

Neutral Citation No. - 2024:AHC:159749-DB

Reserved

Chief Justice's Court

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 18769 of 2017

Petitioner :- All India Kaimoor Peoples Front

Respondent :- State of U.P. and others

Counsel for Petitioner :- Anoop Trivedi (Sr.Adv.) with Narendra Srivastava, Irfanul Huda, Shashi Kant Dwivedi

Counsel for Respondent :- M.C. Chaturvedi (A.A.G.), Ramanand Pandey (A.C.S.C.), Arvind Singh (A.C.S.C.), Rajiv Singh (S.C.), M.D. Singh Shekhar (Sr.Adv.) with Ram Dayal Tiwari, Devbrat Mukherjee, Shailesh Kumar Pathak, Pradeep Kumar Tripathi, Sanjay Kumar Yadav, Anil Kumar Srivastava, Arvind Srivastava, Ashwani Kumar Srivastava, Birendra Singh, Madan Lal Srivastava, Pradyumna Kumar, Rashid Ali, Ratnesh Kumar Srivastava, Sanjay Kumar Srivastava, Shiv Bahadur Singh, Suresh Chandra Pandey, Syed Rafat Ali

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

(Per : Arun Bhansali, CJ)

1. Heard Sri Anoop Trivedi, Senior Advocate, assisted by Sri Narendra Srivastava, for the petitioner and Mr. Irfanul Huda for applicant/intervenor; and Sri M.C. Chaturvedi, A.A.G., Sri Ramanand Pandey, A.C.S.C., Sri Arvind Singh, A.C.S.C., Sri. Rajiv Singh, S.C., Sri M.D. Singh Shekhar, Senior Advocate, assisted by Sri Ram Dayal Tiwari, Advocate, Sri Devbrat Mukherjee, Sri Shailesh Kumar Pathak, Sri Pradeep Kumar Tripathi and Sri Sanjay Kumar Yadav, Advocates, for respondents.

2. This writ petition has been filed as a public interest litigation on 27.04.2017 seeking the following reliefs:

“(i) Issue a writ, order or direction, in the nature of certiorari, calling for records of the case and quashing the illegal lease agreement/deeds issued on different dates between 23.5.2016 to 1.6.2016, as narrated under paragraph no.31 to this writ petition.

(ii) issue a writ, order or direction in the nature of mandamus to call upon the respondent nos.5,6 and 7 in order to enquire into the entire

matter, in respect of the corruption of more than 15 crore rupees committed by them causing huge loss to public exchequer as well as about contemptuous attitude towards order of this Hon'ble Court, shown by the said respondents.

(iii) issue a writ, order or direction, in the nature of mandamus commanding the appropriate authority to recover the entire amount from the respondents nos.5, 6 and 7 which has been caused to public exchequer, due to the corrupt and contemptuous attitude of the said respondents.

(iv) issue any other order or direction which this Hon'ble Court may deem fit, under the facts and circumstances of the present case.

(v) award the cost of the present writ petition to the petitioner.”

3. It is, *inter alia*, indicated in the petition that the petitioner is a Non Governmental Organization (N.G.O.) performing several social and public interest activities throughout the country, particularly in the State of Uttar Pradesh, specifically relating to the protection of forest and environment, which is getting adversely affected due to illegal activities.

4. It is further indicated that cause of action for filing the petition arose on account of State Government having made a paradigm shift in its policy decision, as contained in Government Order dated 31.05.2012, by taking a u-turn and reverting back to grant of mining lease in respect of minor minerals in accordance with Chapter II of the U.P. Minor Minerals (Concession) Rules, 1963 ('the Rules'). It is claimed that the change of procedure has given a go-bye to earlier avowed declaration about transparency and fairness as warranted by Public Trust doctrine and is going to cause immense loss of revenue to State exchequer.

5. It is elaborated that under Chapter II of the Rules, the grantee is only liable to pay royalty and dead rent which is far less than what is earned by the Government by way of bid money by resorting to auction, as prescribed under Chapter IV of the Rules.

6. By way of chronology, it is indicated that G.O. dated 16.03.1999 (Annexure-1) was issued by the State for grant of mining

leases of minor minerals irrespective of its source only by way of auction in terms of Chapter IV of the Rules. The G.O. dated 16.03.1999 came to be superseded by G.O. dated 30.12.2000, *inter alia*, providing that instead of auction procedure, the lease shall be granted as per procedure prescribed under Chapters II, III and VI of the Rules by inviting applications subject to payment of royalty and dead rent. It is then contended that on 31.05.2012 (Annexure-3) State issued another G.O. for settling the mining leases under Chapter IV of the Rules, i.e., by e-auction or tendering.

7. It is claimed that the G.O. dated 31.05.2012 applied to all types of mining leases to be granted by the State whether found in river bed or in situ. The said aspect was determined by a Division Bench in **Nar Narain Mishra Vs. State of U.P. and others : 2013 (2) ADJ 166** wherein, *inter alia*, the Division Bench came to the conclusion that the plea raised that the G.O. dated 31.05.2012 does not cover 'in situ' and 'building stone' is misconceived as the G.O. dated 31.05.2012 does not confine the same to minerals found in river bed.

8. The policy to allot mining leases through e-auction/tendering was again changed in the year 2014 vide G.O. dated 22.10.2014 (Annexure-4) by providing that mining lease of minor minerals found in river bed shall be granted by procedure prescribed under Chapter IV. Qua the G.O. dated 22.10.2014, the plea raised is that the said G.O. only applies to minerals found in river bed and not to minerals found in situ.

9. It is then alleged that despite enforcement of Government Orders dated 31.05.2012 and 22.10.2014, the District Magistrate, Sonbhadra issued several advertisements in different dates, i.e., 14.05.2015, 06.06.2015, 16.09.2015 and 30.01.2016 for grant of mining lease in Tehsil Robertsganj, District Sonbhadra for excavation of delo stone/rejected lime stone/granite in respect of villages Bili Markundi, Sinduriya, Vardiya, Jatajua, Baghmandava and Patwadah.

10. The above advertisements were challenged vide Writ Petition No. 14522 of 2016 (Rakesh Kumar Vs. State of U.P. and others). An interim order dated 05.04.2016 (Annexure-6) was passed whereby an ad-interim injunction restraining the State and respondent no. 3 from taking any steps in pursuance of the advertisement dated 30.01.2016 was granted. It is claimed that despite the interim order dated 05.04.2016, the then District Magistrate in connivance with respondents no. 6 and 7 issued fresh leases in favour of several persons on the basis of G.O. dated 30.12.2000. A list of 22 such mining leases has been indicated. It is indicated that in few writ petitions, interim orders were granted against such lease holders.

11. It is then alleged that the Writ Petition No. 14522 of 2016, wherein interim order was granted, came to be withdrawn on 02.08.2016 and other writ petitions challenging grant of lease were withdrawn on 22.03.2017 and 18.04.2017.

12. It is then submitted that thereafter the petitioner-N.G.O. filed detailed representation making allegations against respondents no. 5, 6 and 7 and informing that the State has been put to huge loss on account of allotment of leases by inviting applications instead of e-tendering, however, as nothing was done, the present writ petition was filed seeking reliefs, as noticed hereinbefore.

13. A Division Bench of this Court by order dated 12.05.2017 restrained the private respondents from carrying out any mining operation on the basis of lease agreement/deed executed in their favour by the official respondents and District Magistrate was directed to ensure that the private respondents stop mining operations forthwith.

14. It may also be noticed at this stage that another Division Bench by its order dated 07.03.2019, on coming to the conclusion that continuance of the interim order is causing huge loss to the State revenue and fact that the interim order dated 05.04.2016 granted in

Writ-C No. 14522 of 2016 on account of its withdrawal was no more in existence, vacated the interim order dated 12.05.2017.

15. During the pendency of the present petition, an intervention/impleadment application has been filed on behalf of Hemant Tiwari, son of Sant Lal Tiwari seeking to place on record details of the lease-deeds and their tenure periods and the judgment dated 28.10.2020 of Hon'ble Supreme Court in **Dharmendra Kumar Singh Vs. State of U.P. : Civil Appeal No. 12202 of 2018** arising out of orders passed by National Green Tribunal.

16. Learned counsel for the petitioner and applicant in the intervention application made vehement submissions that G.O. dated 31.05.2012 specifically provides for grant of leases in respect of minor minerals sand, moram, bajari and bolder in accordance with the provisions contained in Chapter IV of the Rules by following the process of e-tendering. It is contended that by G.O. dated 22.10.2014, the G.O. dated 31.05.2012 was recalled only to the extent of excavation of minor minerals from river beds. The Collector, Sonbhadra invited applications for allotment of lease of minor minerals ignoring the e-tendering process. The Court while hearing Writ-C No. 14522 of 2016 was *prima facie* of the view that the Government Order dated 22.10.2014 is applicable only to excavation of minor minerals from river bed and the G.O. dated 31.05.2012 was withdrawn only to that extent and, as such, restrained the State to take steps pursuant to the advertisement dated 30.01.2016. However, in gross violation/non compliance of the interim order dated 05.04.2016, leases have been granted on different dates between 23.05.2016 to 01.06.2016. Submissions have been made that the G.O. dated 31.05.2012 has been altered without any rhyme and reasons and that the action of the respondents is in flagrant violation of the Rules.

17. Elaborating the submissions, learned counsel submitted that initially by G.O. dated 16.03.1999, it was decided to resort to Chapter

IV of the Rules and comply with the requirement of e-tendering process. The said policy came to be reversed by G.O. dated 30.12.2000. The G.O. dated 16.03.1999 was withdrawn. However, the same came to be revived by G.O. dated 31.05.2012 which specifically pertains to "प्रदेश में बालू, मौरम, बजरी एवं बोल्टर के रिक्त क्षेत्रों" whereby again Chapter IV was applied, i.e., e-tendering process was implemented. Again a reversal took place on 22.10.2014. However, the same was confined to minerals found in river bed whereafter the advertisements for allotment instead of auction/e-tendering was issued which were *ex facie* contrary to the G.O. dated 31.05.2012. The Division Bench in Writ-C No. 14522 of 2016, noticing the fact that the G.O. dated 22.10.2014 was only in regard to excavation of minor minerals from river bed and that the G.O. dated 30.12.2000 would have no application, passed the restraint order qua advertisement dated 30.01.2016, however, ignoring the said interim order and in its violation, respondents have made allotment, which deserve to be set aside. It was emphasized that G.O. dated 31.05.2012 stood interpreted in the case of **Nar Narain Mishra (supra)** wherein it was held that the *Imarti Patthar*/building stone is also covered by the said G.O. It was submitted that in **Sukhan Singh Vs. State of U.P. and others : 2014 (11) ADJ 89**, it was laid down that on issuance of G.O. dated 31.05.2012, the grant of mining leases, both fresh as well as renewals, have to be abide by Chapter IV of the Rules.

18. In **Sulekhan Singh and Company and others Vs. State of U.P. and others : Civil Appeal No. 4845 of 2015** decided on 04.01.2016, quashing of mining leases on the ground that the same were granted in violation of the Government Order dated 31.05.2012 was upheld. Reference has also been made to the order dated 09.09.2016 passed in **PIL No. 22482 of 2016 : Amar Singh Vs. State of U.P.** wherein the application seeking vacation of interim order was rejected wherein directions have been given for holding inquiry by C.B.I.

19. Further reference has been made to the order passed in the case of **Dharmendra Kumar Singh (supra)**. It has been emphasized that in teeth of G.O. dated 31.05.2012 and its interpretation in the case of **Nar Narain Mishra (supra)** by the Division Bench, the action of the respondents in issuing the advertisement and allotting the mining leases is *ex facie* against the law, specifically in view of the fact that the advertisement dated 30.01.2016 itself was stayed by the Division Bench noticing the non applicability of the G.O. dated 30.12.2000 and therefore, the petition be allowed.

20. Learned counsel appearing for some of the respondents, Mr. M.D. Singh 'Shekhar', Senior Advocate, made submissions that the PIL is based on para-5 and 6 of the writ petition, which essentially seeks to question the policy decision of the State in withdrawing the G.O. dated 31.05.2012. It was emphasized that Hon'ble Supreme Court in **Natural Resources Allocation, In re, Special Reference No. 1 of 2012 : (2012)10 SCC 1**, has laid down that the Court cannot conduct a comparative study of various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place and that it respects the mandate and wisdom of the executive for such matters.

21. Reference was also made to **Goa Foundation Vs. Union of India : (2014) 6 SCC 590** wherein Hon'ble Supreme Court, with reference to the provisions of Mines and Minerals (Development & Regulation) Act, 1957 and the Mineral Concession Rules, observed that it is for the State Government to decide as a matter of policy in what manner leases of the mineral resources would be granted.

22. It was emphasized that Rules 23 and 24 of the Rules provide for applicability of e-tendering and withdrawal of the area from the said provision respectively and, therefore, subject to exercise of Court's power of judicial review, the said power can always be exercised. Reference was also made to **Janhit Manch Vs. State of Maharashtra**

and others : (2019) 2 SCC 505 wherein it was observed that the Government has to take care of the policy matters.

23. Learned Senior Advocate further emphasized that none of the Government Orders/policy has been challenged in the petition and, therefore, once the State, exercising powers under the relevant Government Orders, has taken steps, in absence of challenge to the said Government Orders/policy, no relief can be claimed. Learned Senior Counsel emphasized that by G.O. dated 22.10.2014, the applicability of G.O. dated 31.05.2012 was withdrawn and, therefore, no case is made out. Submissions have been made that reliance can not be placed on prima face observations made by the Division Bench granting interim order and that once the writ petition stood withdrawn, no reliance can be placed on grant of the interim order.

24. Learned counsel, Mr. Devbrat Mukherjee, made submissions that the G.O. dated 31.05.2012 whether applied to river bed minerals or to in situ also, has lost significance in view of the G.O. dated 26.02.2013 wherein the G.O. dated 31.05.2012 has been clarified to indicate that the same pertained only to river bed minerals and, therefore, the submissions based on G.O. dated 31.05.2012, without reference to the G.O. dated 26.02.2013, is wholly misplaced. Learned counsel indicated that the G.O. dated 30.12.2000 only pertained to *Imarti Patthar*, i.e., in situ rock and that the same was never withdrawn. What was withdrawn was only the river bed minerals related G.O. dated 30.12.2000. It was sought to be emphasized that the G.O. dated 31.05.2012, relied on by the petitioner, only pertains to the river bed minerals and the same has to be read along with the clarification dated 26.02.2013. The G.O. dated 22.10.2014 is specifically confined to river bed minerals and not to previously existing G.O. relating to in situ rocks. With reference to the Mining Policy-2017, it was submitted that now, the policy of the State is clear in specifically de-linking the both, river bed and in situ minerals. Reliance was placed on **Peethambra Granite Private Ltd. Vs. State of**

U.P. and others : Writ- C No. 30066 of 2017, decided on 18.02.2020. It was submitted that taking note of the G.O. dated 26.02.2013 which clarify the G.O. dated 31.05.2012 restraining its applicability to the minerals found in river bed, it was laid down that the granite building stone is not covered in G.O. dated 31.05.2012. Submissions have been made that the order in the case of **Peethambra Granite Private Ltd. (supra)** has become final and in light of G.O. dated 26.02.2013 the determination made in the case of **Nar Narain Mishra (supra)** now cannot be taken into consideration for determination of the present case.

25. Learned A.A.G. made detailed submissions and took the Court through the Government Orders since 16.03.1999. Learned counsel submitted that the G.O. dated 16.03.1999 pertained to applicability of Chapter IV to both river bed and in situ minerals. However, on 30.12.2000, two separate Government Orders were issued. While G.O. No. **6706/77-5-2000-8 (204)/1995** pertained to river bed minerals, G.O. No. **6706-I/77-5-2000-8(204)/95** pertained to in situ minerals (*Imarti Patthar*) and by both the Government Orders qua in situ as well as river bed minerals, Chapter II of the Rules was made applicable. Again on 02.11.2002, G.O. No. **6706/77-5-2000-8 (204)/1995 (supra)** pertaining to river bed minerals only was withdrawn, which procedure, i.e., Chapter II, was again re-introduced by G.O. dated 16.10.2004 making specific reference to river bed minerals.

26. On 31.05.2012, G.O. was issued again resorting to e-tendering process though no reference was made to the same being applicable only to river bed minerals. However, it is submitted that the same was applicable to river bed minerals only in view of the changes which were made qua the policy pertaining to river bed minerals as in terms of G.O. No. **6706-I/77-5-2000-8(204)/95** dated 30.12.2000, the policy pertaining to the in situ minerals had continued. Learned counsel emphasized that after the judgment in the case of **Nar Narain Mishra**

(supra), on 26.02.2013 the above position was clarified and that the G.O. dated 31.05.2012 has to be read along with G.O. dated 26.02.2013 and not in isolation. Learned counsel referred to G.O. dated 22.10.2014 wherein again reference was made to river bed minerals as by the said G.O. dated 31.05.2012 qua the river bed minerals again Chapter II was made applicable.

27. Learned counsel referred to Mining Policy-2017 to indicate the minerals types wherein 'in situ' and 'river bed' minerals have been separately indicated and that now it has been provided by separate G.Os. dated 14.08.2017 and 12.12.2017 that leases for river bed and in situ minerals would be allotted through e-auction, respectively.

28. Learned Counsel emphasized that procedure for allotment of leases for in situ minerals continued till 2017 whereas for river bed the same changed from time to time. It was submitted that the orders/ judgments relied on have not taken into consideration the provisions of G.O. dated 26.02.2013, which for the first time has been taken into consideration in the case of **Peethambra Granite Private Ltd. (supra)**. It was submitted that on 22.10.2014, when the G.O. was issued for river bed minerals, both the G.Os. dated 31.05.2012 and 26.02.2013 were withdrawn which clearly indicates the existence and relevance of the G.O. at the relevant time.

29. Submissions have been made that allegations made regarding violation of the interim order granted by this Court, whereby the advertisement dated 30.01.2016 was stayed is wholly baseless inasmuch none of the lease has been granted pursuant to the advertisement dated 30.01.2016 and an affidavit in this regard by the Secretary (Mining) has already been placed on record wherein the advertisement number and date of the each mining lease granted, referred in para-31 of the writ petition, has been given to indicate that the same pertain to advertisements dated 03.12.2014, 06.06.2015,

13.05.2015, 24.04.2015 and 03.12.2015 and three cases pertain to renewal of the lease.

30. Further submissions have been made that after the G.O. dated 22.10.2014 with respect river bed minerals, advertisements were issued which were challenged in **Gulab Chandra Mishra Vs. State : 2015 (3) ADJ 478** whereby the writ petitions were allowed and directions were given for execution of lease pursuant to the G.O. dated 22.10.2014 against which Special Leave Petition was filed before Hon'ble Supreme and matter was remanded back to the High Court. After remand, **Writ-C No. 1498 of 2015 (Gulab Chandra Mishbra Vs. State)** was again decided on 01.05.2017 permitting the State to proceed with the implementation of interim mining policy as embodied in G.O. dated 22.04.2017 pursuant to which Mining Policy-2017 was framed, dealing with the subject matter. It was prayed that the petition be dismissed.

31. Learned Government Counsel relied on judgment in **NHPC Ltd. Vs. State of Himachal Pradesh : AIR 2023 SC 4457** to support the G.O. dated 26.02.2013 and **State of Bihar and others Vs. Ramesh Prasad Verma : (2017) 5 SCC 665** to contend that an instrument, if clarificatory, declaratory or explanatory in nature, will generally have retrospective operation.

32. Learned Counsel appearing for the petitioner, in response to the plea raised by the respondents referring to G.O. dated 26.02.2013, made submissions that the said G.O. cannot put the judgment in **Nar Narain Mishra (supra)** at naught. Submissions have been made that Special Leave Petition filed against the judgment in the case of **Nar Narain Mishra (supra)**, though was dismissed by Hon'ble Supreme Court on 03.03.2014, the G.O. dated 26.02.2013 was not placed before Hon'ble Supreme Court. Even in the case of **Sukhan Singh (supra)** and **Sulekhan Singh (supra)**, the said G.O. was not brought to light. Further submissions have been made that the judgment in the

case of **Peethambra Granite (supra)** has been distinguished in **Dharmendra Kumar (supra)**. It has been reiterated that once interim order dated 05.04.2016 was passed, there was no occasion to grant lease deeds, which is contemptuous. Submissions have been made that once vide interim order dated 05.04.2016, advertisement dated 30.01.2016 has been stayed, it cannot be construed that the respondents shall proceed in respect of other advertisements. In respect of the plea that G.O. No.6706-I dated 30.12.2000 was not withdrawn by G.O. dated 31.05.2012, submissions have been made that in case the said plea had any substance, there was no occasion to rely on the G.O. dated 22.10.2014 while issuing the advertisement in question. It was submitted that the plea sought to be raised by the State has no substance.

33. Learned counsel for the applicant in the intervention application submitted that issuance of G.O./corrigendum dated 26.02.2013 amounts to overreaching the judicial verdicts. Similar submissions pertaining to non citing of the said G.O. in the SLP arising out of judgments in **Nar Narain Mishra (supra)**, **Sukhan Singh (supra)** and **Sulekhan Singh (supra)** were reiterated. The plea pertaining to G.O. No.6706-I dated 30.12.2000 was thrashed in view of the subsequent conduct in not relying on the said plea at earlier stage.

34. We have considered the submissions made by counsel for the parties and have perused the material available on record.

35. At the outset, it may be noticed that the petitioner has based the plea on G.O. dated 31.05.2012, judgment in **Nar Narain Mishra (supra)** and subsequent judgments in **Sukhan Singh (supra)** and **Sulekhan Singh (supra)** and an interim order passed in Writ-C No.14522 of 2016 dated 05.04.2016, wherein certain observations were made by the Division Bench and the advertisement dated 30.01.2016 was stayed.

36. The respondents, besides relying on G.O. No.6706-I dated 30.12.2000, have primarily relied on G.O. dated 26.02.2013 and the fact that Writ-C No.14522 of 2016 stood withdrawn on 02.08.2016.

37. The manner of disposal of natural resources have all along been a subject of perception and the Government, from time to time, has been taking stand in favour of or against the method of disposal, i.e., through allotment or auction. The State has been changing its policy pertaining to mode of grant of mining leases between Chapter-II of the Rules, which is based on payment of royalty and dead rent, and Chapter-IV of the Rules, wherein the area may be leased out by auction or by tender or by auction-cum-tender. For the present purpose, the policy declared through G.O. dated 16.03.1999 adopted Chapter-IV for the purpose of grant of mining leases, i.e., through auction etc. On 30.12.2000, two separate G.Os. 6706 and 6706-I came to be issued. While G.O. No. 6706 pertained to minor minerals available in river bed, the G.O. No. G.O.6706-I pertained to *Imarti Patthar* (building stones) and both the G.Os. provided for adopting mode for grant of mining lease, as provided under Chapter-II, i.e., based on payment of royalty and dead rent. Whereafter G.O. dated 02.11.2002 specifically superseded G.O. No. 6706 pertaining to minor minerals available in river bed and applied Chapter-IV to the said minor minerals. On 16.10.2004 again, pertaining to river bed minerals, Chapter-II was made applicable, i.e., policy of grant of leases based on royalty and dead rent was adopted.

38. Whereafter the subject G.O. dated 31.05.2012 came to be issued. The said G.O. made reference to applicable policy for grant of mining leases, i.e., Chapter-II and a decision was taken to grant leases under Chapter-IV by auction through e-tendering. The said G.O. did not refer to any of the previous Notification/G.O.

39. The issuance of the said G.O. led to filing of several writ petitions, which came to be decided in the case of **Nar Narain Mishra**

(supra), wherein writ petitioners, claiming grant/renewal of mining leases questioned the validity of G.O. dated 31.05.2012.

40. In the said judgment, a plea was raised that leases in respect of *Imarti Patthar* (building stones) were not covered by G.O. dated 31.5.2012. The Division Bench dealt with the said aspect as under:

“74. One of the submissions raised by Pushpila Bisht is that the "Imarti Patthar" or "Building Stone" is not covered by the Government Order dated 31/5/2012. In Writ Petition No.56827/2012, reference has been made to the Government Order dated 05/7/2012, by which a tender document has been annexed in paragraph 13 in which "Imarti Patthar" has been mentioned.

75. Petitioner's case in the writ petition is that the "Imarti Patthar" or the "Building Stone" is an "In situ rock deposit" which has been defined in Rule 2 (3-a) of the Rules, 1963. It is submitted that the Government Order dated 31/5/2012, uses the word "Boulder" which refers to large stones which are displaced from its place of origin and are found in the River Bed whereas the "Imarti Patthar" are "In situ rock deposit" and are not found in the river bed, hence they cannot be covered under the Government Order dated 31/5/2012.

76. Government Order dated 31/5/2012, uses the word "Boulder". However, the Government Order dated 31/5/2012, does not confine to the word "Boulder" which is found in the Riverbed. The word "Boulder" can be used for the minerals which is found in the Riverbed as well as the mineral which is found "In situ rock deposit". Petitioner's case in the writ petition is that since the word "Boulder" is found only in the Riverbed, the Government Order dated 31/5/2012, does not cover "Imarti Patthar" is misconceived since the Government Order dated 31/5/2012, does not confine the word "Boulder" to one which is found in the Riverbed. In this context a look of 1st Schedule and 2nd Schedule to the Rules, 1963 makes it clear that the word "Boulder" is included in the heading "Building Stone" as well as when found in mixed form in the Riverbed. Item No. 5 of the 1st Schedule and Item No. 4 of the 2nd Schedule, both uses the word "Boulder" as building stones as well as when found in mixed form in the Riverbed. Item No. 5 of the 1st Schedule and Item No. 4 of the 2nd Schedule of the Rules, 1963 are quoted below:

"FIRST SCHEDULE"

<i>Minerals</i>	<i>Rate of Royalty</i>
<i>1.</i>	<i>2.</i>
<i>1.....</i>	
<i>2.....</i>	
<i>3.....</i>	
<i>4.....</i>	
<i>5. Building Stone</i>	<i>Rs. 180.00 per cubic metre</i>
<i>(i) Sized dimensional stone</i>	
<i>including slabs and ashlar,</i>	
<i>(sandstone, quartzite)</i>	
<i>(ii) Millstone and Hand Chakis</i>	<i>Rs. 200.00 per cubic metre</i>
<i>(Sandstone, Quartzite)</i>	

- (iii) Khandas and Boulders

(a)Rs.33.00 per cubic metre of Granite and Dolostone sized up to 25 cm. x 25 cm. x 25 cm.
(b)Rs.30.00 per cubic metre of sandstone and quartzite sized up to 25 cm. x 25 cm. x 25 cm.

SECOND SCHEDULE

(See Rule 22)

Name of Minor Mineral	Name of Districts	Rate of dead rent per acre per annum
1	2	3
1.....		
2.....		
3.....		
4. Such Building Stone, Ballast, Bajri and ordinary Sand as are found in mixed form in the river bed	Bijnor, Sharanpur, Bahraich, Lakhimpur Kheri and other districts, if any.	Boulder Rs. 8000.00 Bajri Rs. 8000.00 Ordinary Sand Rs. 4,000.00. The separate rate will be charged on each minerals.”

Thus the above argument of the learned counsel for the petitioners cannot be accepted.”

41. The said judgment was delivered on 29.01.2013. It appears that authorities became wiser on account of the above determination made by the Division Bench and issued G.O. dated 26.02.2013, which, *inter alia*, reads as under:

"लखनऊ: दिनांक: 26 फरवरी, 2013

विषय:- प्रदेश में बालू, मौरंग, बजरी एवं बोल्टर के रिक्त क्षेत्रों को उ०प्र० उपखनिज परिहार नियमावली, 1963 के अध्याय-4 के प्राविधानों के अंतर्गत ई-टेन्डरिंग प्रणाली के माध्यम से परिहार पर स्वीकृत किये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या-1277/86-12-278/2011, दिनांक 31 मई, 2012 के संबंध में मुझे यह कहने का निदेश हुआ है कि शासनादेश में जहां-जहां भी उप खनिजों एवं खनिजों का उल्लेख किया गया है, वहाँ-वहाँ उक्त से "नदी तल में अनन्य रूप से मिली-जुली अवस्था में पायी जाने वाली बालू या मौरंग या बजरी या बोल्टजर या इसमें से कोई भी मिली-जुली अवस्था में हो" समझा जायेगा।

2. अतएव शासनादेश संख्या-1277/86-12-278/2011, दिनांक 31 मई, 2012 को उपर्युक्त सीमा तक संशोधित किया जाता है।

विवेक वाष्णीय
विशेष सचिव।"

42. The above G.O. purportedly clarified/declared that in G.O. dated 31.05.2012, wherever reference to minor minerals and minerals has been made, the same shall be read as minor minerals found in river bed. Though G.O. dated 26.02.2013 sought to clarify/rectify the

G.O. dated 31.05.2012 in effect taking out in situ minerals/*Imarti Patthar*/building stones from its purview, the said G.O. was not cited/relied on in subsequent litigations i.e. the SLP arising out of judgments in **Nar Narain Mishra (supra)**, **Sukhan Singh (supra)** and **Sulekhan Singh (supra)**.

43. The policy dated 31.5.2012 again came to be changed by G.O. dated 22.10.2014, whereby with specific reference to the G.Os. dated 31.05.2012 and 26.02.2013 and with specific reference with regard to minor minerals found in river bed, withdrawal of the said G.Os. was issued again applying Chapter-II to river bed minerals. The relevant portion reads as under:

"लखनऊ: दिनांक: 22 अक्टूबर, 2014

विषय:- नदी तल में उपलब्ध उप खनिज यथा बालू, मौरम, बजरी, बोल्टर अथवा जो मिली-जुली अवस्था में अनन्य रूप से नदी तल में पाये जाते हैं, के रिक्त क्षेत्रों को उत्तर प्रदेश उप खनिज (परिहार) नियमावली, 1963 (यथासंशोधित) की व्यवस्थाओं के अन्तर्गत परिहार पर स्वीकृत किये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषय के संदर्भ में मुझे यह कहने का निदेश हुआ है कि उत्तर प्रदेश उप खनिज (परिहार) नियमावली, 1963 के नियम-24 के प्राविधानों के अन्तर्गत नियमावली, 1963 के नियम- 23 के उपनियम- (1) के अन्तर्गत शासनादेश संख्या- 1277/ 86-2012-278/2011, दिनांक 31.05.2012 एवं अनुवर्ती शासनादेश संख्या - 382(1)/ 86-2013-278/ 2011, दिनांक 26.02.2013, शासनादेश संख्या- 1710/ 86-2014-278/2011, दिनांक 09.06.2014 एवं शासनादेश संख्या-1710(1)/ 86-2014-278/2011, दिनांक 08.07.2014 द्वारा की गयी सामान्य घोषणाओं को तात्कालिक प्रभाव से एतद्द्वारा वापस लिये जाने की राज्यपाल महोदय सहर्ष स्वीकृति प्रदान करते हैं।

... ..
... .. "

44. In view of the fact that the G.O. dated 26.02.2013 was specifically referred to and was withdrawn in relation to river bed minerals by G.O. dated 22.10.2014, the doubt sought to be raised during the course of submissions pertaining to existence of the said G.O., specially in view of the fact that the same was not cited at any earlier stage, i.e., in cases relating to **Nar Narain Mishra (supra)**, **Sukhan Singh (supra)** and **Sulekhan Singh (supra)**, apparently has no basis.

45. Once the G.O. dated 22.10.2014 was issued, the advertisements were issued for grant of mining leases, which came to be challenged in Writ-C No.14522 of 2016 and an interim order dated 05.04.2016 was granted restraining the State from taking any step pursuant to the advertisement dated 30.01.2016. The Division Bench, granted the interim order with certain observations vide order dated 05.04.2016, which reads as under :

“The petitioner in these proceedings under Article 226 of the Constitution seeks an order restraining the State Government from granting mining leases in respect of minor minerals by any procedure other than the process of e-tendering prescribed under Chapter IV of the Uttar Pradesh Minor Mineral (Concession) Rules 1963. The petitioner has also sought to challenge an advertisement dated 30 January 2016 issued by the Collector and District Magistrate, Sonbhadra.

On 31 May 2012, a Government Order was issued, by which it was envisaged that in respect of the entire State of Uttar Pradesh, the grant of leases in respect of minor minerals for sand, moram, bajari and boulder would be in accordance with the provisions contained in Chapter IV of the Rules of 1963 by following the process of e-tendering. For that purpose, the entire area of the State was declared to be vacant. On 22 October 2014, a Government Order was issued, the subject of which relates to the extraction of minor minerals of the aforesaid nature from river beds. The Government Order dated 22 October 2014 purports to recall, inter alia, the Government Order dated 31 May 2012. However, it is clear that the subject matter of this Government Order is only in regard to the extraction of minor minerals from river beds. The advertisement which has been issued by the Collector, Sonbhadra on 30 January 2016 seeks to place reliance on a Government Order dated 30 December 2000 for inviting applications for the allotment of leases of minor minerals in the tehsil of Robertsganj.

The submission of the learned Standing Counsel appearing on behalf of the State is that, upon the issuance of the Government Order dated 22 October 2014, the earlier Government Order dated 31 May 2012 stands recalled, as a result of which the requirement of e-tendering is abrogated and the applicability of Chapter IV of the Rules of 1963 is done away with.

Prima facie, in our view, this is an incorrect reading of the Government Order dated 22 October 2014. The Government Order dated 22 October 2014 applies only to the excavation of minor minerals from river beds and it is only to that extent that the earlier Government Order dated 31 May 2012 is withdrawn. Moreover, the challenge in these proceedings is also to the Government Order dated 22 October 2014 which can be dealt with after a counter is filed.

*Be that as it may, at this stage, we find, prima facie, that the action of the Collector and District Magistrate, Sonbhadra in issuing an advertisement, placing reliance on a Government Order dated 30 December 2000 was misconceived. Once the Government Order was issued on 31 May 2012 by which Chapter IV was applied across the State, there would be no occasion then to fall back on the provisions contained in the Government Order dated 30 December 2000. We may note at this stage that the issue of river bed minerals which was governed by Rule 9A is a separate matter altogether in respect of which a special leave petition is pending before the Supreme Court arising out of a judgment of this Court dated 3 April 2015 in **Gulab Chandra Mishra Vs State of Uttar Pradesh, 2015 (3) ADJ 478 (DB)**. The issue which is dealt with in relation to Rule 9A does not arise in these proceedings.*

Consequently, we direct both the Principal Secretary (Mining) as well as the Collector and District Magistrate, Sonbhadra to file their counter affidavits within four weeks from today.

In the meantime, we issue an ad-interim injunction restraining the State and the third respondent from taking any steps in pursuance of the advertisement dated 30 January 2016.

List on 5 May 2016.”

46. As would be seen, the interim order was premised on the basis that the G.O. dated 31.05.2012 pertained to grant of lease in respect of minor minerals in accordance with the provisions contained in Chapter-IV and the G.O. dated 22.10.2014 was confined to excavation of minor minerals from river beds and only to that extent the G.O. dated 31.05.2012 was withdrawn. The fact that G.O. dated 31.05.2012 stood clarified/rectified/amended by G.O. dated 26.02.2013, was not brought to the notice of the Court, though the same was specifically indicated in the G.O. dated 22.10.2014. The above writ petition itself, wherein the interim order was granted, came to be withdrawn on 02.08.2016. From the stand, which has been taken and reiterated by the State, it is claimed that the interim order pertained to the advertisement dated 30.01.2016 and none of the leases, which were granted and have been challenged on the ground of the same being in violation of the interim order, pertains to the advertisement dated 30.01.2016, which stand has not been controverted from any corner.

47. The effect of G.O. dated 26.02.2013 came to be noticed by the Coordinate Bench of this Court in the case of **Peethambra Granite Pvt. Ltd (supra)**, wherein it was, *inter alia*, observed as under:

“Sri Manish Goyal, learned Additional Advocate General referring to the provisions of Rule 23 of the Rules, 1963 submitted that the order of 31.05.2012 is a declaration under Rule 23 and is not a Government Order.

Even if that be so, it has been brought to our notice that another order was issued on 26.02.2013 particularly clarifying the Government Order of 31.05.2012 and restricting its applicability to Sand or Morrum or Bajri or Boulder found in the riverbed and amends the Government Order dated 31.05.2012 to that extent.

We have already noted above that though the District Magistrate has sought a clarification from the State Government in this regard but no such clarification was issued by the State Government and therefore, in order to know the stand of the State, we by our order dated 01.11.2019 requested the learned Additional Advocate General to present before us the stand of the State Government in the present matter on the subject of 'Granite' as a minor mineral and leases which have already been granted in December, 2013 to the petitioner.

In response to our order, Sri Manish Goyal, learned Additional Advocate General placed before us instructions of the State Government dated 16.11.2019 through an affidavit dated 26.11.2019 which acknowledges that with respect to minor mineral, namely, 'Granite' leases were granted or old leases were renewed and further clarifies that in the letter of 31.05.2012 minor minerals, Sand or Morrum or Bajri or boulder found in the riverbed in mixed form has been mentioned but 'Granite-Building Stone is not included in the Government order of 31.05.2012 and that the instructions dated 16.11.2019 specifically in paragraph 5 mentions that grant of leases or renewal of leases or stoppage of work under leases already renewed was only because of the interim order dated 20.06.2016 passed by the High Court in the case of Vijay Kumar Dwivedi (supra). Therefore, it is quite clear from the instructions dated 16.11.2019 that Granite-Building Stone' is not included in the letter of 31.05.2012 which was clarified by the subsequent Government Order of 26.02.2013.”

48. From the above facts situation, it is apparent that the G.O. No.6706-I dated 30.12.2000 pertained to policy for grant of mining lease for in situ rock/building stone, i.e., under Chapter-II, the subsequent G.Os. dated 02.11.2002 and 16.10.2004, indicating change in policy, were confined to river bed minerals. The G.O. dated 31.5.2012, though initially did not confine its application to the river bed minerals, the same came to be clarified by G.O. dated 26.02.2013 and the fact that the G.O. dated 22.10.2014 was confined to river bed minerals, it cannot be said, as observed in the case of **Peethambra Granite Pvt. Ltd (supra)**, that G.O. dated 31.05.2012 would continue

to apply for in situ rock/building stones. The fact that the G.O. dated 26.02.2013 was not cited, despite forming part of G.O. dated 22.10.2014, does not take away its effect of clarifying/declaring the scope of G.O. dated 31.05.2012, i.e., G.O. dated 31.05.2012 was confined to river bed minerals.

49. In view of the above facts coupled with the fact that pursuant to the advertisement dated 30.01.2016, which was stayed vide interim order dated 05.04.2016, no lease was granted during the period of stay, the entire plea sought to be raised in the present writ petition in public interest cannot be countenanced. The very fact that G.O. dated 26.02.2013 has not been challenged, the submissions made that the G.O. dated 26.02.2013 could not have been issued by the respondents after judgment in the case of **Nar Narain Mishra (supra)**, apparently has no basis. Further once the defect in/absence of a particular aspect in G.O. dated 31.05.2012 was noticed by the respondents, may be after the judgment in the case of **Nar Narain Mishra (supra)**, the issuance of clarification/rectification was well within its domain, as laid down in the case of **NHPC Ltd. (supra)**.

50. In view of the above discussion, we do not find any reason to issue any direction, as sought by the petitioner in the present writ petition, filed as public interest litigation, and the same is, therefore, dismissed.

51. All interim orders stand vacated.

Order Date :- 30-09-2024

P.Sri.

(Vikas Budhwar, J) (Arun Bhansali, CJ)