

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MAY, 2021

PRESENT

THE HON'BLE SHRI.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE SHRI.JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.30397 OF 2018 (GM-MMS)  
C/w.

WRIT PETITION NO.30399 OF 2018 (GM-MMS)

IN W.P.NO.30397 OF 2018 (GM-MMS)

Between:

M/s. Ganapathy Granite Impex Pvt Ltd.,  
Formerly known as M/s. Ananya Export Pvt Ltd.,  
Represented by its Managing Director  
M.K. Ganapathy,  
Aged about 50 years,  
Son of Sri M.P. Kuttappa,  
Having its Office at:  
No.22B, Hosakote Industrial Area,  
Hosakote - 562 114,  
Bengaluru District.

...Petitioner

(By Shri Aravind B. Reddy, Advocate)

And:

1. State of Karnataka,  
Represented by Secretary  
Department of Commerce and Industries

(MSME & Mines)

VikasaSoudha, Bangalore - 560 001.

2

2. Director  
Department of Mines and Geology,  
Khanija Bhavan, Race Course Road,  
Bangalore - 560 001.
3. Deputy Director,  
Department of Mines and Geology,  
Chickballapur - 562101,  
Chickballapur District.
4. Deputy Commissioner,  
District Offices Complex,  
Sidlaghatta Road, Chickballapur District,  
Chickballapur - 562101.
5. M/s. Fair Deal Stones Pvt. Ltd,  
No.86-Q-No.9, Jigani,  
Industrial Area, I Phase,  
Anekal Taluk - 562 106,  
Bengaluru Urban District,  
Represented by its Director,  
Narayana JaichandlalBahety.

...Respondents

(By Shri Vikram Huilgol,  
Additional Government Advocate for R1 to R4,  
Shri Bharath Kumar V, Advocate for R5)

This writ petition is filed under Articles 226 and 227  
of the

Constitution of India praying to call for the records which ultimately resulted in passing order at Annexure-A dated 20.06.2018 passed by 1st respondent and to quash the same and etc.

IN W.P.NO.30399 OF 2018 (GM-MMS)

Between:

Sri Janardhan Naik,  
S/o Sri Eranaik,  
Aged about 34 years,

3

R/at Thulasidoddy village,  
Shivanahalli Post, Kanakapura Taluk,  
Ramanagar District - 571511.

...Petitioner

(By Shri D.N. Nanjunda Reddy, Senior Advocate  
for Shri L.M. Chidanandayya  
and Smt. Kusuma R. Prasad, Advocates)

And:

1. State of Karnataka,  
Represented by Secretary  
Department of Commerce and Industries  
(MSME & Mines)  
Vikasa Soudha,  
Bangalore - 560 001.
2. Director

- Department of Mines and Geology,  
Khanija Bhavan,  
Race Course road,  
Bangalore - 560 001.
3. Deputy Director,  
Department of Mines and Geology,  
Chickballapur - 562101,  
Chickballapur.
4. Deputy Commissioner,  
District Offices Complex,  
Sidlaghatta Road,  
Chickballapur District,  
Chickballapur - 562101.
5. M/s. Fair Deal Stones Pvt. Ltd,  
No.86-Q-No.9, Jigani,  
Industrial Area, I Phase,  
Anekal Taluk - 562 106,  
Bengaluru Urban District.

4

Respondents

(By Shri Vikram Huilgol,  
Additional Government Advocate for R1 to R4,  
Shri Bharath Kumar V, Advocate for R5)

This writ petition is filed under Articles 226 and 227 of  
the  
Constitution of India praying to call for the records which  
ultimately resulted in passing order at Annexure-A dated  
20.06.2018 and to quash the same and etc.

These writ petitions, having been heard and reserved, coming on for pronouncement of order, this day, the Chief Justice made the following:

ORDER

These two writ petitions are clubbed together as they take exception to the same order passed on 20th June 2018 by the Secretary to the Government of Karnataka, Commerce and Industries Department (MSME and mines). The order deals with 10 applications made by different parties for grant of quarrying lease for minor mineral pink granite in respect of a land in Survey No.43 of Daraburu village of Chikkaballapur Taluk and District. The details of the said 10 applications have been set out. Out of the 10 applicants, one of the applicants M/s. Samrat Minerals withdrew its application. The details of the said applications as set out in the impugned order are being reproduced for the sake of convenience as under:

SL. No. in	Appli- cation No.	Date of Application	Name & address of the Applicants	Applied area extent
1	169/04	18.11.2014	M/s. Tilak Granites, M. Gopal @ Gopal Bovi, C.M. Complex, Dr. Ambedkar Road, Devanahalli Post and Taluk, Bengaluru Rural District	10-00
2	241/04	05.02.2005	Sri S. Ahmed	1-00
3	242/04	05.02.2005	Sri S. Ahmed	1-00
4	243/04	05.02.2005	Sri S. Ahmed	1-00
5	245/04	05.02.2005	Sri S. Ahmed	1-00
6	221/05	14.10.2005	M/s Samrat Minerals	20-00
7	59/10	08.04.2010	M/s Fairdeal Stones Pvt. Ltd. #860, Road No.9, Jigani Industrial Area, Anekal Taluk, Bengaluru Urban District.	8-00
8	323/12	21.09.2012	M/s Ananya Exports Pvt. Ltd. # 22B Hoskote	8-00

Industrial Area, Hoskote  
- 562114, Bengaluru  
District  
9            314/14            21.01.2014            Sri Janardhana Naik 8.00  
s/o.            Era            Naik,  
Tulasidoddi            Village,  
Shivanahalli            Post,  
Kanakapura Taluk.

2. The issue framed for the consideration under the impugned order was whether the applications made by 9 applicants can be considered for grant of quarrying lease in respect of land in Sy.No.43 and if yes, which of them are eligible. The writ petitioners in these writ petitions and private respondent in both the writ petitions M/s. Fair Deal Stones Private Limited (for short "Fair Deal Stones") are the applicants out of the nine applicants. By the impugned order, it was held that M/s. Fair Deal Stones was the only eligible applicant and therefore, it was held that Clause (d) of Sub Rule (2) of Rule 8-B of Karnataka Minor Mineral Concession Rules, 1994 (for short "the said Rules") is applicable in the case of M/s. Fair Deal Stones. Therefore, the application made by M/s. Fair Deal Stones was allowed and the other applications were rejected.

3. We must note here that along with memo dated 19th March 2021, the Additional Government Advocate has filed on record photo copies of applications of all the applicants. A combined sketch is also produced on record by the State Government showing the areas in respect of which applications were made by various applicants. The said sketch shows that M/s. Tilak granites applied for quarrying lease in respect of 10 acres. The petitioners in these two petitions applied for the same area of 8 acres. The Application made by M/s Fair Deal Stones was in respect of the area of 10 acres though the above chart incorporated in the impugned order shows the area applied by the said company as 8 Acres. In fact, in paragraph no. 6 of the statement of objections filed by M/s Fair Deal Stones, a statement has been made that the area was reduced by the said company to 8 Acres. A combined sketch produced by the State Government shows that the petitioners in these two petitions and M/s. Fair Deal Stones had applied in respect of the same area.

4. We have heard the arguments of the learned counsel for the petitioners in both the petitions. The learned counsel appearing for the petitioners have invited our attention to the provisions of the said Rules before and after the amendment made with effect from 12th August 2016. The first submission made is that the No Objections received from the Deputy Conservator of Forest and the Joint Inspection Report as provided in sub-rule (5) of Rule 8 of the said Rules were in respect of the area in respect of which the petitioners, M/s. Fair Deal Stones and the other applicants had made applications. The submission of the petitioners is that the No Objection and the Joint Inspection Report were in respect of area of 8 acres in respect of which the three parties involved in these petitions had applied.

Therefore, the No Objection Certificate and the Joint Inspection Report will enure to the benefit of all the applicants. Their submission is that assuming that the No Objection of the Deputy Conservator of Forest may have been called for on the basis of the application made by M/s. Fair Deal Stones and though the Joint Inspection may have been carried out on the basis of the application made by the said party, the No Objection Certificate and the Joint Inspection Report related to the land and the same will be for the benefit of all the applicants. It was further submitted that in any case, on the basis of the applications made by other applicants, the Authorities failed to perform their obligation of seeking No Objection and Joint Inspection Report. The submission, therefore, is that the impugned order erroneously proceeds on the footing that only M/s. Fair Deal Stones was qualified. The learned counsel submitted that as the petitioners were also eligible under clause

(d) of Sub-Rule (2) of Rule 8B, their applications were required to be considered in the light of clause (e) of Sub Rule (2) of Rule 8-B of the said Rules of 1994, by applying the rules which were in force prior to 12th August, 2016. It is, therefore, submitted that priorities as fixed by Sub Rule (1) of Rule 12 which existed on the Rule book as on 12th August, 2016 will have to be considered.

5. The learned counsel appearing for M/s. Fair Deal Stones invited our attention to the language used in Sub Clauses (d) and (d-1) of Sub Rule (2) of Rule 8-B. He submitted that Clause(d) will be applicable only to those applications pending as on 12th August 2016 in respect of which No Objection Certificates and Joint Inspection Reports have been received before 12th August 2016. Inviting our attention to the No Objection Certificate, he submitted that the same was issued on the basis of the application made by M/s. Fair Deal Stones. He submitted that No Objection Certificate and Joint Inspection Report have been submitted on the basis of the application made by M/s. Fair Deal Stones. He submitted that as we are dealing with non-specified minor mineral, No Objection Certificate of only Deputy Conservator of Forest was required along with the Joint Inspection Report of the Assistant Commissioner and Deputy Director of Senior Geologist as the land subject matter is a gomal land. He invited our attention to the Joint Inspection Report at Annexure-R2 to the Statement of Objections filed by his clients. He pointed out that the Deputy Conservator of Forest has submitted No Objection Certificate, a copy of which is at Annexure-R3 is based on the application made by M/s. Fair Deal Stones. He submitted that the No Objection Certificate and Joint Inspection Report are specifically in respect of the application of M/s. Fair Deal Stones. He submitted that the Joint Inspection Report was of 3rd June 2010 and No Objection Certificate of the Deputy Conservator of Forest was of 6th March, 2012 and thus, on 16th of August, 2016, the application made by the M/s. Fair Deal Stones was complete in all aspects. He submitted that the application of the petitioner in W.P.No.30397/2018 was made on 21st September 2012 and that the application of the petitioner in W.P.No.30399/2018 was made much later on 21st January, 2014. Thus, much before the applications were made by the petitioners, the process on the basis of the application made by M/s. Fair Deal Stones was completed. He pointed out that M/s. Fair Deal Stones filed W.P.No.41479/2017 complaining about inaction on the part of the Authorities in considering the application. Accordingly, on 12th September 2017, a Division Bench of this Court directed the Director of department of Mines and Geology to consider and decide the application made by the petitioner for execution of lease within six weeks. His submission is that even going by the priorities as provided in Rule 12, on the date on which the process on the basis of the application of M/s. Fair Deal Stones was

completed, there was no other application pending which had higher priority in terms of Rule 12 of the said Rules of 1994. He submitted that M/s. Fair Deal Stones was entitled to priority under Clause (ii) of Sub-Rule (1) of Rule 12 of the said Rules of 1994 as it existed prior to 16th August, 2016. He submitted that looking to the language used in Clauses (d) and (d-1) of Sub Rule (2) of Rule 8-B, No Objection Certificates and Joint Inspection Reports must be in respect of a particular application and in this case, the No Objection Certificate and Joint Inspection Report were specifically in respect of the application made by M/s.Fair Deal Stones. He submitted that the petitioners slept over their applications, but M/s. Fair Deal Stones had filed a writ petition in the year 2017 seeking a writ of mandamus. He submitted that only those applications will have benefit of Sub Rule (2) of Rule 8-B in respect of which No Objection Certificates and Joint Inspection Reports were received prior to 12th August 2016. He submitted that no other application was eligible on 12th August 2016 except the application made by M/s. Fair Deal Stones. He would, therefore, submit that there is no merit in the petitions and the same deserve to be rejected.

6. The learned Additional Government Advocate urged that the view taken by the State Government under the impugned order cannot be faulted with.

7. We have carefully considered the submissions. It is necessary to make a reference to the relevant rules with which we are concerned. Firstly, we are concerned with Rule 8 of the said Rules of 1994. Sub Rule (5) of Rule 8 is relevant, which reads thus:

"(5) The Competent Authority shall before granting or renewing a lease, licence, working permission, consult.-

(i) in case of specified minor minerals, the Deputy commissioner of the District concerned and obtain no objection certificate;

(ii) in the case of non-specified minor minerals, the Tahsildar of the Taluk concerned and obtain No Objection Certificate;

(iii) in case of all minor minerals, the Deputy Conservator of Forest of the concerned jurisdiction and obtain No Objection Certificate;

(iv) in case of all minor minerals in  
Gomal/gayarana/hullubanikharab etc. type of

lands, the Assistant Commissioner of Revenue Department and Deputy Director/Senior Geologist concerned, who shall furnish a Joint Inspection Report through Deputy Commissioner in accordance with Circular No.RD 72 LGP 98, dated 24-2-1999.

(v) in case of all minor minerals, jurisdictional Mines and Geology Officer and obtain technical report along with sketch duly mentioning GPS Co-ordinates; and shall take action in accordance with Chapter III, in respect of specified minor mineral and in accordance with Chapters IV and V, in respect of non-specified minor mineral as the case may be."

The other important provisions with which we are concerned are Sub-Rules (1) and (2) of Rule 8-B, which read thus:



"8-B. Status of applications received. - (1) All applications received and pending for grant of lease or license prior to the date of commencement of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016, shall become intelligible including the applications received for grant of mining leases of the minerals that are now classified as minor mineral.

(2) Notwithstanding anything contained in sub-rule (1), the following shall remain eligible on and from the commencement of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016, namely.-

(a) Applications received upon the notification issued under Rule 8-B existed before the Karnataka Minor Mineral Concession (Amendment) Rules, 2016.

(b) Where the Committee that existed under the provisions of Rule 11 or District Task Force Committee has recommended for grant of a quarrying lease or license for grant of mining lease, before the commencement of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016.

(c) Where in the case of minerals now re-

classified as minor mineral by the Central Government by Notification No. S.O. 423 (E), dated 10-2-2015, No Objection Certificates from revenue and forest departments and the approved mining plan from the Indian Bureau of Mines (IBM) have been received before commencement of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016.

[(d) Applications received and pending for grant of lease or licence in case of specified minor minerals before commencement of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016 and for which No Objection Certificate (NOC) have been received in the office of Directorate of Mines and Geology from the Deputy Conservator of Forest for all Lands, Deputy Commissioner in case of Kharab lands, Assistant Commissioner (Revenue) and Deputy Director or Senior Geologist (Joint inspection report) in case of Gomala lands in accordance with the Circular No. RD 72 LGP 98, dated 24-2-1999 before commencement of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016 and shall be considered and disposed by the State Government subject to obtaining No Objection Certificate (NOC) from the deputy Commissioner of the concerned District before grant;] [(d-1) Applications received and pending for grant of lease or licence in the case of non- specified Minor Minerals before commencement of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016 and for which No Objection Certificates (NOCs) have been received in the Department of Mines and Geology of the concerned District Office, from the Deputy Conservator of Forest for all lands, Tahsildar incase of Karab lands, Assistant Commissioner and Deputy Director or Senior Geologist (Joint Inspection Report), in the case of Gomala lands, before commencement of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016, and shall be processed by the Competent Authority as under the existing rules before commencement of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016.

(e) These applications shall be considered for grant of quarrying lease or license, or otherwise as per the provisions that existed before the Karnataka Minor Mineral concession (Amendment) Rules, 2016 subject to fulfillment of the conditions specified for the same, with the approval of the State Government]:

Provided that in case of grant of quarrying lease or license covered by clause (b), (c) and (d) of sub-rule (2), the lease shall pay, in addition to the royalty, an amount which shall be equal to the Average Additional Periodic Payment payable by the holders of quarry lease or license granted through auction within the Taluk if such average is available for the Taluk, or within the District if such average is not available for the Taluk, or within the neighboring Districts if such average is not available for the District, and if such average is not available within the neighboring Districts, such Average Additional Periodic Payment shall be deemed to be fifty per cent of Royalty. This deemed percentage shall be reset after three years based on average obtained in auctions by 31-3- 2019; and if no auctions have taken place by 31-3- 2019 for deriving the average from Taluk, District or neighboring districts, as the case may be, then the deemed rate will become the final rate for the Average Additional Periodic Payment:

Provided further that when such Royalty and Average Additional Periodic Payment is paid, then the payment by the lessee for the District Mineral Foundation shall be as payable by the holders of lease or license through action:

Provided also that in respect of any mineral that are now re-classified as minor minerals by the Central Government vide Notification No. S.O. 423 (E) dated 10-2-2015, no quarrying lease or licence shall be granted except with the previous approval of the State Government."

(emphasis added)

8. As for as Rule 8-B is concerned, this Court by the judgment and order dated 16th August 2019 in the case of [K. Thirumalesh v. State of Karnataka](#) and others<sup>1</sup> has interpreted Sub-Rules (1) and (2) of Rule 8B of the said Rules. The conclusions are in paragraphs 47 to 49 of the said decision, which read thus:

"47. In short, the conclusions can be summarized as under:

(a) Rule 8-B of the said Rules, as amended on 12th August, 2016 is constitutionally valid;

W.P.No.10601 of 2019 and connected matters

(b) All pending applications for grant of mining leases/licenses under the said Rules which were filed before 12th August, 2016 and pending on the said date shall become automatically ineligible unless the cases specifically fall within any of the exceptions specifically carved out in clauses (a) to

(d) and (d-1) of sub-rule (2) of Rule 8-

B;

(c) Only those application which were filed before 12th August, 2016 to which any of the clauses (a) to (d) and (d-1) of sub-rule (2) of Rule 8-B applies, can be decided in accordance with the Rules prevailing prior to 12th August, 2016;

(d) While deciding the question whether clauses (a) to (d) and (d-1) of sub-rule (2) of Rule 8-B are attracted, if any deeming fiction providing for grant of deemed no objection certificates is expressly available under any of the express provisions of the said Rules such as sub-rule (6) of Rule 8, the same could be applied;

(e) In view of express provisions of sub-

rule (1) and (2) of Rule 8-B, merely because there is a failure on the part of the authorities to obtain clearances/no objection certificates/ reports, the mandate of sub-rule (1) of Rule 8-B cannot be ignored and it shall apply with full force inasmuch as by sub-rule (1) of Rule 8-B, all applications received prior to 12th August 2016 were made ineligible. The only exception provided is in the sub-rule (2) in case of the applications which are governed by clause (a) to

(d) and (d-1) of sub-rule (2) No other exception to sub-rule (1) of Rule 8-B has been provided in the said Rules and therefore, cannot be carved out by the Court.

48. Now coming to the petitions in hand, wherever the applications made before 12th August, 2016 are pending as of today, the same will have to be considered only in the context of applicability of exceptions carved out by sub-rule (2) of Rule 8-

B. In case of those applications where endorsements/rejection have been issued, those applications will have to be reconsidered only for ascertaining whether any of the clauses (a) to (d) and (d-1) of sub-rule (2) of Rule 8-B are attracted. To decide whether any of the clauses (a) to (d) and (d-1) are applicable, factual adjudication will have to be made. It must be noted here if on holding inquiry, it is held that none of the clauses (a) to (d) and (d-1) are attracted, then the applications will have to be held as ineligible. In some cases, deeming provision of sub-rule (6) of Rule 8 has been invoked to establish applicability of sub-rule (2) of Rule 8 (B). Whether deeming fiction is applicable or not is an issue which requires factual adjudication. We must note here that as, in this group we are not called upon to decide the issue of interpretation of applicability of outer limit of 24 months provided in clause (e) of sub-rule (2) of Rule 8-B, the said issue is kept open. However, Writ Petition No.38427 of 2018 will be governed by the order dated 28th June, 2019 and will stand disposed of in terms of the said order.

49. Accordingly, in view of the law which we have laid down, we pass the following order in all petitions, except Writ Petition No.38427 of 2018: -

i) In those petitions where applications made for grant of mining leases made before 12th August 2016 are pending, the same shall be examined by the Competent Authority only in the context of applicability of sub-rule (2) of Rule 8-B as amended in the light of what we have held earlier;

(ii) In those cases where endorsements of rejection have been issued, by withdrawing the said endorsements, the applications for mining leases filed before 12th August 2016 shall be reconsidered only in the context of applicability of sub-rule (2) of Rule 8-B. Even applicability of deeming fiction under sub-rule (6) of Rule 8 shall be decided wherever such a plea is raised. Appropriate order shall be passed within a period of three months from today;

(iii) Appropriate order shall be passed in the light of what is held by us in paragraph 47 (forty seven) above;

(iv) The writ petitions are disposed of on the above terms;

(v) There will be no order as to costs."

(emphasis added)

In the present case, it is apparent that No Objection Certificate of the Deputy Conservator of Forest contemplated by Clause (iii) of Sub Rule (5) of Rule 8 has been issued on the basis of the application made by M/s. Fair Deal Stones. However, the Joint Inspection Report has been submitted on the basis of the letter dated 11th May 2010 addressed by the Director of Mines and Geology to the Assistant Commissioner, Chikkaballapur Sub Division and the Senior Geologist, Chikkaballapur District. A copy of the said letter has been produced by the State Government along with the memo dated 1st April 2021. The letter generally refers to "applications" received for grant of quarrying lease in respect of the land in Sy.No.43 and it refers to area of 10 acres. But a copy of the said letter has been forwarded to M/s. Fair Deal Stones. As stated earlier, the application of M/s. Fair Deal Stones was subsequently confined to an area of 8 acres. But the application of M/s. Tilak granites was in respect of 10 acres. The subject of the letter dated 11th May 2010 clearly records that it is regarding the conduct of joint inspection and furnishing of report with respect to gomal land in Sy.No.43 of Daraburu village to the extent of 10 acres. The Joint Inspection Report relied upon by the State Government in the impugned order does not refer to any specific application of M/s. Fair Deal Stones and the same is in respect of the larger area of 10 acres.

9. Under Sub-Rule (1) of Rule 8-B, all applications pending as on 12th August 2016 were rendered ineligible. Therefore, the applications of the petitioners and M/s. Fair Deal Stones were rendered ineligible. The question is whether the applications were covered by exceptions carved out to Sub-Rules (1) by any of the clause (a) to (d1) of Sub-Rule (2) of Rule 8B.

10. The argument of the State Government and M/s. Fair Deal Stones is that the language of Clauses (d) and (d-1) of Sub Rule (2) of Rule 8-B makes it clear that the no Objection Certificates/Joint Inspection Reports referred therein must be with reference to a specific application of a particular applicant. We have quoted Sub-Rule (5) of Rule 6. The object of getting No Objection Certificate from the jurisdictional Deputy Conservator of Forest appears to be to ascertain whether the land in respect of which an application for grant of quarrying lease is made is a forest land or whether there is any prohibition on carrying on quarrying operations on the subject land under the laws regarding forest and environment. The Deputy Conservator is not concerned with the applicant or his credentials. The No Objection is confined to a particular land and not the applicant. He is not concerned with qualifications or disqualifications of the applicant. The requirement of a Joint Inspection Report in case of gomal land appears to be incorporated with a view to ascertain whether

the gomal land continues to be really useful for the purposes of grazing and whether it is fit for carrying on quarrying operations. Therefore, considering the aforesaid object, the inspection is required to be conducted by the jurisdictional Assistant Commissioner and the jurisdictional Senior Geologist of the Department of the mines and Geology. While conducting the Joint Inspection, the officers are not concerned with the credentials of any particular applicant. They are concerned with the land. Thus, the No Objection Certificates or Joint Inspection Report under Sub Rule (5) of Rule 8 are qua lands and not qua the applicants.

11. For example, if the licensing Authority had received three applications in respect of the same land from three different applicants for exploitation of the same mineral, the applications could be considered on the basis of No Objections Certificates and Joint Inspection Report in respect of land subject matter of the applications. It was not necessary for the Licensing Authority to call for separate No Objections Certificates and Joint Inspection Reports in respect of each application. When Clauses (d) and (d-1) of Sub Rule (2) of Rule 8-B talk about the "Applications.....for which" No Objection Certificates/Joint Inspection Reports have been received, obviously, the reference is to the lands in respect of which applications are pending. The reason, as stated above, is that the No Objection Certificates or Joint Inspection Report under Sub Rule (5) of Rule 8 are qua lands and not qua the applicants. If such interpretation is not accepted, the actions of the licensing Authorities will be vulnerable to allegations of discrimination prohibited by [Article 14](#) of the Constitution of India. If the interpretation sought to be put forth by M/s. Fair Deal Stones is accepted, the Licensing Authority will have a choice to process only one application out of several applications received in respect of the same land by calling for No Objection Certificates and Joint Inspection Reports only in respect of the said application and to keep the other applications pending. The Licensing Authority was required to call for the No Objection Certificates and Joint Inspection Reports in respect of the land in respect of which applications have been received for the grant of quarrying lease. If the interpretation put by the Respondents is accepted, in case of every application in respect of the same land, a separate No objection and Joint Inspection Report will have to be called for. Such interpretation will be irrational.

12. Therefore, the impugned order proceeds on a completely wrong premise that compliances were made as contemplated by Clauses (d) of Sub-Rule (2) of Rule 8B in respect of the application of M/s. Fair Deal Stones. As observed earlier, the No Objection Certificate and Joint Inspection Report referred in the impugned order are in respect of the land and not the applicants. Therefore, in the facts of the case, it was necessary to consider all applications which were pending as on 12th August 2016 in the context of applicability of clause (d) of Sub-Rule (2) of Rule 8B.

13. If clause (d) is attracted in respect of more than one application in respect of the same land, the same will have to be considered on the basis of the said Rules which were in force before 2016 amendment came into force on 12th August 2016. That is the specific provision in clause (e) of Sub-Rule (2) of rule 8B. Rule 12 was repealed with effect from 12th August 2016. Hence, the applications subject matter of the case will be governed by the priorities mentioned in Rule 12 as it existed till 12th August 2016. Rule 12 read thus:

"12. Priorities. - (1) Selection from amongst the applicants for grant of quarrying lease under this chapter shall be made in the following order of preference, namely.-

(i) a Corporation or undertaking owned or controlled by the State or Central Government and Joint Sector projects with such Government Corporations or undertakings;

(ii) persons who have already established hundred per cent export oriented units for cutting and polishing of granites in the State;

(iii) persons who have already established a Small-

scale Industrial Unit for cutting and polishing of granites in the State;

(iv) persons who hold a valid licence for establishment of a granite cutting and polishing unit within the State for the purpose of hundred per cent export and persons who hold a permanent Registration Certificate for establishment of a Small-scale Industrial Unit in the State;

(v) xxxxx ;]

(vi) a Society registered under the Karnataka Co-

operative [Societies Act](#), 1959, and the members of which belong to economically weaker sections of the Society and who are also stone quarry workers by tradition;

(vii) all others.

[(1.A). Notwithstanding anything contained in sub-rule (1) except clause (i) of sub-rule (1), if any individual or societies of the Scheduled Castes and Scheduled Tribes has applied over the same area, the preference shall be given to the extent of fifteen per cent of quarrying leases to the Scheduled Castes and three per cent of quarrying leases to the Scheduled Tribes. For this purpose, a roster of thirty-three grants for one Cycle shall be taken into consideration, where Nos.1, 7, 14, 21 and 27 are reserved for Scheduled Castes and No.2 is reserved for Scheduled Tribes and remaining shall be to other than Scheduled Castes and Scheduled Tribes.] (2) In case applicants falling under clause (iv) of this Rule 12 who require specified minor mineral for their proposed industry they shall set up industry in accordance with their industrial programme within a period of twenty- four months from the date of execution of lease deed and shall keep the Director informed of the progress made every six months from the date of execution of lease deed. On setting up of industry the lessees shall inform the fact in writing to the Director failing which the lease shall be deemed to have been terminated on the expiry of the said period of twenty-four months. Where the lessees are unable to set up industry within the said period for reasons beyond their control they may submit before the expiry of the said period an application to the Director explaining the reasons for the same together with affidavits. The Director shall forward such applications to the State Government and it may on being satisfied that such failure in setting up the industry was due to reasons beyond the control of the lessee, extend the period of such lease by one more year either prospectively or retrospectively."

(emphasis added)

14. In paragraph 41 of the impugned order, it is observed that Rule 12 was not applicable as it was not in existence on 12th August 2016. The impugned order completely overlooks clause

(e) of Sub-Rule (2) of Rule 8B. The said finding recorded about the non-applicability of Rule 12 is completely erroneous and contrary to clause (e) which requires the applications to be decided as per the provisions of the said Rules as prevailing before 2016 amendment came into force on 12th August 2016. Hence, priority under Rule 12 ought to have been considered in case of all applications covered by clause (d) of Sub-Rule (2) of Rule 8B. In paragraph No.24 of the impugned order, submissions of the department of Mines and Geology have been recorded in which it is mentioned that the petitioner in Writ Petition No.30397/2018 falls in priority covered by Clause (ii) of Sub-Rule (1) of Rule 12 and the petitioner in Writ Petition No.30399/2018 falls in priority under Sub Rule (1-A) of Rule 12. According to the stand of the Director of the department of Mines and Geology, as noted in paragraph 24 of the impugned order, M/s. Fair Deal Stones is covered by clause (iii) of Sub Rule (1) of Rule 12. The stand of M/s. Fair Deal Stones is that it is falling in the category covered by clause (ii) of Sub Rule (1) of Rule 12. There is no adjudication made on this factual dispute in the impugned order. As No Objection Certificate and Joint Inspection Report are in respect of the applications made by the nine applicants, in view of Clause (e) of Sub Rule (2) of Rule 8- B, the cases of these parties will have to be considered as on 12th August 2016, according to the priorities provided in Rule 12. If there are any of disqualifications attached to any of these applicants, the same will have to be considered by the State Government. The factual inquiries as above cannot be appropriately made in writ jurisdiction and hence, the said exercise will have to be undertaken by the State Government.

15. We may note here that in the impugned order, it is mentioned that the applications made by petitioners in these two petitions were filed subsequent to the application made by M/s. Fair Deal Stones. However, any Rule in existence prior to 12th August, 2016 which provided for giving priority as per seniority of the applications is neither referred in the impugned order nor is brought to the notice of this Court. In paragraph No.41 of the impugned order, it is mentioned that the application of M/s. Fair Deal Stones fulfills all the requirements of Clause (d) of Sub Rule (2) of Rule 8-B and therefore, the said company was eligible on the relevant date i.e., 12th August 2016. Further, it is stated in paragraph 41 that the other applications are overlapping and since, the application of M/s. Fair Deal Stones must be given priority, the other applications cannot be considered.

16. Therefore, the approach of the State Government in the impugned order is erroneous. Hence, by setting aside the impugned order, the applications will have to be ordered to be considered afresh. Except for the present petitioners, no other applicants have challenged the impugned order. However, in view of the legal position, all the applications will have to be considered afresh unless some of the applicants do not want to press their applications.

17. Accordingly, we pass the following:

**ORDER**

- (i) The impugned order dated 20th June 2018 (Annexure-A) is hereby set aside;
- (ii) The case of all the applicants covered by said order (except M/s. Samrat Minerals) shall be considered afresh by the State Government in accordance with law and in the light of what is held in this Judgment. Needless to add that notice shall be issued to all the applicants (except M/s. Samrat Minerals) and opportunity of being heard shall be granted to all the concerned parties;
- (iii) A fresh order shall be passed by the State Government as expeditiously as possible and in any event on or before the end of September 2021;
- (iv) Except the legal issues which are decided by this Judgment, all other issues are left open for the decision of the State Government.
- (v) The petitions are partly allowed on above terms with no order as to costs.

Sd/-

CHIEF JUSTICE Sd/-

JUDGE Mr