

**HIGH COURT OF GUJARAT (D.B.)**

**STATE OF GUJARAT  
V/S  
PETHALJI NATHABHAI CHAWDA**

**Date of Decision:** 02 August 1979

**Citation:** 1979 LawSuit(Guj) 118

**Hon'ble Judges:** [B J Divan](#), [R C Mankad](#)

**Eq. Citations:** 1980 AIR(Guj) 139, 1979 (2) GLR 1

**Case Type:** Letters Patent Appeal; Special Civil Application

**Case No:** 234 of 1978; 1186 of 1974

**Subject:** Constitution

**Head Note:**

**Gujarat Minor Mineral R.1966 - R.44 Constitution of India, 1950 - Art.14 - Rules providing for particular categories to whom mining rights are to be awarded - Government can prescribe terms and conditions regarding eligibility - Fixing of such categories in accordance with directive principles constitution - Government to look after economic advancement of small entrepreneurs - Framing of such rules not violative of Art.14.**

**Under Rule 44 of the Gujarat Minor Mineral Rules 1966 the power to prescribe cases or class of cases and terms and conditions on which the right to remove any minor mineral or the right to collect royalty thereon shall be granted either by public auction or otherwise to dispose of that right is not a right to reserve but one important thing to be borne in mind is that the Government has been given the power to lay down the terms and conditions as to how the competent officer shall sell by public auction or otherwise dispose of the right to remove a minor**

mineral in any particular area. The power to prescribe the terms and conditions will carry with it the power to prescribe the conditions of eligibility as well. When conditions of eligibility are prescribed exclusion of those who are not eligible automatically takes place but in such a case it cannot be said that the Government has exercised the power of reservation or the authority concerned exercises such power because the objects prescribing conditions of eligibility is to see that certain goals which the authority has in mind are achieved by the prescription of conditions of eligibility. All that the Government has done in the instant case is that in order to become eligible to get the right to remove limestone from the survey numbers a person shall be one of the four categories laid down in the notification In the light of the directive principles of the Constitution and in the light of the philosophy of social justice underlying the Constitution it is one of the obligations of the Government to see to the economic advancement of those who work with their hands and those who belong to the category of small entrepreneurs with that object in view and with that philosophy of social justice in view Government has prescribed that individual families of Khanias and small merchants who hold sanads or parwanas under the Saurashtra Quarry Rules genuine co-operative societies of Khanias and new Khanias and new small merchants will be eligible for getting the right to remove limestone from the survey number mentioned in the Notification. (para 3) The words of rule 44 are wide enough to enable the Government to prescribe terms and conditions and since the condition of eligibility would be one of the terms and conditions which the Government can prescribe or can lay down the notification cannot be said to be bad. (Para 4)

**Acts Referred:**

[Constitution Of India Art 14](#)

Gujarat Mines And Minerals Rules, 1966 R 44

**Final Decision:** Appeal allowed

**Advocates:** [J R Nanavati](#), [P S Patel](#), [Ambubhai and Divanji](#), K S Nanavati

**Reference Cases:**

[Cases Cited in \(+\): 1](#)

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## **Judgement Text:-**

Divan, C J

**[1]** This appeal has been filed by the State of Gujarat and officers connected with Geology & Mining Department of the Government of Gujarat against the decision of A.D. Desai J. in Special Civil Application No. 1886 of 1974. The controversy between the parties is within a very narrow compass and the whole question turns upon the interpretation of Rule 44 of the Gujarat Minor Mineral Rules, 1966. The petitioner is carrying on the business of quarrying limestones and in this writ petition he has challenged the order dated April 25, 1974 passed by the Deputy Secretary to the Government of Gujarat, Industries, Mines and Power Department, rejecting the revision application filed by the petitioner, There is land bearing survey No. 4 admeasuring 2 acres 29 gunthas of Durgapur village in Junagadh District. This land has limestones. On April 1, 1972 the petitioner applied for grant of quarry lease in respect of survey No. 4 of Durgapur village and by his order dated April 4, 1972 the Collector of Junagadh, who is the competent officer, rejected this application of the petitioner on the ground that limestone contained therein was of a high chemical grade and therefore the said land had been reserved for industrial purposes. Against this order the petitioner filed a revision application to the Director of Geology and Mining and this application was dismissed on June 27, 1973 on the ground that this land was reserved for grant of Parvanas to Khanias. The Director of Geology and Mining did not agree with the reasoning of the Collector that the land was reserved for industrial purposes. On July 30, 1973 against the decision of the Director, Geology and Mining, the petitioner preferred a revision application to the Government of Gujarat and hearing of the revision petition was fixed before the Deputy Secretary, Industries, Mines and Power Department on February 4, 1974, February 18, 1974 and March 18, 1974. On these respective dates, the petitioner had sent applications for adjourned accordingly. The case had been adjournment on the ground of sickness. As no certificate of a doctor was annexed to the application to prove the sickness, the revision application was heard by the officer concerned, namely, the Deputy Secretary, Industries, Mines and Power Department and the Deputy Secretary confirmed the order passed by the Director, Geology and Mining and that order has been challenged in the present proceedings.

**[2]** The main contention before A. D. Desai J. and before us at the hearing of the appeal was in connection with a notification issued by the Government of Gujarat in purported exercise of powers under Rule 44 of the Gujarat Minor Minerals Rules, 1966. The notification was issued on July 11, 1968 and was issued by the Government of Gujarat

Industries, Mines and Power Department. It bears No. GU/65/MMR/17-4/68/2872 and is reproduced in-extenso hereinbelow :

"In exercise of the powers conferred by Rule 44 of the Gujarat Minor Mineral Rules, 1966, the Government of Gujarat hereby directs that the right to remove limestone building stone in the area of survey Nos. 4, 93, 95, 106, 96 and 100 of village Dungarpur of Junagadh District (hereafter referred to as the 'said area') may be granted under the said rule 44 by the competent Officers, subject to the following terms and conditions, namely :-

1. The said area shall be divided into plots not ordinarily exceeding 2000 sq. metres as may be considered convenient by the competent officer.

2. A parwana for each of the plots shall be granted by the competent officer to persons belonging to the following categories in the order of priority as specified below, namely :-

(a) Individual families of Khantias who do physical work at present in excavating building stone in the said area. Preference shall be given to such Khantias who hold parwanas or sanads under the Saurashtra Quarry Rules in the said area or who held parwanas of long standing as Khantias under the Saurashtra Quarry Rules :

(b) Small merchants who held sanads or parwanas under the Saurashtra Quarry Rules:

(c) Genuine co-operative societies of Khantias :

(d) New Khantias and new small merchants.

3. No parwana shall be granted to any persons whose quarry lease or sanads granted under the Saurashtra Quarry Rules are in existence at the time of the grant of parwanas in the said area.

4. No one shall be granted a parwana in respect of more than one plot and no plot shall be granted in joint names of two or more persons.

5. The parwana shall be in the form appended hereto and shall be granted for a period of one year ending in 31st December in payment of a fee of rupees 10/- which shall be paid in the manner prescribed under rule 7 of the Gujarat Minor Mineral Rules, 1966. The parwana shall be renewable every year on payment of a fee of rupees 10/- payable in the like manner. A parwana granted in the last quarter of a year shall be valid till 31st day of December of the year next following.

6. Application for grant of quarry leases or permits to limestone (building stone) in the said area, pending in the date of issue of this order shall not be considered."

Rule 44 of the Minor Mineral Rules, 1966, is in these terms :

"Notwithstanding anything contained in the foregoing provisions, it shall be lawful for a competent officer to sell by public auction or otherwise dispose of the right to remove any minor mineral or of collection of royalty thereon in such cases or class of cases and on such terms and conditions as the State Government may by a general or special order direct."

A.D. Desai J. felt that under the scheme of the Gujarat Minor Mineral Rules, it was not competent to the Government of Gujarat to reserve the area and then give directions as to how the right to remove minor minerals from the reserved area should be disposed of. Under the scheme of the rules, according to A. D. Desai J. and particularly in the light of Rules 33-A and 33-B and other rules in that behalf, it is open to the Government to reserve areas for the purpose of grant of quarrying parwanas and quarrying permits as the Director may think fit after notifying the same and when any area is so reserved, no quarrying lease shall be granted for such reserved area. According to A. D. Desai J. the effect of the notification which is impugned in this case is to reserve the area for granting of quarrying leases or parwanas

permits.

**[3]** With great respect to A. D. Desai J, we are unable to agree with this conclusion. In view of the non obstante clause, it is obvious that Rule 44 has to be interpreted on its own disregarding the rest of the provisions of the rules in question. It is true that the power to prescribe cases or class of cases and terms and conditions on which the right to remove any minor mineral or the collect royalty thereon shall be granted either by public auction or otherwise to dispose of that right, is not a right to reserve, but one important thing to be borne in mind is that the Government has been given the power to lay down the terms and conditions as to how the competent officer shall sell by public auction or otherwise dispose of the right to remove a minor mineral in any particular area. In this case, limestone from a particular survey number of a village in Junagadh District. Now the power to prescribe the terms and conditions will carry with it the power to prescribe the conditions of eligibility as well, that is, to prescribe as to who would be eligible for getting the right to remove minor minerals, either by public auction or otherwise being disposed of by the competent officer and then the conditions of eligibility for such disposal of selling by public auction can be prescribed. It cannot be said that some reservation is being applied by the Government. Of course, when conditions of eligibility are prescribed, exclusion of those who are not eligible automatically takes place, but in such a case it cannot be said that the Government has exercised the power of reservation or the authority concerned exercised the power because prescribing conditions of eligibility is to see that certain goals which the authority has in mind are achieved by the prescription of conditions of eligibility. All that the Government has done in the instant case is that in order to become eligible to get the right to remove limestone from these survey numbers, a person shall be one of the four categories a, b, c and d., laid down in the notification. It is well-known that in the light of the directive principles of the Constitution and in the light of the philosophy of social justice underlying the Constitution, it is one of the obligations of the Government to see to the economic advancement of those who work with their hands and those who being to the category of small entrepreneurs. With that object in view and with that philosophy of social justice in view, Government has prescribed that individual families of khantias and new small merchants will be eligible for getting the right to remove limestone from the survey numbers of Dungarpur village mentioned in the notification. Since the Government has laid down this condition of eligibility in the light of this philosophy, it is obvious that those who do not satisfy the condition of eligibility will necessarily be excluded from getting the right to remove limestone from these survey

numbers mentioned in the notification. We may point out that whenever under any appropriate legislation, conditions of eligibility are laid down, for example, for practice of legal profession that only qualified advocates can practise, the condition of eligibility excludes those who are not qualified advocates. Similarly, the condition of eligibility for practising medical profession would exclude those who are not qualified doctors or qualified medical practitioners. But therefore it cannot be said that prescribing these conditions of eligibility is an exercise of the right of restriction or reservation and, with great respect to A. D. Desai J., he was in error in overlooking this distinction between conditions of eligibility and reservation of areas of reservation of the right to extract minor minerals from certain areas.

**[4]** Under these circumstances, since all that the Government has done is to prescribe conditions of eligibility for getting the right to remove limestone from this different survey numbers of Dungarpur village, the notification cannot be struck down on the ground that it reserves areas for the purpose of granting quarry permits or parwanas. The words of Rule 44 which is under consideration before us are wide enough to enable the Government to prescribe terms and conditions and since the condition of eligibility would be one of the terms and conditions which the Government can prescribe of can lay down, the notification cannot be said to be bad.

**[5]** We regret that we cannot agree with reasoning of our learned Brother and have to arrive at a different conclusion. We therefore allow this Letters Patent Appeal and set aside the judgment and order passed by our learned Brother A. D. Desai J. The special civil application fails and is dismissed. The original petitioner will pay the costs throughout.

**[6]** No orders on the Civil Applications. Rule discharged in both the Civil Applications. No order as to costs of both the Civil Applications.

Appeal allowed .