State Of Tamil Nadu & Anr vs P. Krishnamurthy & Ors on 24 March, 2006

Equivalent citations: AIR 2006 SUPREME COURT 1622, 2006 (4) SCC 517, 2006 AIR SCW 1778, (2007) 1 WLC(SC)CVL 126, 2006 (3) SCALE 460, 2006 (5) SRJ 55, (2006) 3 SCALE 460, (2006) 3 MAD LJ 313, (2006) 4 MAD LW 635, (2006) 4 SCJ 375, (2006) 5 SUPREME 581, MANU/SC/1581/2006

Bench: Arun Kumar, R V Raveendran

```
           CASE NO.:
Appeal (civil)  5572-5644 of 2005

PETITIONER:
State of Tamil Nadu & Anr.

RESPONDENT:
P. Krishnamurthy & Ors.

DATE OF JUDGMENT: 24/03/2006

BENCH:
Arun Kumar & R V Raveendran

JUDGMENT:
```

J U D G M E N T RAVEENDRAN, J.

These appeals by special leave against the judgment dated 11.5.2004 of a Division Bench of the High Court of Madras in W.A. Nos.3241-42/2003 and connected cases, relate to the validity and scope of Rule 38A of the Tamil Nadu Minor Mineral Concession Rules, 1959 (for short 'the Rules') which reads as under :

> "38-A. Quarrying of sand by the State Government:-
>
> Notwithstanding anything contained in these rules, or any order made or action taken thereunder or any judgment or decree or order of any Court, all existing leases for quarrying sand in Government lands and permissions/leases granted in ryotwari lands shall cease to be effective on and from the date of coming into force of this rule and the right to exploit sand in the State shall vest with the State Government to the exclusion of others. The proportionate lease amount for the unexpired period of the lease and the unadjusted seigniorage fee, if any, will be refunded."

Background facts

2. We may briefly refer to the circumstances leading to the insertion of Rule 38A in the Rules. A public interest litigation (W.P. No.985/2000) was filed in the Madras High Court, complaining about indiscriminate illicit quarrying of sand in riverbeds. The High Court issued certain directions to curb illicit quarrying while disposing of the said writ petition. A contempt petition (Contempt Application No.561/2001) was filed complaining of non-implementation of the said directions by the State Government. In the said contempt proceedings, the High Court issued a direction to the State Government on 26.7.2002 to constitute a High Level Committee consisting of scientists, geologists and environmentalists to conduct a thorough scientific survey of the sand quarrying activities in rivers and riverbeds in the State and submit a report regarding the damage caused on account of indiscriminate illicit quarrying and to suggest the remedial measures. The High Court also suggested that a suitable regulatory legislation may be made by the State on the basis of the report of such Committee, and issued certain interim directions pending such legislation.

3. Accordingly, a High Level Committee was constituted which submitted a report detailing the extensive damage that had occurred on account of haphazard, irregular and unscientific manner of quarrying sand by the quarry leaseholders, thereby impairing smooth flow of water and causing damage to riverbeds, river banks as also the structures (like bridges and transmission powerlines constructed across rivers or imbedded on the riverbed) and drinking water systems branching from rivers, leading to ecological imbalances. It was found that the unauthorized use of Poclain machines for quarrying, and the tendency of lessees to extend quarrying activities beyond the leased area and the permissible depth, were the main causes for the devastating situation. The Committee suggested several measures to remedy the situation, one of which was to impose total prohibition on quarrying by private parties. On considering the said report, the State Government took a decision in public interest to stop quarrying of sand in Government lands and Ryotwari (private patta) lands by private agencies and take upon itself exclusively, all sand quarrying activities in the State. It is in this background, Rule 38A came to be inserted in the Rules by Notification dated 1.10.2003 with effect from 2.10.2003.

4. Prior to insertion of the said Rule, the State Government was granting quarrying leases, the term of such leases being three years or less, under Rule 8 of the Rules. It is stated that as on 2.10.2003, private agencies were holding 135 sand quarrying leases granted by the State Government and 52 permissions for sand quarrying in Ryotwari lands. Out of these, 19 were to expire in 2003, 102 were to expire in 2004, 33 were to expire in 2005 and the remaining 33 were to expire in 2006; and in addition, sand quarrying was carried on by some others on the authority of orders of court, even though no leases had been granted in their favour. With effect from 2.10.2003, the State Government stopped all sand quarrying by private agencies. Several writ petitions were filed in the Madras High Court by the Lessees/permission holders, challenging Rule 38A.

Decision of the High Court

5. On 8.10.2003, a learned Single Judge of the High Court granted an interim stay, until further orders or till the leases granted to the writ petitioners came to an end, whichever was earlier. Being aggrieved by the interim stay, the State Government moved the matter before a Division Bench immediately which in turn issued an interim direction on the same day (8.10.2003) directing both

parties not to quarry sand from areas covered by leases or court orders, until further orders. Subsequently, the writ petitions, which were pending before the learned Single Judge, were taken up for hearing by the Division Bench along with the writ appeals against the interim order, and were disposed of by a common order dated 11.5.2004.

6. The Division Bench upheld the validity of Rule 38A in so far as it created an exclusive right in the State to quarry sand. It was, however, of the view that the leases/permissions which had already been granted and were in force as on 2.10.2003 when the Rule came into force, could not be terminated without giving a hearing to the concerned lessees/permission-holders. Consequently, it upheld the validity of Rule 38A subject to the following conditions :

> "1. The State is entitled to exploit the sand by quarrying itself on the Government lands, which are not covered by the mining leases of the writ petitioners. The same is applicable to patta lands subject to the permission of the landholders or their tenants or lessees in occupation, which are not covered by the mining leases.
>
> 2. The writ petitioners whose Mining leases expired as on this day and which are covered by the Court orders shall not be entitled for any relief. This will not cover the Court orders passed to make up the deficiency of the lease period.
>
> 3. The respective District Collectors shall issue notices to the petitioners with regard to the mining leases where there is an allegation of infraction of environmental laws and if there is a contest, then hold an enquiry by affording opportunity to them and then pass orders basing on the material on record. The above exercise shall be made by the District Collector within a period of two months from the date of receipt of a copy of this order and until then, the status quo with regard to mining operations as obtained on this day, shall be maintained.
>
> 4. In so far as the cases not covered by environmental violations are concerned, the said writ petitioners shall be entitled to continue their sand quarry operations till the expiry of their respective lease periods. But this shall not preclude the respondents/Government from terminating their leases by issuing a prior notice of six months as contemplated under Clause 11 of Appendix I of the Rules in so far as the Government lands are concerned.
>
> 5. In the cases relating to the petitioners, where there is an allegation of breach of conditions of lease, then a notice has to be issued to them affording opportunity and then pass orders basing upon the material on record. But until then, they shall be entitled to quarry."

Some of the writ petitioners, being aggrieved by the judgment upholding validity of Rule 38A, approached this Court. This Court did not entertain the SLPs.

The Contentions & the Issue

7. The State has challenged the judgment of the High Court in these appeals by special leave, being aggrieved by the conditions stipulated by the court while upholding the validity of Rule 38A. According to the State, the Rule ought to have been upheld unconditionally, so that there could be cessation of all quarrying activities relating to sand in the State by private agencies with effect from 2.10.2003. Though leave was granted on 5.9.2005, the interim prayer of the State to stay the conditions imposed by the High Court was not granted. Instead, hearing was expedited. The State has raised the following contentions :-

> (i) The High Court having upheld the validity of Rule 38A, ought not to have excluded the existing leaseholders (in regard to Government lands) and permission holders (in regard to Ryotwari lands) from the operation of the said rule. Continuation of quarrying operations by the existing leaseholders/permission-holders would negate the very purpose (to save riverbeds from indiscriminate quarrying) of the amendment to the Rules by adding Rule 38A.
>
> (ii) The State has the power to regulate the grant of quarrying and mining leases relating to minor minerals by making appropriate rules, in view of the power delegated to it by the Parliament under section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short the 'Act'). The power to regulate includes the power to prohibit, in appropriate cases. Termination of all quarrying leases and permissions is nothing but prohibition of quarrying by lease/permission holders. The State was, therefore, well within its power in making a rule which directed cessation of quarrying of sand by all lease/ permission holders in the State and Rule 38A in entirety is valid.
>
> (iii) The decision to put an end to all leases/permissions was not arbitrary or unreasonable. Rule 38A manifested the policy of the State Government, formulated after duly considering all relevant aspects and the recommendations of the High Level Committee. Therefore, the High Court erred in imposing conditions, for the applicability of Rule 38A to existing lease/permission holders.

8. The validity of Rule 38A in so far as it seeks to vest the exclusive right in the State Government, in regard to sand quarrying, does not arise for our consideration as the High Court has held that creation of such monopoly is not illegal having regard to the scheme of the Act and the decisions of this Court recognizing the right of the State to create such monopoly in State of Tamil Nadu v. Hind Stone & Ors. [1981 (2) SCC 205] and Gem Granites v. State of Tamil Nadu [1995 (2) SCC 413]. In Hind Stone (supra), this Court held that the power of regulation vested in the State Government can extend to total prohibition of leases and the State was entitled, in exercise of its regulatory power, in appropriate cases, to take over exclusive exploitation of a particular minor mineral or give it to a sole agency or prohibit exploitation by private agencies with the intention of conservation and prudent exploitation. In Gem Granites (supra), this Court held that the State Government as owner of a minor mineral, may decline to give any lease to quarry such minor mineral to anyone and may engage in such quarrying operations itself. Therefore, the High Court rightly held that Rule 38A reserving the exclusive right of quarrying sand, in itself, to the exclusion of others, was valid and did

not suffer from any infirmity. This Court also refused to entertain the SLPs., filed by lessees in view of the said settled legal position.

9. The question that arises in these appeals by the State relates to the other part of the Rule, that is, whether the State can, while making a rule providing for exclusive vesting of right to exploit sand in itself, provide that all existing leases relating to quarrying of sand in Government land (and all existing permissions to quarry sand in ryotwari lands) shall cease to be effective on and from the date when such rule comes into force, and that too without providing a reasonable opportunity of hearing to the aggrieved lease/permission holders. In other words, the question is whether Rule 38A ought to be upheld unconditionally or whether holders of existing leases (Government lands) and permissions (ryotwari lands) should be protected till the expiry or termination of their leases/permissions as per law.

10. The Respondents contend that Rule 38A does not conform to section 4A(3) of the Act. It is pointed out that sub- section (3) of Section 4A of the Act mandates that no order making a premature termination of a mining lease shall be made except after giving the holder of the lease a reasonable opportunity of being heard; and that it, therefore, follows that any Rule made by the State Government for regulating mining leases in respect of minor minerals, in exercise of the rule-making power conferred by the Act, should conform to Section 4A(3); and that Rule 38A made by the State, to the extent it provides for termination or cessation of all existing leases/permissions relating to sand, without affording a hearing to the affected leaseholder/s, is clearly contrary to the express provisions of Section 4A(3) is invalid.

Legal Provisions

11. A brief reference to the relevant provisions of the Act and Rules will facilitate decision on the said question.

11.1) Section 3(e) of the Act defines "Minor minerals" as building stones, gravel, ordinary clay, ordinary sand (other than sand used for prescribed purposes), and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral. Section 4 requires the mining operations to be under leases granted under the Act and the Rules made thereunder. Section 4A deals with termination of mining leases. While sub-section (1) enables the Central Government to request the State Government to terminate a mining lease in respect of any mineral other than a minor mineral in the circumstances stated therein, sub-section (2) enables the State Government to make premature termination of mining lease in regard to minor minerals. We extract below sub-sections (2) and (3) of section 4A which are relevant for our purpose :-

> "(2) Where the State Government is of opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, control of floods, prevention of pollution or to avoid danger to public health or communication or to ensure safety of buildings, monuments or other structures or for such other purposes, as the State Government may deem fit, it may, by an order, in respect of any minor mineral, make premature termination of prospecting licence

> or mining lease with respect to the area or any part thereof covered by such licence or lease.
>
> (3) No order making a premature termination of a prospecting licence or mining lease shall be, made except after giving the holder of the licence or lease a reasonable opportunity of being heard."

[Emphasis supplied] 11.2) Section 15 empowers the State Government to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. Section 17 deals with the special power of the Central Government to undertake prospecting or mining operations in certain lands. Section 17A provides for reservation of any area (not already held under any mining lease) for purposes of conservation of any mineral or for undertaking mining operations through any company/corporation owned by the Central Government or State Government.

11.3) The Tamil Nadu Minor Mineral Concession Rules, 1959 were made by the State Government in exercise of its power under Section 15 of the Act. Rule 1(3) provides that the said Rules shall apply to all the lands in the State of Tamil Nadu. Rule 2(6) defines "quarry", "quarrying leases" and "quarrying operations" and provides that they shall have the same meaning assigned to "mine", "mining lease" and "mining operations" in the Act. Rule 8 relates to leasing of Government lands for quarrying minor minerals (other than certain types of granites covered by Rules 8-A and 8-C). It contemplates the District Collector granting lease to an applicant who offers the highest bid amount for an area advertised and notified for grant of such lease, followed by execution of a lease deed by the State Government and the lessee. Sub-rule (8) of Rule 8 provides that the period of quarry lease for sand shall be three years; and Sub-rules (8) and (11) of Rule 8 make it clear that a lease granted under Rule 8 shall neither be extended nor be renewed. Rule 15 provides for absolute prohibition or regulation of quarrying or removal of sand from riverbeds to which Madras River Conservancy Act, 1884 has been extended and for regulating the quarrying or removal of sand from beds of river in charge of the Public Works Department. The form of lease for quarrying and removing minor minerals by private persons is contained in Appendix I to the Rules and Clause 11 thereof provides that such lease may be terminated by six months notice in writing on either side (without any right in the Lessee to seek compensation). It is not in dispute that all quarrying leases granted by the State Government contained such a provision for termination simplicitor. Rule 36 deals with general restrictions in respect of quarrying operations. The proviso to sub-Rule (1) of Rule 36 provides that there shall be no quarrying of any minor mineral in the river beds or adjoining areas within 200 meters radial distance from the location of any bridge, water supply system, infiltration well, or pumping installation of any of the local bodies or Central or State Governments or the State Water Supply and Drainage Board head works. Sub-rule 5(c) of Rule 36 provides that the lessees and permit holders shall carry out quarrying operations in a skilful, scientific and systematic manner, keeping in view proper safety of the labour, structure and the public, and public works located in that vicinity of the quarrying area and in a manner to preserve the environment and ecology of the area.

Whether the Rule is valid in entirety ?

12. There is a presumption in favour of constitutionality or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a sub-ordinate legislation can be challenged under any of the following grounds :-

a) Lack of legislative competence to make the sub-ordinate legislation.

b) Violation of Fundamental Rights guaranteed under the Constitution of India.

c) Violation of any provision of the Constitution of India.

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 court might well say that Legislature never intended to give authority to make such Rules).

The court considering the validity of a sub-ordinate 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.

13. In Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India [1985 (1) SCC 641], this Court referred to several grounds on which a subordinate legislation can be challenged as follows:

"A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."

[Emphasis supplied] In Supreme Court Employees Welfare Association vs. Union of India [1989 (4) SCC 187], this Court held that the validity of a sub-ordinate legislation is open to question if it is ultra vires the Constitution or the governing Act or repugnant to the general principles of the laws of the land or is so arbitrary or unreasonable that no fair-minded authority could ever have made it. It was further held that Rules are liable to be declared invalid if they are manifestly unjust or

oppressive or outrageous or directed to be unauthorized and/or violative of general principles of law of the land or so vague that it cannot be predicted with certainty as to what it prohibited or so unreasonable that they cannot be attributed to the power delegated or otherwise discloses bad faith.

In Shri Sitaram Sugar Co. Ltd. v. Union of India [1990 (3) SCC 223], a Constitution Bench of this Court reiterated :

> "Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterized as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". See Leila Mourning v. Family Publications Service [411 US 356]. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorized end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires": per Lord Russel of Killowen, C.J. in Kruse v. Johnson (1898) 2 QB 91."

In St. Johns Teachers Training Institute vs. Regional Director, NCTE [2003 (3) SCC 321], this Court explained the scope and purpose of delegated legislation thus :

> "A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of statutes."

[Emphasis supplied]

14. It is submitted on behalf of the Appellant that where the power exercised does not concern with the interest of an individual, but relates to public in general, or where the power exercised concerns with a direction of a general character laying down the future course of action, it should be held to

be an exercise of legislative power and not an exercise of administrative or judicial/quasi-judicial power. It is contended that Section 4A(3) refers to performing executive or administrative acts and not to a legislative act, as it requires hearing before making a premature termination of mining leases held by an individual. It is submitted that termination of all leases/permissions relating to quarrying of sand, as a class, under Rule 38A, is a legislative act and not an executive act and therefore, section 4A(3) has application. It is submitted that Rule 38A being a delegated legislation, legislative in character, is not open to question on the ground that it violates the principles of natural justice.

15. There is no dispute that making of Rule 38A is a legislative act and not an administrative act. It is no doubt true that an act which is legislative in character, as contrasted from an executive act or a judicial/quasi-judicial function, does not oblige the observance of rules of natural justice. In Rameshchandra Kachardas Porwal v. State of Maharashtra [1981 (2) SCC 722], this Court observed:

> "We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice."

16. In Union of India vs. Cynamide India Ltd. [1987 (2) SCC 720], this Court differentiated between legislative acts and non-legislative acts thus :-

> The distinction between the two has usually been expressed as 'one between the general and the particular'. 'A legislative act is the creation and promulgation of a general:
>
> rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy'. 'Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.' It has also been said "Rule making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to specific ' individuals or situations". But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only.

> That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts.

17. The contention that the act of premature termination referred to in section 4A(3) is an executive act and not a legislative act, finds support from the decision in State of Haryana vs. Ram Kishan & Ors. [1988 (3) SCC 416] wherein this Court considered the scope of section 4-A, as it originally stood prior to the substitution thereof by Act No. 37 of 1986. Section 4-A, considered in that case, read as under :-

> "4-A(1). Where the Central Government, after consultation with the State Government, is of opinion that it is expedient in the interest of regulation of mines and mineral development so to do, it may request the State Government to make a premature termination of a mining lease in respect of any mineral, other than minor mineral, and, on receipt of such request, the State Government shall make an order making a premature termination of such mining lease and granting a fresh mining lease in favour of such government company or corporation owned or controlled by government as it may think fit.
>
> (2) Where the State Government, after consultation with the Central Government, is of opinion that it is expedient in the interest of regulation of mines and mineral development so to do, it may, by an order, make premature termination of a mining lease in respect of any minor mineral and grant a fresh lease in respect of such mineral in favour of such government company or corporation owned or controlled by government as it may think fit."

Old section 4A did not provide for a hearing before premature termination of the leases. This Court held that section 4A providing for premature termination of a lease, was a provision conferring power to the executive to take adverse decisions involving civil consequences. This Court further held that as the act of termination was an executive act and not a legislative act, the provision must be interpreted as implying to preserve a right of hearing to the affected person before taking the decision, in the absence of exclusion of rules of natural justice. We may, for convenience, extract the following reasoning of this Court :

> "The language of Section 4-A clearly indicates that the section by itself does not prematurely terminate any mining lease. A decision in this regard has to be taken by the Central Government after considering the circumstances of each case separately. For exercise of power it is necessary that the essential condition mentioned therein is fulfilled, namely, that the proposed action would be in the interest of regulation of mines and mineral development. The section does not direct termination of all

> mining leases, merely for the reason that a government company or corporation has equipped itself for the purpose ...
>
> Considered in this light, the section must be interpreted to imply that the person who may be affected by such a decision should be afforded an opportunity to prove that the proposed step would not advance the interest of mines and mineral development. Not to do so will be violative of the principles of natural justice. Since there is no suggestion in the section to deny the right of the affected persons to be heard, the provisions have to be interpreted as implying to preserve such a right. Reference may be made to the observations of this Court in Baldev Singh v. State of Himachal Pradesh [1987 (2) SCC 510], that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, such rule would apply. The learned counsel placed reliance on the observations in paragraphs 5 to 7 of the judgment in Union of India v. Cynamide India Ltd. [1987 (2) SCC 720], which were made in connection with legislative activity which is not subject to the rule of the audi alteram partem. The principles of natural justice have no application to legislative activities, but that is not the position here. It has already been pointed out earlier that the existing mining leases were not brought to their end directly by Section 4-A itself. They had to be terminated by the exercise of the executive authority of the State Government."

The old section 4A enabled the termination of lease either by the Central Government or by the State Government (in consultation with the other) only for the purpose of granting a fresh lease in favour of any government company/corporation owned by such government, if it was of the opinion that it was expedient in the interest of regulation of mines and mineral development to do so. Though old section 4A did not provide for a hearing before termination, this Court read such a requirement into the section. On the other hand, present section 4A (substituted by Act 37 of 1986) enables the Central Government to request the State Government to terminate a mining lease in regard to any mineral (other than a minor mineral) and also enables the State Government to terminate a mining lease in regard to any minor mineral, where the concerned government is of the opinion that it is expedient in the interest of the regulation of mines and mineral development, preservation of natural environment, control of floods, prevention of pollution or to avoid danger to public health or communication or to ensure safety of buildings, monuments, or other structures (and also additionally on the ground of conservation of mineral resources or for maintaining safety in the mines in the case of minerals other than minor minerals) or for such other purposes, by making an order of premature termination. Granting a lease in favour of government company/corporation is no longer a purpose for which an existing lease could be terminated under section 4A. In fact, along with substitution of section 4A by Act 37 of 1986 with effect from 10.2.1987, a new section (section 17A) was introduced which provides for reservation of any area for purpose of granting of a mining lease to a government company or corporation provided such area is not already held under a mining lease. The ground on which a lease could be prematurely terminated under old section 4A and the grounds on which a lease can be terminated under new section 4A are completely different. Though the grounds for premature termination have changed in section 4A, the principle laid down in Ramkishan that premature termination of lease under section

4A, after giving a hearing to the lessee is an executive act and not legislative act, however, continues to hold good. Therefore, the act of termination of a mining lease, even under the new section 4A, is an executive act.

18. A delegated legislation, though legislative in character, will be invalid, on the ground of violation of principles of natural justice, if the enabling Act under which the delegated legislation is made, specifically requires observance of the principles of natural justice for doing the act. This was made clear in Rameshchandra Kachardas Porwal (supra) itself. In Cynamide India Ltd., (supra), this Court observed :

> " legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is self-evident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for a hearing . But, where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity ."

[Emphasis supplied] Reference may also be made to the following observations of a Constitution Bench in Shri Sitaram Sugar (supra) :

> "If a particular function is termed legislative rather than judicial, practical results may follow as far as the parties are concerned. When the function is treated as legislative, a party affected by the order has no right to notice and hearing, unless, of course, the statute so requires. It being of general application engulfing a wide sweep of powers, applicable to all persons and situations of a broadly identifiable class, the legislative order may not be vulnerable to challenge merely by reason of its omission to take into account individual peculiarities and differences amongst those falling within the class."

[Emphasis supplied]

19. When the Act is read as a whole, the legislative intent is clear that a lease once validly granted can not be terminated prematurely without a notice and hearing. The reason is obvious. Exercise of power of termination will have civil consequences adversely affecting the interest of the lease-holders. We may refer to the three sections inserted by Act 37 of 1986 with effect from 10.2.1987, in this behalf. Section 24A deals with the rights and liabilities of a holder of a mining lease. It provides that on issue of a mining lease under the Act or the Rules made thereunder, it shall be lawful for the holder of such lease, to enter upon the leased land, at all times during its currency for carrying on mining operations. Sub-section (1) and (2) of Section 4A contemplates premature termination only when the concerned government is of the view that it is expedient to do so, in the interest of regulation of mines and mineral development, preservation of natural environment, control of floods, to prevent pollution or to avoid danger to public health or communication or to ensure safety of buildings, monuments or other structures or for such other purposes. Sub- section (3) of Section 4A prohibits any order of a premature termination of a mining lease being made, without giving a

hearing to the lease holder. The Act does not contemplate 'wholesale' termination of all existing leases/permissions in relation to a minor mineral without hearing. Section 17-A while empowering Central Government to reserve areas for purposes of conservation of minerals, and empowering Central/State Government to reserve areas for mining operation by Government Companies/Corporations, specifically exclude areas already held under mining leases. Even, section 17 while referring to the power of the Central Government to undertake mining operations exclusively in any area, excludes areas already held under mining leases. It is, thus, clear that the Act extends a statutory protection to the holder of a mining lease to carry on mining operations during the period of lease, in terms of the lease deed. The Act further contemplates premature termination only for the reasons stated in sub-section (1) or (2) of section 4A and in the manner provided in sub-section (3) of section 4A. There is no doubt that the Legislature can make a provision in the Statute itself for termination of the mining leases without observance or principles of natural justice. It did not choose to do so. When the Act assures the Lessee the right to carry on mining operations during the entire period of lease and provides for termination only after giving a hearing, the delegate cannot, while making a rule in exercise of the power granted under the Act, make a provision for termination of all leases relating to a particular minor mineral, without giving an opportunity of hearing to the lease/permission holders. That part of Rule 38A which purports to terminate all leases forthwith, without notice or hearing to the lessees, does not conform to the object, scheme and the provisions of the Act under which it is made and therefore, invalid. Borrowing the words of Russell of Killowen CJ, we may as well say 'Parliament never intended to give authority to make such a rule'.

20. We may look at it from another angle. The government order dated 1.10.2003 states the reasons for making Rule 38A. It states that rule is introduced as the High Level Committee appointed by it found that illicit and haphazard sand mining has led to deepening of river beds, widening of the rivers, damage to civil structures, depletion of groundwater table, degradation of ground water quality, sea water intrusion in coastal areas, damages to river systems and reduction in bio-diversity, apart from causing health hazards and environmental degradation. These are the very grounds which are referred to in section 4A as grounds for premature termination. When the Act requires a hearing for termination on such grounds, it is inconceivable that the delegate will be permitted to exercise the power of termination on such grounds without a hearing.

21. If a rule is partly valid and partly invalid, the part that is valid and severable is saved. Even the part which is found to be invalid, can be read down to avoid being declared as invalid. We have already held that premature termination of existing leases, in law, can be only after granting a hearing as required under sub-section (3) of section 4A for any of the reasons mentioned in section 4A(1) or (2). Therefore, let us examine whether we can save the offending part of Rule 38A (which terminates quarrying leases/permissions forthwith) by reading it down. Apart from the statutory provision for termination in section 4A(3), there is a contractual provision for termination in the mining leases granted by the State Government. This provision enables either party to terminate the lease by six months notice. No cause need be shown for such termination nor such termination entails payment of compensation or other penal consequences. In this case, after considering the High Level Committee Report, the State has taken a decision that all quarrying by private agencies in pursuance of the quarrying leases granted in regard government lands or permissions granted in

respect of ryotwari land should be terminated in public interest. If Rule 38A is read down as terminating all mining leases granted by the government by six months notice (in terms of clause 11 in the lease deeds based on the model form at Appendix 1 to the Rules) or for the remainder period of the lease whichever is less, it can be saved, as it will then terminate the leases after notice, in terms of the lease.

Whether conditions imposed by High Court require to be modified ?

22. The respondents submitted that from 2.10.2003 when Rule 38A was inserted, the State Government had prevented the existing leaseholders/permission holders from quarrying and removing sand. It is submitted that on 8.10.2003, the Division Bench issued a direction that neither party should quarry sand in regard to the area covered by the existing leases and that order was in force till the disposal of the writ petitions. On 11.5.2004, the writ petitions were disposed of upholding Rule 38A and, at the same time, recognizing the right of the existing leaseholders to continue with the quarrying operations till the expiry of their respective lease period. It is submitted that in spite of the said judgment, the State did not permit the lease holders to carry on quarrying operations, apparently, in view of its decision to challenge the said judgment. The State filed the SLPs in November, 2004. As this Court did not stay the order of the High Court, the state government was bound to permit the Respondents to carry on quarrying operations in terms of the order of the High Court, but did not do so. The respondents, therefore, submit that they should be permitted to continue quarrying operations for the unexpired periods of lease as on 2.10.2003. They rely on the decision of this Court in Beg Raj Singh V. State of U.P. [2003 (1) SCC 726], wherein the lease holders were permitted to carry on operations during the lease period of three years, subject to adjustment of the period during which they have already operated.

23. On the other hand, learned counsel for the State Government, submitted that Rule 38-A was made to prevent environmental degradation and indiscriminate quarrying and, therefore, if the leaseholders are permitted to continue the quarrying operations, the very purpose of Rule 38A will be defeated.

24. It is not the case of the State that all the leaseholders have violated the terms of the lease or acted in a manner detrimental to environment. Learned counsel appearing for the State, in fact, fairly admitted that several leaseholders had carried on quarrying activities without violating the terms of lease and without causing environmental degradation. If any leaseholder had acted or acts in a manner likely to result in environmental degradation etc., it is always open to the State Government to terminate the lease after giving a hearing, as provided in section 4A(3).

25. Section 4A(3) requires the grant of an opportunity of hearing only for premature termination of mining leases (and prospective licences with which we are not concerned). If anyone was carrying on quarrying of sand as on 2.10.2003 in whatsoever circumstances other than in pursuance of mining leases, there is no question of hearing them before stopping quarrying activities in pursuance of Rule 38A, as hearing is required only in regard to those holding subsisting leases. Therefore, all quarrying permits for sand stood terminated with effect from 2.10.2003. All quarrying by any person, other than those holding mining leases also ceased with effect from 2.10.2003.

26. In regard to mining leases subsisting as on 2.10.2003, we have read down Rule 38A as terminating such leases in terms of the contract (lease deeds) by six months, without assigning cause and without any liability to pay compensation. Such of those writ petitioners (Respondents herein) whose leases were subsisting on 2.10.2003 (and whose activities were stopped with effect from that day) will be entitled to carry on the quarrying activities for a period of six months or for the actual unexpired period of the lease (as on 2.10.2003), whichever is less. This benefit will be available to even those who have orders of court for grant of mining leases, but where mining leases were not executed for one reason or the other. It is, however, made clear that the State Government is at liberty to prematurely terminate the leases for any of the causes mentioned in section 4A(2), by giving a notice and hearing under Section 4A(3), if they want to terminate any lease within the said period of six months.

27. We, accordingly, allow these appeals in part. In place of the conditions stipulated by the Division Bench while upholding the validity of Rule 38A, we hold and direct as follows :

(i) That part of Rule 38A which vests the exclusive right to quarry sand, in the State Government, is upheld.

(ii) That part of Rule 38A which purports to terminate quarrying leases/permissions forthwith (from 2.10.2003) is read down in terms of Para 26 above.

(iii) The provision in Rule 38A for refund of proportionate lease amount for the unexpired period of lease and unadjusted seigniorage fee, shall remain undisturbed.

(iv) It is made clear that except to the limited relief as a consequence of reading down as per para 26 above, the respondents will not be entitled to any other reliefs which have been granted by the High Court.

(v) Parties to bear their respective costs.