.

5.4 As per Rule 29, the applications of the petitioners were not eligible. In their case, no prior written approval was granted by any competent authority for grant of lease, no Letter of Intent was issued to bring about the entitlement or consideration of the applications. The Rules of 2017 had already come into play with effect from 25.04.2017. The Revisional Authority had only remanded the case. Even otherwise, the quarry lease could not be granted bypassing the statutory Rules in force.

5.5 Once the Rule hold the field, which provided a particular method of disposal of quarry lease applications, the have to be applied to all cases. The undecided pending applications could not be permitted to govern by earlier procedure. The Collector rightly treated the applications of the petitioners to be ineligible. As the method of auction was provided in the new Rules, it was always open to the petitioners to participate in the auction as and when held for grant of quarry in respect of
the land they requested for.

5.5.1 Merely because the Revisional Authority remanded the case before coming into force of the Rule, it would not create any right for the petitioners for grant of quarry lease. Nor there is a substance

in the contention that the Collector decided after passage of time and the statutory Rules in the meantime came into force. The time element of coming into force of the Rules and the decision of the Collector treating the applications of the petitioners ineligible under the Rules was only fortuitous and nothing could be make out of it.

5.5.2 The so called clarificatory communication dated 18.12.2018 from the Industries and Mines Department provided that the cases dealt with by the Revisional Authority before 24.05.2017, would be processed after fulfilling of the conditions which may have been imposed by the Revisional Authority for the purpose of sanctioning of the quarry lease, stood contrary to the statutory rules holding the field, whereunder the pending quarry lease applications were provided to be treated ineligible unless the Letter of Intent was already issued before the coming into play of the Rules.

5.6 It is trite that administrative instruction, circular or clarifications have no efficacy, much less binding effect, when pitted against the statutory rules. Communication dated 18.12.2018 was indeed an internal exchange of view in the nature of administrative clarification by the authorities, which cannot be permitted to have effect in law to override what is provided in the statutory Rules. The principles on this score, is unequivocal.

5.6.1 In Punjab Water Supply & Sewerage Board vs. Ranhodh Singh and Ors.[(2007) 2 SCC 491] , which was in the context of service law, propounded the same principle. It was held that once the terms and conditions of the service including recruitment of employees, were to be governed either by statutory Rules or Rules framed under the proviso to Article 309 of the Constitution, it must necessarily be held that any policy decision adopted by the State in exercise of its jurisdiction under Article 162 of the Constitution would be illegal and without jurisdiction.

5.6.2 The Supreme Court in Punjab Water Supply & Sewerage Board (supra) observed, "In the instant case, the High Court did not issue a writ of mandamus on arriving at a finding that the respondents had a legal right in relation to their claim for regularisation, which it was obligated to do. It proceeded to issue the directions only on the basis of the purported policy decision adopted by the State. It failed to notice that a policy decision cannot be adopted by means of a circular letter and, as noticed hereinbefore, even a policy decision adopted in terms of Article 162 of the Constitution of India in that behalf would be void. Any departmental letter or executive instruction cannot prevail over statutory rule and constitutional provisions. Any appointment, thus, made without following the procedure would be ultra vires." (para 19)

5.6.3 In the similar way, in Vinod Kumar Koul vs. State of Jammu and Kashmir [(2012) 11 SCC 247] , it was a Circular dated 20.05.1993 in the nature of administrative decision of the service selection board. The Supreme Court found it ex facie inconsistent with the plain language of Rule 13(i) of the Jammu and Kashmir Subordinate Services Recruitment Rules, to hold that it cannot be relied upon for determining the eligibility of appellant. In that case, the circular provided the stipulation of a candidate required to be a permanent resident of the State of Jammu & Kashmir to be eligible for the post of Laboratory Assistant holding that the appellant could not have been discarded from the zone of consideration on the basis of the circular when nothing of the kind was contemplated in the statutory rules. The said principle will apply with reverse logic in the present case.

5.6.4 In yet another decision in Commissioner of Central Excise, Bolpur vs. M/s. Ratan Melting and Wire Industries [(2008) 13 SCC 1] . It was observed in the context of circular issued by the Central Excise Board, "So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law." (para 6)

5.6.5 In Glaxosmithkline Pharmaceuticals Limited vs. Union of India and Ors.[(2014) 2 SCC 753] , the Supreme Court stated in paragraph 60 that "it is well settled that if the departmental circular provides for an interpretation which runs contrary to the provisions of law, such interpretation cannot bind the Court."

5.7 Therefore, when the State Government provided by aforesaid communication dated 18.12.2018 to classify certain cases of the nature dealt with by the Revisional Authority before 24.05.2017 to be 'saved cases', such instruction cannot stand in wake of the statutory Rules. Any such policy stipulation or administrative instruction running against Gujarat Minor Mineral Rules, 2017, was not permissible. In classifying the cases as 'saved cases', the respondents acted without authority in law.

5.7 Any application liable to be considered after coming into force of the statutory rules could not have been treated de hors the Rules. The undecided pending applications of the petitioners under the earlier procedure were left dead.

5.8 The contention could hardly stand valid that since in another district, the similarly situated persons were treated in particular fashion, the petitioners should also be treated accordingly. The petitioners could not involve Article 14 in negative way in their favour. It is already reiterated that guarantee of equality before the law is a positive concept and cannot be enforced in negative manner.

5.8.1 If the settled law is to be reiterated, in State of U.P. vs. Rajkumar Sharma[(2006) 3 SCC 330], it was observed in paragraph 15, that if the State has committed the mistake, it cannot force to perpetuate the same mistake. In State of West Bengal vs. Debosis [(2011(14) SCC 187] , following was observed by the Supreme Court, "It is now well settled that guarantee of equality before law is a positive concept and cannot be enforced in a negative manner. If an illegality or an irregularity has been committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of Courts and Tribunals to require the state to commit the same irregularity or illegality in their favour on the reasoning that they have been denied the benefits which have been illegally or arbitrarily extended to others. [See : Gursharan Singh vs. New Delhi Municipal Administration – 1996 (2) SCC 459, Union of India vs. Kirloskar Pneumatics Ltd. - 1996 (4) SCC 433, Union of India vs. International Trading Co. - 2003 (5) SCC 437, and State of Bihar vs. Kameshwar Prasad Singh – 2000 (9) SCC 94 ." (para 26)

5.8.2 In Ford Corporation of India vs. Jagdish Balaram Bahira[(2017) 8 SCC 670] , the Supreme Court observed that 'Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles". Also in Chebrolu Leela Prasad Rao vs. State of Andhra Pradesh [(2021) 11 SCC 401] , in which the principle was succinctly stated by the Apex Court, "The concept of equality cannot be pressed to commit another wrong. The concept of equality enshrined in Article 14 of the Constitution is a positive concept. It is not a concept of negative equality. It cannot be used to perpetuate an illegality. Equity cannot be applied when it arises out of illegality. The doctrine of equity would not be attracted when the benefits were conferred on the basis of illegality, as held in Usha Mehta v. Government of Andhra Pradesh [(2012) 12 SCC 419], John Vallamattom v. Union of India[(2003) 6 SCC 611], General Manager, Uttranchal Jal Sansthan v. Laxmi Devi[(2009) 7 SCC 205], State of West Bengal v. Debashish Mukherjee[AIR 2011 SC 3667]. (para 95)

5.8.3 Therefore, the petitioners had no legs to stand to contend that since others are granted the quarry lease, their case should also be

considered in like manner. The benefit wrongly given or obtained cannot be a ground to invoke the equality clause. This was stated by the Supreme Court in Basawaraj and Another Vs. Special Land Acquisition Officer, [(2013) 14 SCC 81] , "Article 14 does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."

6. The inescapable conclusion emerges is that the Gujarat Minor Mineral Rules, 2017, as they came into force, the applications pending for grant of quarry lease were not liable to be considered as per the position obtained before the Rules. The new statutory Rules are to be necessarily applied for all cases of grant of quarry lease. The petitioners' applications were rendered ineligible and redundant.

6.1 As rightly observed by the Collector, the petitioners could participate in auction procedure, which may be undertaken as per the in-force statutory rules.

6.2 The decision of the Collector treating the applications of the petitioners to be ineligible was eminently proper and legal.

6.3 A manifest error was committed by learned Single Judge in recording the findings and passing the order setting aside the decision of the Collector and relying on the clarification dated 18.12.2018 to remand the case.

6.4 For the foregoing reasons and discussion, the impugned order in both the cases along with findings and directions of learned Single Judge do not sustain in the eye of law. Resultantly, impugned judgment and order dated 02.05.2022 passed in both the Special Civil Applications are set aside.

7. In the case of ***Hemubha Malubha Jadeja Vs. State Of Gujarat*** reported in ***2024 (3) GLR 2166***, this Court has held and observed in paras – 10 to 14 and 16 as under:-

"10. The challenge in the captioned writ petitions are the orders both dated 11.03.2022 passed by the Collector, Geology & Mining Department in respective writ petitions, whereby the application of the petitioners of respective petitions for grant of quarry lease, has

been rejected on the ground that the case of the petitioners, cannot be treated as saved case as per the Rules of 2017. Another ground which weighed with the Collector was that in view of the Rule 4 of Rules of 2017, the land in question, is to be disposed of by conducting an auction. With these two grounds the application of the petitioners for grant of quarry lease has been rejected. Initially, the contention raised by the learned Senior Counsel was that the case of the petitioners, ought to have been treated as saved case for, directions in succession were issued by the revisional authority; however, the Collector has not considered the same and has rejected the application.

11. The Rules of 2017, came to be amended with effect from 09.03.2018. Notably, sub-rule (2) of Rule 29 of the Rules of 2017 came to be substituted which provides that without prejudice to sub-rule (1) where before the commencement of the rules, government has communicated a prior written approval for grant of quarry lease to an applicant or if a letter of intent has been issued in writing to an applicant by the government for grant of the quarry lease, the quarry lease can be granted in accordance with the provisions of sub-rule (3) to (6). Proviso came to be added providing for obtaining of an environmental clearance or an approval for change in land use to non-agricultural purpose; or an approval for mining plan for conducting the mining operations over the proposed lease area governed by the rules, prior to the commencement of the rules. Therefore, before commencement of the rules, if the government had communicated a prior written approval for grant of quarry lease or if the LOI has been issued in writing, granting quarry lease coupled with further rider that in the cases were either environmental clearance, or approval for change of land use to non-agricultural purposes or an approval for mining plan for conducting the mining operation, is obtained, the same can be treated as saved case. The requirement, therefore, for falling within the saved cases is prior written approval for grant of quarry lease by the State Government or issuance of LOI. Further proviso would be relevant which, states that a person shall make a written representation before the government with a relevant documents and if the government deems fit, shall issue LOI which would entitle such a person to obtain quarry lease in the same manner, as if such LOI was issued before the commencement of rules.

12. It is the case of the petitioners that initially, the application was filed in the year 1997 which came to be decided vide order dated 15.01.2004 which was subject matter of challenge before the revisional authority who, vide order dated 23.08.2004, has quashed and set aside the order dated 15.01.2004 and remanded the matter to the Collector to decide it afresh. The said order dated

23.08.2004, is argued that it is the prior approval. The order by no stretch of imagination can be construed to be a prior approval. It has to be formal order by the State Government and not order by the adjudicating authority.

13. Therefore, if the petitioners wanted to qualify, either of the conditions enumerated in sub-rule (2) or in the proviso ought to have been satisfied. In the present case, the petitioners are unable to point out either of the conditions or eventualities required as per rule 29 of Rules of 20178 and more particularly, sub-rule (2) of the Rules of 2017 read with first proviso of Rule 29 of the Rules of 2017. In none of the orders or any documents on record, it is coming out that the petitioners were having either the approval or the LOI or any of the instances provided in the proviso to Rule 29. The instructions have been taken recourse of, to contend that the author has provided clarification and if the case, falls within the clarification, the authorities ought to have consider the cases. The application was filed and it was rejected first in the year 2004 and thereafter, with no further orders at the end of the state government, the matter remained at the level of the authorities. Clearly, there was neither any prior written approval nor any LOI was in place in favour of the petitioners. After the amendment Rule 29 of the Rules of 2017 speaks thus:

29. Existing applications and right of holder of letter of intent.-

(1) All applications for grant of a quarry lease received prior to the date of commencement of these rules shall become ineligible.

(2) Without prejudice to sub-rule (1), where before the commencement of these rules, the Government has communicated a prior written approval for grant of a quarry lease to an applicant; or if a letter of intent has been issued in writing to an applicant by the Government to grant a quarry lease, the quarry lease shall be granted in accordance with the provisions of sub-rules (3) to (6) (inclusive):

Provided that, if an applicant has applied for an obtained (a) an environmental clearance; or (b) an approval for change in land use to non-agricultural purposes, (c) an approval for mining plan, for conducting mining operations over the proposed lease area governed by these rules, prior to the commencement of these rules: Provided further that, such person shall make a representation before the Government with relevant documents and if Government deems fit, shall issue letter of Intent, which shall entitle such person to obtain a quarry lease, in the same manner as if such letter of intent was issued before the commencement of these rules.]

(3) The Government shall issue an order in writing for found of a quarry lease to the holder of a satisfaction of the letter of intent upon following conditions within a period of two years from the date of commencement of these rules, failing which the right of such an applicant for grant of a quarry lease shall be forfeited automatically and in such cases, the Government would not be required to issue any order for this purpose:

(a) fulfilment of the conditions of the prior approval or the letter of intent; (b) the holder of letter of intent having obtained all consents, approvals, permits, no-objections and the like as may be required under applicable laws for commencement of mining operations;

(c) the holder of letter of intent having satisfied the conditions specified in CHAPTER VIII with respect to a mining plan (including the mine closure plan);

(d) furnishing financial assurance as specified in rule 64: Provided that upon receipt of a written application, stating reasons for non-fulfilment of the conditions within a period of two years, the Government may, for reasons recorded in writing, extend the period of two years by an additional period of not more than six months: Provided further that, save for the right to receive a quarry lease pursuant to the prior approval or the letter of intent, these rules shall apply to quarry lease granted pursuant to the prior approval or the letter of intent.

(4) The order for grant of a quarry lease shall be in writing and shall inter alia also specify that the person in whose favour the order has been issued shall be required to furnish a performance security in accordance with such order in the form of a bank guarantee as per the format specified in Form A
or a non- interest bearing security deposit.

(5) A quarry lease deed shall be executed in the format specified in Form B by the Government within thirty days of the date of completion of the conditions specified in sub-rule (4) and shall be subject to the provisions of the Act and the rules made thereunder.

(6) Any letters of intent granted pursuant to an auction process in the State shall continue to be governed by the tender documents relating to such auctions and a quarry lease deed shall be executed in the format specified in Form F by the Government within such period as specified in the grant order. The provisions of sub-rule (2) to (5) shall not apply to such letters of intent:

Provided that save for the right to receive a quarry lease pursuant to the letter of intent, these rules shall apply to quarry lease granted pursuant to the letter of intent.

The date on which a duly executed quarry lease deed is registered shall be the date of commencement of the quarry lease, and the holder of the letter of intent shall ensure that it achieves registration of the quarry lease deed within thirty days from the date of its execution.

14. In the present case, as discussed hereinabove, there is nothing on record to suggest that either of the eventualities were fulfilled by the petitioners and therefore, in absence thereof, the judgment in the case of State of Gujarat vs. Giganbhai Nathubhai Karotara (supra), applies on all fours. The issue before the division bench was whether any direction can be issued to decide the applications for grant of quarry lease, uninfluenced by the rules and as to whether the statutory rules could be ignored or deviated from, while considering the application. The issue was also as to whether the State Government, irrespective of the operation of the rules, could have by way of classificatory circular carved out the category of saved case. Rule 29 of the amended Rules of 2017 was threadbare considered by the Hon'ble Division Bench and so also Rule 4 of the Rules of the 2017. It has been held and observed that once the rule hold the field which provided particular method of disposal of quarry lease application the same has to be applied in all the cases. Undecided pending applications could not have permitted to be governed by the earlier procedure.

16. In paragraph 6, the division bench has concluded that the Rules of 2017 as they came into force, the applications pending for grant of quarry lease were not liable to be considered as per the position obtaining before coming into force of the rules. The new statutory rules are to be necessarily applied to all the cases for grant of quarry lease rendering all earlier applications as ineligible and redundant. Paragraph 6 reads thus:

6. The inescapable conclusion emerges is that the Gujarat Minor Mineral Rules, 2017, as they came into force, the applications pending for grant of quarry lease were not liable to be considered as per the position obtained before the Rules. The new statutory Rules are to be necessarily applied for all cases of grant of quarry lease. The petitioners' applications were rendered ineligible and redundant.

6.1 As rightly observed by the Collector, the petitioners could participate in auction procedure, which may be undertaken as per

the in-force statutory rules.

6.2 The decision of the Collector treating the applications of the petitioners to be ineligible was eminently proper and legal.

6.3 A manifest error was committed by learned Single Judge in recording the findings and passing the order setting aside the decision of the Collector and relying on the clarification dated 18.12.2018 to remand the case.

6.4 For the foregoing reasons and discussion, the impugned order in both the cases along with findings and directions of learned Single Judge do not sustain in the eye of law. Resultantly, impugned judgment and order dated 02.05.2022 passed in both the Special Civil Applications are set aside.

8. In the case of ***Dhara Minerals And Mines Versus State Of Gujarat*** reported in ***2024 (0) JX(Guj) 953***, this Court has held and observed in paras – 21 to 27 as under:-

21. The provisions are clear and unambiguous and shall not detain this Court any further. Hence, in the considered opinion of this Court, the provisions of clause (b) of sub-rule (1) of rule 12 of the Rules of 2017 would apply only to the cases wherein, the lease is granted and is in currency, prior to the coming into force of the Rules of 2017, with effect from 24.05.2017.

22. Rule 29 of the Rules of 2017, since is also relevant, the same is extracted hereinbelow, for ease of reference:

29. Existing applications and right of holder of letter of intent.-

(1) All applications for grant of a quarry lease received prior to the date of commencement of these rules shall become ineligible.

(2) Without prejudice to sub-rule (1), where before the commencement of these rules, the Government has communicated a prior written approval for grant of a quarry lease to an applicant; or if a letter of intent has been issued in writing to an applicant by the Government to grant a quarry lease, the quarry lease shall be granted in accordance with the provisions of sub-rules (3) to (6) (inclusive):
Provided that, if an applicant has applied for and obtained: (a) an environmental clearance; or (b) an approval for change in land use

to non-agricultural purposes; or (c) an approval for mining plan, for conducting mining operations over the proposed lease area governed by these rules, prior to the commencement of these rules: Provided further that, such person shall make a written representation before the Government with relevant documents and if Government deems fit, shall issue letter of Intent, which shall entitle such person to obtain a quarry lease, in the same manner as if such letter of intent was issued before the commencement of these rules.

(3) The Government shall issue an order in writing for grant of a quarry lease to the holder of a letter of intent upon satisfaction of the following conditions within a period of two years from the date of commencement of these rules, failing which the right of such an applicant for grant of a quarry lease shall be forfeited automatically and in such cases, the Government would not be required to issue any order for this purpose:

(a) fulfilment of the conditions of the prior approval or the letter of intent;

(b) the holder of letter of intent having obtained all consents, approvals, permits, no-objections and the like as may be required under applicable laws for commencement of mining operations;

(c) the holder of letter of intent having satisfied the conditions specified in CHAPTER VIII with respect to a mining plan (including the mine closure plan);

(d) furnishing financial assurance as specified in rule 64:

Provided that upon receipt of a written application, stating reasons for non-fulfilment of the conditions within a period of two years, the Government may, for reasons recorded in writing, extend the period of two years by an additional period of not more than six months:

Provided further that, save for the right to receive a quarry lease pursuant to the prior approval or the letter of intent, these rules shall apply to quarry lease granted pursuant to the prior approval or the letter of intent.

(4) The order for grant of a quarry lease shall be in writing and shall inter alia also specify that the person in whose favour the order has been issued shall be required to furnish a performance security in accordance with such order in the form of a bank guarantee as per the format specified in Form A or a non- interest bearing security deposit.

(5) A quarry lease deed shall be executed in the format specified in Form B by the Government within thirty days of the date of completion of the conditions specified in sub-rule (4) and shall be subject to the provisions of the Act and the rules made thereunder.

(6) Any letters of intent granted pursuant to an auction process in the State shall continue to be governed by the tender documents relating to such auctions and a quarry lease deed shall be executed in the format specified in Form F by the Government within such period as specified in the grant order. The provisions of sub-rule (2) to (5) shall not apply to such letters of intent:

Provided that save for the right to receive a quarry lease pursuant to the letter of intent, these rules shall apply to quarry lease granted pursuant to the letter of intent.

(7) The date on which a duly executed quarry lease deed is registered shall be the date of commencement of the quarry lease, and the holder of the letter of intent shall ensure that it achieves registration of the quarry lease deed within thirty days from the date of its execution.

23. Pertinently, Rule 29 of the Rules of 2017 governs existing applications and the right of holder of the LoI. By virtue of sub-rule (1) of Rule 29, all applications for grant of quarry lease, received prior to the date of commencement of the Rules of 2017 i.e. 24.05.2017, shall be rendered ineligible and nothing further remains to be done. Sub-rule (2) which is in the nature of an exception carved out, provides that where before the commencement of the Rules, the Government has communicated a written approval before grant of a quarry lease to an applicant or LoI has been issued, the quarry lease shall be granted in accordance with the provisions of sub-rules (3) to (6). Proviso to sub-rule (2), contains further eventualities, namely, environmental clearance, approval for change in land use and approval for mining plan etc. Sub-rule (3), makes a provision for issuance of the order by the Government for grant of quarry lease to holder of the LoI. Sub-rule (4) of Rule 29, provides for passing of the order and specify the person in whose favour the order has been issued, coupled with the requirement of furnishing the performance security as specified in form A. Sub- rule (5), says about execution of the quarry lease as specified in form B by the Government within stipulated period. Sub-rule (6) deals with the LoI. Sub-rule (7) of Rule 29 provides that the date on which the quarry lease is registered can be said to be the date of its commencement.

24. It is sought to be contended that in the cases of Rule 29, clause (b) of sub-rule (1) of Rule 12 would apply and hence, the lease shall be extended upto 31.03.2025. It is required to be noted that the said impression and contention is a misconception on the part of the petitioners considering the language of Rule 29 inasmuch as Chapter VI governs the grant of quarry lease pursuant to existing approvals. The title also throws sufficient light which says existing applications and right of holder of LoI. Sub-rule (1) of Rule 29, makes ineligible all the applications for grant of a quarry lease received prior to the date of commencement of the Rules of 2017 i.e. 24.05.2017. Therefore, the intention is clear that, on an after the date of commencement of the Rules of 2017, if any applications are pending, the said applications, would be rendered ineligible. Eventualities prescribed in sub-rule (2) of Rule 29 read with proviso, it is clear that those cases, are to be treated as saved cases and would be considered for grant of quarry lease. In any event, those cases, would not fall within the category of granted. Therefore, on and after the date of commencement of the Rules of 2017, all the quarry leases in respect of minor minerals specified, with which this Court is concerned, would be governed by sub-rule (3) of Rule 12 read with Rule 29 of the Rules of 2017 for a period of 5 years only. Those cases after expiry of 5 years, would be governed as per Rules of 2017, that is, by auction, which is the principal object behind the Rules.

25. In some of the cases, it is also sought to be argued that after the execution of the lease deed and as per the Rules of 2017, the leases have been extended. Assuming that the leases have been extended, that by itself will not cover the case of the petitioners within the clause (b) of sub-rule (1) of Rule 12 of the Rules of 2017. It is also sought to be argued that the cases where the grant orders have been issued by the Collector, prior to the coming into force of the Rules of 2017 i.e. 24.05.2017, be treated in a different category, so as to cover it within clause (b) of sub-rule (1) of Rule 12 of the Rules of 2017. Similarly, there are cases, wherein, the State Government while quashing the order of the Collector, has granted the quarry lease and directed to complete the procedure of executing the quarry lease. In either of the eventualities, no quarry lease has been executed prior to 24.05.2017. In absence of any lease deed executed, it is not possible to accept the said contentions, as for covering within the purview of clause (b) of sub-rule (1) of Rule 12, there has to be lease already in currency. It is true that the orders are passed by the State Government prior to 24.05.2017 but with no lease deed in place, which is nothing but a fortuitous circumstance rendering the petitioners ineligible to avail of the benefits of the provisions of clause (b) of sub-rule (1) of Rule 12 of the Rules of 2017.

26. It is by now well settled that once the Rules are in force, the cases are to be considered as per the Rules prevailing. In this connection, the judgment in the case of State of Gujarat V/s. Giganbhai Nathubhai Karotara (supra), would be of a little help. One of the issues before the Division Bench, was:

i. Whether in view of the statutory rules having come into force on 24.05.2017, the authorities can be directed to decide the applications for grant of quarry lease uninfluenced by the Rules of 2017 ?

The Division Bench, in paragraphs 5.4, 5.5, 5.5.1 and paragraph 6 has held and observed thus:

5.4 As per Rule 29, the applications of the petitioners were not eligible. In their case, no prior written approval was granted by any competent authority for grant of lease, no Letter of Intent was issued to bring about the entitlement or consideration of the applications. The Rules of 2017 had already come into play with effect from 25.04.2017. The Revisional Authority had only remanded the case. Even otherwise, the quarry lease could not be granted bypassing the statutory Rules in force.

5.5 Once the Rule hold the field, which provided a particular method of disposal of quarry lease applications, the have to be applied to all cases. The undecided pending applications could not be permitted to govern by earlier procedure. The Collector rightly treated the applications of the petitioners to be ineligible. As the method of auction was provided in the new Rules, it was always open to the petitioners to participate in the auction as and when held for grant of quarry in respect of
the land they requested for.

5.5.1 Merely because the Revisional Authority remanded the case before coming into force of the Rule, it would not create any right for the petitioners for grant of quarry lease. Nor there is a substance in the contention that the Collector decided after passage of time and the statutory Rules in the meantime came into force. The time element of coming into force of the Rules and the decision of the Collector treating the applications of the petitioners ineligible under the Rules was only fortuitous and nothing could be make out of it.

6. The inescapable conclusion emerges is that the Gujarat Minor Mineral Rules, 2017, as they came into force, the applications pending for grant of quarry lease were not liable to be considered as per the position obtained before the Rules. The new statutory Rules

are to be necessarily applied for all cases of grant of quarry lease. The petitioners' applications were rendered ineligible and redundant.

27. Before concluding, the judgments cited on behalf of the petitioners are required to be dealt with. In the case of State of Tamil Nadu & Anr Vs. P. Krishnamurthy (supra), the challenge was to the validity of Rule 38-A of the Tamilnadu Minor Minerals Concession Rules, 1959 which provided for discontinuance of the lease. The Apex Court held that a lease once validly granted cannot be terminated prematurely without a notice and hearing. In the case on hand, after the introduction of the Rules of 2017, the lease have been executed for 3 years or 5 years as the case may be and in some of the cases, has been extended for little more than 5 years, there is no explicit termination or premature termination. There is no curtailment or unceremonious interruption and by virtue of the lease period, it has come to an end. Hence, the principle laid down, would not apply to the facts of the case.

8. In the case of ***State Of Gujarat Vs. Arvindbhai Thakorbhai Kayasth*** reported in ***2024 (2) GLR 1615 : 2024 (2) GLH 523***, the Hon'ble Division Bench of this Court has held and observed in paras – 11, 17 and 21 as under:-

"11. In the instant case, no prior written approval for grant of quarry lease was communicated to the petitioner. The approval of the mining plan vide order dated 4.3.2017 passed by the Geologist was subject to fulfillment of other conditions of grant of quarry lease and would not amount to prior written approval for grant of quarry lease within the meaning of sub-rule (2) of Rule 29. Admittedly, no Letter of Intent has been issued in writing by the Government to grant the quarry lease in favour of the petitioner. It may further be clarified that the approval of mining plan by the office of the Geologist vide communication dated 4.3.2017 sent to the petitioner was subject to the conditions which have not been fulfilled by the petitioner. The pending application of the petitioner, therefore, has been rendered ineligible by virtue of Rule 29(1) of the Rules 2017 with the commencement of the said Rule on 24.05.2017.

17. In view of the abovenoted facts reflected from the record of the writ petition and the instant Letters Patent Appeal, we find that the learned single Judge has grossly erred in law in treating the case of the petitioner in the category of saved cases and holding that

inspite of the fact that environmental clearance certificate was not produced in time, the petitioner is entitled for consideration of his application for renewal of quarry lease in view of order dated 19.06.2014 passed by the Revisional Authority. The learned single Judge has completely ignored the impact of sub-rule(1) of Rule 29, whereunder only two conditions are prescribed for the saved cases, firstly where prior written approval for grant of quarry lease was given by the State Government and secondly, where Letter of Intent has been issued in writing by the Government for grant of a quarry lease. As the original petitioner did not fall in any of these categories, the case of the original petitioner could not be treated as a saved case.

21. We may further note that in a recent decision dated 13.10.2023 in Letters Patent Appeal No. 718 of 2023, the Division Bench of this Court has noted the effect of Rule 29 sub-rule (1)(2), sub-rule(6) and held that as per Rule 2019, the applications of the petitioners therein were ineligible as no prior written approval was granted by any competent authority for grant of lease, nor any Letter of Intent was issued to bring about their entitlement. The fact that the Revisional Authority had remanded the case for positive consideration, the quarry lease cannot be granted by-passing the statutory rules in force, which came into force play with effect from 24.05.2017. It was held that once the rule holding the field which provided a particular method of disposal of quarry lease applications, they have to be applied to all cases. Undecided pending applications cannot be permitted to be decided under the earlier procedure. As the method of auction was provided in the new rules, it was always open to the petitioners to participate in the auction as and when it was held for grant of quarry lease in respect of the land they requested for. Merely because Revisional Authority remanded the case before coming into force of the Rules, 2017, it would not create any right for the petitioners (therein) for grant of quarry lease. Nor there was substance in the contention that the Collector decided the matter after a long passage of time and statutory rules in the meantime came into force. The time element of coming into force of the Rules and the decision of the Collector treating the applications of the petitioner (therein) ineligible under the Rules was only fortuitous and nothing could be make out of it.

10. The order passed by the Division Bench of this Court in the case of ***Arvindbhai Thakorbhai Kayasth*** (supra) came to be challenged before the Hon’ble Supreme Court by filing Special Leave to Appeal (C) No. 14675 of 2024 and the Hon’ble Supreme Court has dismissed

the appeal vide order dated 19.07.2024 and confirmed the order passed by the Division Bench of this Court.

11. Having considered the submissions canvassed by the learned counsel for the respective parties and the averments made in the petitions and the decisions of this Court and the Hon'ble Supreme Court, it appears that the similar issue was decided by the learned Single Judge as well as the Division Bench of this Court, which was confirmed upto the Hon'ble Supreme Court. Now, considering the facts of the present case and the aforesaid decisions of this Court as well as Hon'ble Supreme Court, I am of the opinion that the present petitions deserve to be dismissed.

12. In view of the aforesaid aspects, I do not find any substance to interfere with the present petitions and the petitions being meritless deserve to be dismissed. Accordingly, the both the petitions are dismissed. Rule is discharged. Interim relief, if any, granted earlier shall stand vacated forthwith. There shall be no order as to costs.

(HEMANT M. PRACHCHHAK,J)

V.R. PANCHAL

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: VIJAYKUMAR RAMESHBHAI PANCHAL(HC00171), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 04/04/2026 10:41:08