

(2010) 09 MP CK 0090

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1574 of 2008, 13118 and 13329 of 2009

Ajay Dubey

APPELLANT

Vs

State of M.P. and Others
 M.P. State Mining
Corporation Ltd. Vs Union of India and Others

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 31
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 14, 240, 243, 254
Environment (Protection) Act, 1986 — Section 24, 24(1), 25, 3(19), 3(2)
General Clauses Act, 1897 — Section 3(19), 3(50)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 15,
15(1A), 18, 3(b)
Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 28

Citation : (2011) 2 MPHT 122

Hon'ble Judges : S.R. Alam, C.J.;Alok Aradhe, J

Bench : Division Bench

Advocate : Siddharth Gupta in Writ Petition Nos. 1574/2008 and 13329/2009 and Mr. Viprav Sharma, Mr. J.P. Shah and Mr. Aditya Sharma, in Writ Petition No. 13118/2009, for the Appellant; Naman Nagrath, A.A.G. for the Respondent Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9, Mr. Ashish Shrotri, Advocate for the Respondent Nos. 3 and 4 and in Writ Petition Nos. 1574/2008 and 13118/2009 and 13329/2009 Mr. Sushrut Dharmadhikari, Advocate for the Respondent Nos. 5, 6 and 10 in Writ Petition Nos. 1574/2008 and 13329/2009 and Mr. Siddharth Gupta, Advocate for the Respondent No. 1 in Writ Petition No. 13118/2009, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Alam, C.J.—In these three writ petitions since common question of law and facts are involved and also as agreed to by the learned Counsel for the parties, they were heard together and are being decided by this common order. Writ Petition No. 1574/2008 and Writ Petition No. 13329/2009 have been preferred as Public Interest Litigations by one Ajay Dubey describing himself to be Secretary

of Environment Friendly Organization-- "Prayatna", mainly with the grievance that number of mines/quarries are being operated illegally across the State of Madhya Pradesh without obtaining the statutory clearances which are mandatory in nature and, therefore, a direction has been sought to stop operation of all such mines which are being run notwithstanding the fact that closure orders have already been issued by the concerned authorities. It has also been inter alia prayed that a High Level Committee be constituted to enquire the matter pertaining to grant of permission for such mining operations.

2. In the other petition, i.e., W.P. No. 13329/2009, the validity of sub-rules (1) and (2) of Rule 49 of M.P. Minor Mineral Rules, 1996 (hereinafter referred to as "1996 Rules") which gives exemption from taking environmental clearance under Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 for excavation of sand and "bajri" is challenged on the ground inter alia that it confers unfettered, unguided and uncanalised powers on the Director to grant exemption from obtaining environmental clearances to any particular mine for special consideration and, thus, the same being in violation of Sections 13, 15(1-A) and 18 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "MMDR Act") and Mineral Conservation and Development Rules, 1988 (hereinafter referred to as "1988 Rules") is ultra vires besides being discriminatory as it is violative of Article 14 of the Constitution of India. It is, therefore, inter alia prayed that the State respondents be directed to ensure that no mining activity in respect of excavation of sand and "bajri" should be allowed to be undertaken without seeking prior clearance under the provisions of Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and Environmental Impact Assessment (in short "EIA") Notification dated 14-9-2006 and other allied statutory provisions relating to environment.

3. W.P. No. 13118/2009 has been preferred by the M.P. State Mining Corporation Ltd. against the letters/orders of the State Level Expert Appraisal Committee (respondent No. 2), dated 12-6-2009, State Level Environment Impact Assessment Authority (respondent No. 3), dated 6-7-2009 and of M.P. State Pollution Control Board (respondent No. 4) dated 13-7-2009 whereunder the petitioner is asked to obtain environmental clearances and to obtain NOC under EIA notification dated 14-9-2006 issued by the Central Government under Rule 5 (3) of Environment (Protection) Rules, 1986. It has further been asserted that in view of the exemption granted under Rule 49 of the 1996 Rules, the respondents cannot insist the Corporation to obtain statutory clearances and the NOC under the aforesaid enactments and EIA Notification dated 14-9-2006.

4. Therefore, the core issue involved in all the three writ petitions is as to whether for carrying out quarry operation of sand and "bajri" environmental clearances and NOC as aforesaid are required to be obtained notwithstanding exemption granted in respect of same under Rule 49 of the 1996 Rules.

5. The case of the petitioner of W.P. No. 1574/2008 is that there is gross dereliction in the matter of enforcement or implementation of environmental provisions on the part of the respondents inasmuch as mass scale illegal mining activities of unprecedented nature are being carried out in the State of Madhya Pradesh since more than a decade. It has been further alleged that in reference to query made under Right to Information Act, 2005, the respondent No. 4 namely M.P. State Pollution Control Board (in short "Board") vide letter dated 11-4-2007 informed the petitioner that 526 mines which have an area of more than 5 hectares are being operated in the State of Madhya Pradesh and out of aforesaid 526, no application has been received by the Board in respect of 296 mines. It has further been informed that the closure orders have been issued in respect of 15 mines which have an area of less than 5 hectares situated in the Districts of Gwalior, Bhind, Morena, Datia and Sheopur. The petitioner was further informed that out of 315 mines, 108 mines are being run without obtaining any permission under the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974. The petitioner further claimed that he has submitted a representation to Chief Minister of State of Madhya Pradesh with the prayer for instituting a high level independent enquiry. It is further stated in the writ petition that in exercise of powers u/s 3(2) of the Environment (Protection) Act, 1986 read with Rule 5 (3) of Environment (Protection) Rules, 1986, the Central Government has issued a notification dated 14-9-2006, which requires that no new project of the nature listed in Schedule I to the above notification shall be undertaken in any part of India unless it is given environmental clearance by the Central Government. It is pleaded in the writ petition that the aforesaid notification provides full-fledged comprehensive procedure. Clause III-A, Clause IV and Entry 20 of Schedule I refers to mining projects. It has further been stated that by order dated 25-8-2003 the respondent No. 4 has directed that grant/renewal of environmental permits for mining operations in respect of mining leases over an area of more than 5 hectares would be the responsibility of the Board, while in respect of areas having less than 5 hectares the responsibility of renewal of environmental permits would be shouldered by the Regional Officers. It has further been alleged that around 1300 mines are being illegally operated in State of Madhya Pradesh.

6. Respondent Nos. 1 to 3, 6, 8 and 9 (State Authorities) have filed the return, inter alia, in which, it is pleaded that the writ petition suffer from the vice of non-joinder of necessary parties inasmuch as the lessees of the mining leases have not been arrayed as respondents. It has further been averred that no material has been brought on record to show that on account of quarrying operation of sand and "bajri", the same is causing environmental pollution and, therefore, requires clearance under various statutory provisions.

7. In W.P. No. 13329/2009, besides questioning the validity of the provisions contained Rule 49 of the Rules of 1996, it has been alleged that EIA Notification which has been issued in exercise of powers delegated by Parliament does not exempt sand and "bajri" mines from environmental clearance, whereas the

respondent Nos: 1 and 2 in the return have stated that challenge to the validity of Rule 49 of the 1996 Rules is misconceived. It has been stated that exemption to sand/"bajri" mines under Rule 49 of 1996 Rules has been granted as sand "bajri" constitute altogether a different class, for which neither any mining nor any quarrying is required. Sand and "bajri" are merely surface deposits and they are accumulated on account of natural flow of river water and for this reason under Rule 49 of 1996 Rules sand and "bajri" mines have been exempted from requirement of obtaining environmental clearance. It has been submitted that for carrying out the process of collection of sand "bajri" no consent or permission from the State Pollution Control Board is required because no minimum or maximum standards or permissible limits are fixed in respect of pollution with regard to sand and "bajri" mines and, further it does not involve any mining activity such as excavation etc. as they are lying on the surface and are lifted from the surface. It has further been submitted that in exercise of powers u/s 15(1-A) of MMDR Act, the State Government has framed 1996 Rules and same are within the Legislative competence of the State Government.

8. In W.P. No. 13118/2009, the M.P. State Mining Corporation Ltd. is the petitioner which is a Corporation fully owned and controlled by the Government of Madhya Pradesh and is a Government company within the meaning of Section 617 of the Companies Act, 1956. It is the case of the petitioner in the aforesaid writ petition that for carrying out quarrying operations in respect of sand/bajri", no consent, permission or No Objection Certificate from the State Pollution Control Board or from any authority under EIA Notification dated 14-9-2006 is required. Rule 49 of the 1996 Rules framed u/s 15(1-A) of the MMDR Act by the State Government completely exempts quarrying operations of sand and "bajri" from the requirement of obtaining environmental clearance.

9. Respondent Nos. 1 and 6 in W.P. No. 13118/2009 have filed counter reply in which, inter alia, it has been stated under EIA Notification dated 14-9-2006, in respect of new mining projects, the expansion or modernization of existing projects, irrespective of the fact that whether mineral is major or minor, prior environmental clearance has to be obtained under the provisions mentioned in the notification as per procedure prescribed therein.

10. Respondent Nos. 2 and 3 in Writ Petition No. 13118/2009 have controverted the stand taken by the petitioner and have stated that contention of the petitioner that no environmental clearance is required to be obtained in respect of quarrying operations of sand/"bajri" is incorrect as the said Notification dated 14-9-2006 does not provide for any exemption in respect of quarrying of sand and "bajri".

11. Respondent No. 4, M.P. State Pollution Control Board, has filed the return in which objection has been taken with regard to maintainability of the writ petition in so far as it pertains to challenge with regard to the orders by which the applications filed by the Corporation seeking environmental clearances have been rejected. It has been averred that statutory remedy of an appeal is provided u/s

28 of the Water (Prevention of Control of Pollution) Act, 1974 and u/s 31 of the Air (Prevention and Control of Pollution) Act, 1981 against the order rejecting an application for grant of consent. It has further been averred that scope of operation of MMDR Act and 1996 Rules as well as Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 is totally different.

12. We have heard Shri Siddharth Gupta, learned Counsel appearing for the petitioners in W.P. No. 1574/2008 and W.P. No. 13329/2009. He argued that Section 6 of the Environment (Protection) Act, 1986 empowers the Central Government to make rules in respect of the matters which are specified in sub-section (2) of Section 6. Sub-section (1) of Section 24 of the Environment Protection Act, 1986 provides that subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. It is submitted that in exercise of powers conferred by Sections 6 and 25 of the Environment (Protection) Act, 1986 the Central Government has framed Rules which are known as Environment (Protection) Rules, 1986 (hereinafter referred to as "1986 Rules"). Rule 5 of the 1986 Rules deals with prohibition and restriction on the location of industries and carrying on processes and operations in different areas. Rule 5 (3) (a) of the 1986 Rules, inter alia, provides that whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so. Rule 3 (b) of the 1986 Rules provides that every Notification issued under clause (a) shall give a brief description of the area, the industries, processes in the area about which such Notification pertains and also specify that reasons for the imposition of prohibition or restrictions on the location of the industries and carrying on of processes or operations in that area. It is further submitted that in exercise of powers under Rule 5 (3) (a) of the 1986 Rules initially notification dated 27-1-1994 was issued by the Central Government wherein it was provided in respect of mining projects (major minerals with less than 5 hectares), it was necessary to obtain environmental clearance from the Central Government. The aforesaid notification was superseded by notification dated 14-9-2006 by which in respect of mining operations extraction of natural resources and power generation have an area of more than 5 hectares, requirement of obtaining prior environment clearance has been prescribed. It has further been submitted that the aforesaid notification shall have the over-riding effect and shall prevail over the laws made by the Legislature of the State. In support of the aforesaid submissions learned Counsel has placed reliance on the decisions of the supreme Court in *S. Jagannath Vs. Union of India and others*, . It has further been contended that mining operations are hazardous in nature as it impairs ecology and natural resources and, therefore, it needs to be regulated. Learned Counsel

in this connection has made reference to the decision of Supreme Court in M.C. Mehta Vs. Union of India (UOI) and Others, . It has further been submitted that Section 24 of the Environment (Protection) Act, 1986 has to be read in such a manner so as to secure the object of the Act for which it is enacted. During the course of submissions learned Counsel for the petitioner gave up the challenge to the validity of Rule 49 of the 1996 Rules. It was submitted that in view of Notification dated 14-9-2006 it is obligatory to obtain prior environment clearance for mining operations in respect of sand and "bajri".

13. On the other hand, Shri Naman Nagrath, learned Additional Advocate General appearing for the State respondents in W.P. No. 13329/2009 while refuting the contentions advanced on behalf of the petitioner submitted that in Schedules 1 and II appended to the 1996 Rules several minor minerals have been mentioned. However, only sand and "bajri" have been exempted from the requirement of obtaining environmental clearance. It has been submitted that sand and "bajri" constitute altogether different class of minor minerals for which neither any mining nor any quarrying is required. Sand and "bajri" are mere surface deposits and thus are accumulated on account of natural flow of river water. Though sand and "bajri". are minor minerals but no mining whatsoever or even quarrying operations are required to be carried out and therefore. Rule 49 of the 1996 Rules exempts sand and "bajri" from environment clearance because quarrying of sand and "bajri" does not cause any environmental pollution. While referring to Rule 2 (xxix) it has been submitted that expressions "Mines" and "Owner" for the purpose of M.P. Minor Rules, have the same meanings respectively assigned to them in the Mines Act, 1952. Section 3(b) provides that Mines Act shall not apply to any mines engaged in the extraction of kankar, murram, laterite, boulder, gravel, minor sand, etc. Rule 5 of the 1996 Rules deals with restrictions on the grant of trade quarry or quarry lease. Rule 5 (2) (d) of the 1996 Rules provides that no quarry lease or trade quarry shall be granted in respect of an area except for the mineral sand or "bajri", within the distance of 100 meters from river banks, nalas, canal, reservoir, dam, any natural water course or any water impounding structure. Thus. for extraction of sand and "bajri" no mining activity is involved. It has further been contended that in exercise of powers u/s 18 of Mines and Minerals (Development and Regulation) Act, 1957 the Central Government has framed Mineral Conservation and Development Rules, 1988. Chapter V of the said Rules deals with environment clearance which contains Rules 31 to 41. However, Rule 2 (iv) of the 1988 Rules provides that rules shall not apply to minor minerals. It has further been contended that MMDR Act as well as Mines Act and the 1988 Rules exempt all the minor minerals from the requirement of obtaining environmental clearance. The State Government has only exempted sand and "bajri" quarry from the requirement of obtaining environmental clearance. It has further been contended that no limits or standards of emission or discharge of environmental pollutants have been prescribed either by the Act or the Rules in respect of quarrying of sand and "bajri, therefore, the provisions of the Act and the Rules as well as the

notification do not apply to the quarrying operations of sand and "bajri". In support of the aforesaid propositions learned Counsel has placed reliance on the decisions of the Supreme Court in *M.V. Krishnan Nambissan Vs. State of Kerala, and Hindustan Lever Ltd. Vs. Food Inspector and Another*, . It has further been contended that notification dated 14-9-2006 does not apply to quarrying of sand and "bajri" as the notification only applies to activity of mining. While referring to definition of "mining operation" and "quarrying operation" in Rule 2 (xxii) of the 1996 Rules, it has been contended that "mining operations" and "quarrying operations" means any operation undertaken for the purpose of mining any minor mineral and shall include erection of Machinery, construction of roads and other preliminary operations for the purpose of quarrying and concomitant of handling and transport of minerals up to the point of dispatch. Since no machinery is required to be erected for quarrying sand and "bajri", therefore, quarrying of sand and "bajri" does not amount to mining operations and consequently the notification dated 14-9-2006 does not apply to the activity of quarrying of sand and "bajri".

14. On the other hand, Shri Ashish Shroti, learned Counsel for respondent No. 3 in W.P. No. 13329/2007 submitted that Rule 3 (1) of the 1986 Rules deals with standards for emission or discharge of environmental pollutants. Sub-rule (1) of Rule 3 of the 1986 Rules provides that standards of emission or discharge of environmental pollutants from the industries, operations or processes shall be as specified in Schedules I to IV. Similarly, sub-rule (3-A) of Rule 3 of the 1986 Rules provides that emission or discharge of environmental pollutants from the industries, operations or processes other than those industries, operations or process for which standards have been specified in Schedule I shall not exceed the relevant parameters and standards specified in Schedule VI. Similarly, sub-rule (3-B) of Rule 3 of the 1986 Rules provides that combined effect of emission or discharge of environmental pollutants in an area, from industries, operations, processes, automobiles and domestic sources, shall not be permitted to exceed the relevant concentration in ambient air as specified against each pollutant to columns (3) to (5) of Schedule VII. Relying on the aforesaid provisions, it has been contended that in respect of quarrying of sand and "bajri", standard of emission or discharge of environmental pollutants prescribed under Rules 6 and 7 in Schedule appended to the Rules are required to be obtained. It has further been contended that transportation of sand results in air pollution and, therefore, environmental clearance is required to be obtained. While referring to Section 25 of the Water (Prevention of Control of Pollution) Act, 1974, it has been contended that consent is mandatory before undertaking mining operations in respect of sand and "bajri".

15. Shri Sushrut Dharmadhikari, learned Counsel appearing for respondent No. 5 in W.P. No. 13329, relying on Paragraph Nos. 45 and 46 of the judgment of Supreme Court in *M.C. Mehta (supra)*, has submitted that natural resources of air, water and soil cannot be utilized, if the utilization results in irreversible damage to environment. It is argued that in recent past it has been noticed that

there is growing tendency of non-compliance of the statutory norms prescribed for protection of environment. The activity of mining sand and "bajri" is hazardous in nature and result in environmental pollution, hence prior environmental clearance is required under EIA notification dated 14-9-2006. It has further been argued that purposive construction has to be given while implementing the notification dated 14-9-2006.

16. Shri V. Bhide, learned Counsel for respondent No. 6 while adopting the submissions made by the learned Counsel for respondent No. 5 has submitted that for quarrying of sand and "bajri", the requirement of prior environmental clearance is necessary. Learned Counsel has placed reliance on the decisions of Supreme Court in M.C. Mehta Vs. Union of India (UOI) and Others, , in support of his submissions.

17. Shri Viplav Sharma, learned Counsel for the petitioner in W.P. No. 13118/2009, has submitted that MMDR Act was enacted by the Parliament in 1957 whereas Water Act, Air Act and Environment (Protection) Act were respectively enacted in the years 1974, 1981 and 1986. After the enactment of environment laws, Section 15(1-A) was incorporated in the MMDR Act with effect from 10-2-1987 which empowers the State Government to frame rules in respect of minor minerals in respect of the matter specified in sub-section (1-A) of Section 15. In exercise of powers conferred under sub-section (1-A) of Section 15 of the MMDR Act, the State Government has framed Madhya Pradesh Minor Mineral Rules, 1996. Rule 49 (1) of the 1996 Rules contains a non-obstante clause and provides that provisions of Rules 44 to 48 shall not apply to sand and "bajri" quarrying. Though the Notification dated 14-9-2006 does not apply to sand and "bajri" quarrying yet even if it assumed that it applies to sand and "bajri" quarrying then it runs foul to Rule 49 (1) of the 1996 Rules. It is submitted that it is trite law that provisions of Rules have to prevail over the notification.

18. It has further been submitted that neither the Environmental (Protection) Act, 1986 nor the Environmental Protection Laws provide for standards of emission of discharge of environmental pollutants. While referring to various provisions of Air Act and Water Act, it has been contended that no standards of emission or discharge of pollutants have been described in respect of quarrying of sand and "bajri". On the aforesaid premises, it is submitted that for carrying out quarrying operations of sand and "bajri", no environmental clearance is required to be obtained.

19. Shri Mohd. Ali, learned Counsel for the intervener, while supporting the submissions made on behalf of the petitioners in W.P. No. 1574/2008 and W.P. No. 13329/2009, has contended that it is necessary to obtain environmental clearance for carrying on quarrying operations of sand and "bajri" as the same results in environmental pollution. It has further been contended that Rule 49 in so far it exempts quarrying of sand and "bajri" from the requirement of obtaining environmental clearance runs counter to the provisions of Central enactment,

rules and notifications issued thereunder and therefore, in view of Article 254 of the Constitution of India, the provisions of Central enactment will prevail over the provisions of law enacted by State Legislature.

20. We have considered the arguments made on both sides. Since learned Counsel for the petitioner in W.P. No. 13329/2009 during the course of arguments has given up the challenge to the validity of Rule 49 on the 1996 Rules, therefore, we need not dwell on the issue pertaining to validity of Rule 49 of the 1996 Rules and now the only issue which survives for consideration in the instant writ petitions is as to whether the Notification dated 14-9-2006 issued by the Central Government under Rule 5 (3) of Environmental Protection Rules and the impugned orders/letters dated 12-6-2009, 6-7-2009 and 13-7-2009 which form the subject matter of challenge in Writ Petition No. 13118/09 are applicable in respect of quarrying operation of sand and "bajri" notwithstanding the fact that Rule 49 of the 1996 Rules exempts the same from the provisions of Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and the Rules made thereunder.

21. In order to appreciate and adjudicate the issue involved in these petitions, it is necessary to first examine relevant provisions of law. 22. It would be necessary to take notice of different enactments made by Parliament namely MMDR Act as well as other laws enacted from time to time pertaining to protection of environment and natural resources. The MMDR Act is an Act to provide for the development and regulation of mines and minerals under the control of the Union. Section 15 of the MMDR Act confers power on State Governments to make rules in respect of minor minerals. Sub-section (1) of Section 15 of the MMDR Act provides that the State Government may by notification in the Official Gazette, 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. Environment (Protection) Act, 1986 came into force on 12-11-1986, whereas Air (Prevention and control of Pollution) Act, 1981 came into force in the year 1981 and Water (Prevention and Control of Pollution) Act, 1971 had come into force in the year 1971. Thereafter, the Parliament incorporated sub-section (1-A) in Section 15 of the MMDR Act by Act No. 37 of 1986 and it came into force with effect from 10-2-1987. It is to be noted that sub-section (1-A) in Section 15 of MMDR Act was inserted by the Parliament, in the year 1987, i.e., subsequent to enactment of Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1971 and Environment (Protection) Act, 1986. Clause (i) of sub-section (1-A) of Section 15 of the MMDR Act, inter alia, empowers the State Government to frame Rules in the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government by the person holding the quarrying or mining lease. The 1996 Rules are enacted by the State Legislature in exercise of powers u/s 15

of MMDR Act and, therefore, Rule 49 of the 1996 Rules is a validly enacted provision of law. Chapter VIII of the 1996 Rules deals with protection of environment. Rule 44 of the 1996 Rules enjoins a duty on every holder of quarry lease to take all possible precautions for the protection of environment and control of pollution while conducting quarrying operations in the manner prescribed therein. It reads as under:-

44. Protection of Environment.-- (1) Every holder of quarry lease shall take all possible precautions for the protection of environment and control of pollution while conducting quarrying operation in the following manner:-

(a) Wherever top soil exists and is to be excavated for quarrying operation, it shall be removed separately;

(b) The top soil so removed shall be stored for future use;

(c) The dumps shall be properly secured to prevent escape of material therefrom and cause land degradation or damage to agricultural fields, pollution of surface water bodies or cause floods;

(d) The site of dumps shall be selected as far as possible on impervious and barren ground within the leased area;

(e) The top spoil dumps shall be suitably terraced and stabilised through vegetation or otherwise.

(2) The top soil so removed shall be utilized for restoration or rehabilitation of the land which is no longer required for quarrying operations.

(3) Removal, Storage and utilization of overburden, etc.:-

(a) livery holder of a quarry lease shall take steps so that the overburden, waste rock, rejects and fines generated during quarrying or during sizing shall be stored in separate dumps;

(b) The dumps shall be properly secured and shall be suitably terraced and stabilised through vegetation or otherwise;

(c) Wherever possible, the waster rock, over burden etc. shall be backfilled into the quarry excavations with a view to restoring the land to its original use as far as possible;

(d) The fines shall be so deposited and disposed that they are not allowed to flow away and cause land degradation or damage to agricultural fields, pollution of surface water bodies or cause floods.

Rule 45 of the 1996 Rules deals with reclamation and rehabilitation of lands whereas Rule 46 of the 1996 Rules deals with precautions against damage to public places, air pollution and noise pollution. Rule 46 of the 1996 Rules being relevant for the purpose is reproduced herein for the facility of reference:-

46. Precautions against damage to public places, air pollution and noise pollution, etc.-- Every holder of a quarry lease shall,-

(i) take adequate precautions against damage to public buildings or monuments, roads, religious places either within the lease area or in proximity to the lease area;

(ii) air pollution due to fines, dust, etc.; shall be controlled, and kept within permissible limits specified in the Air (Prevention and Control of Pollution) Act, 1981 (No. 14 of 1981) and the Environment (Protection) Act, 1986 (No. 29 of 1986) and rules made thereunder;

(iii) noise arising out of quarrying operations shall be abated or controlled at the sources so as to keep it within permissible limits.

23. Rule 47 of the 1996 Rules deals with penalty whereas Rule 48 of the 1996 Rules prescribes for filing of returns. Rule 49 of the 1996 Rules deals with relaxation from protection of environment. Rule 49 of the 1996 Rules which is relevant for the purpose of adjudication of the controversy involved in the instant writ petitions is reproduced below:-

49. Relaxation from protection of Environment.-- (1) Notwithstanding anything contained in these rules the provisions of Rules 44, 45, 46, 47 and 48 shall not apply to sand and "bajri" quarrying.

(2) Relaxations may be granted by the Director, to a quarry lease holder from all or some of the provisions of environmental protection on special considerations.

24. Thus, sub-rule (1) of Rule 49 of the 1996 Rules provides that provisions of Rules 44 to 48 of the 1996 Rules shall not apply to sand and "bajri" quarry. Thus, by sub-rule (1) of Rule 49 of the 1996 Rules, the provisions of Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 and the Rules made thereunder have been made inapplicable in respect of sand and "bajri" quarry.

25. Now we may advert to the provisions of Environment (Protection) Act, 1986. The Environment (Protection) Act, 1986 is an Act to provide for the protection and improvement of environment and for matters connected therewith, Section 7 of the Environment (Protection) Act, 1986 provides that no person carrying on any industry, operation and process shall discharge or emit or permit to be discharged or emitted any environmental pollutants in excess of such standards as may be prescribed. Section 25 empowers the State Government to make rules. with regard to the matters which have been enumerated in sub-section (2) of Section 25. of the Act. Section 24 of the Act which is relevant for the purpose of controversy involved in the instant writ petitions is extracted below:-

24. Effect of other laws.-- (1) Subject to the provisions of subsection (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment

other than this Act.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

26. Thus, from perusal of Section 24 of the Environment (Protection) Act it is clear that subject to provisions of sub-section (2) the provisions of the Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. The expression "enactment" has not been defined under the Environment (Protection) Act, 1986. Therefore, we may refer to the provisions of the General Clauses Act, 1897. Section 3(19) defines the expression "enactment" as under:-

(19) "enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid.

Section 3(50) defines the expression "Regulation" as under :--

(50) "Regulation" shall mean a Regulation made by the President under Article 240 of the Constitution, and shall include a Regulation made by the President under Article 243 thereof and; a Regulation made by the Central Government under the Government of India Act, 1870, or the Government of India Act, 1915, or the Government of India Act, 1935.

Thus, if Rule 49 of the 1996 Rules which has been framed by the State Legislature u/s 15 of the MMDR Act is viewed in context to the definition of "enactment" as provided in Section 3(19) of the General Clauses Act and the definition of "Regulation" as defined in Section 3(50) of the General Clauses Act, it is apparent that it does not fall within the meaning of the expression "enactment". For the aforementioned reasons non-obstante clause contained in Section 24 (1) of the Environment (Protection) Act, 1986 does not apply to Rule 49 of the 1996 Rules and, therefore, contention raised on behalf of the Counsel for the petitioners that notification dated 14-9-2006 issued under Rule 5 (3) of Environment (Protection) Rules, 1986 will prevail over Rule 49 (1) of the 1996 Rules in view of Section 24 of the Environment (Protection) Act, cannot be accepted.

27. That apart, the Environment (Protection) Act, 1986 namely Act No. 29 of 1986 was enacted on 23rd of May, 1986 after deceiving the assent of the President of India which came into force with effect from 19-11-1986 whereas Section 15(1-A) of the MMDR Act was enacted vide Act No. 37 of 1986 subsequent to the Act No. 29 of 1986 and came into force on 10-2-1987. Thus, the Parliament was aware of the earlier legislation and its non-obstante clause yet power was conferred by the later enactment authorizing the State Legislature to make rules in respect of minor minerals. Therefore, it would be assumed that the Legislative intent or mandate is that the rule framed by the State u/s 15(I-A)

of MMDR Act should prevail over all previous enactments on the subject. It is well settled proposition of law that if the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that provisions of the earlier enactment continue to apply. It is also cardinal principle of interpretation of statute that later enactment must prevail over the earlier one even if the non-obstante clause is provided in the earlier enactment. Therefore, Section 15(I-A) of the MMDR Act since was brought in the statute book at later point of time cannot be made inoperative because of non-obstante clause of the Act which was enacted earlier in point of time namely Environment (Protection) Act, 1986. We are fortified in our view by the decision of the Supreme Court in *KSL and Industries Ltd. Vs. Arihant Threads Ltd. and Others*, wherein the Supreme Court has held that where there are two special statutes which contain non-obstante clauses, later statute must prevail. Besides that, if the petitioner's aforesaid contention is accepted then it would amount to giving higher status or putting the Notification on higher pedestal than the statutory Rules. However, we need not to further deliberate on this issue and suffice it to say on this since the Notification under Rule 5 (3) of Environment (Protection) Rules, 1986 is not an enactment within the meaning of Section 24(1) of the Environment Protection Act and, therefore, it cannot have overriding effect on Rule 49 of the 1996 Rules.

28. It is also relevant to mention that Rule 49 (1) of the 1996 Rules is the special provision relating to sand and "bajri" only. Section 24 of the Environment (Protection) Act, 1986 is a general provision. It is well settled in law that if the special provision is made on a certain matter, that matter is excluded from the general provision. In this connection, we may refer to decisions of the Apex Court reported in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, *State of Bihar Vs. Dr. Yogendra Singh Col (Retired) and Others*, *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, . For this additional reason also, the Notification dated 14-9-2006 shall not apply in respect of quarrying operations of sands and "bajri".

29. It is also relevant to mention here that though in Schedules I and II appended to the 1996 Rules several minor minerals like granite, marble, limestone, flag stone, etc. are included yet only sand and "bajri" have been exempted from environmental clearance. It is also relevant to mention here that Central Government in exercise of powers u/s 18 of the MMDR Act has framed Rules, namely, Mineral Conservation and Development Rules, 1988. Chapter V of the 1988 Rules deals with Environment. Rules 31 to 41 deals with protection of environment. However, aforesaid Rules which have been framed by the Central Government have not been made applicable to minor minerals as is clear from Rule 2 (iv) of the 1988 Rules. Thus, minor minerals have been kept outside the purview of even 1988 Rules by the Central Government. It appears that the State Legislature has treated the sand and "bajri" to be a different class of minor mineral. It is a matter of common knowledge that sand and "bajri" are merely surface deposits and are accumulated on account of natural flow of river water.

Though sand and "bajri" are classified as minor minerals, yet no mining, or quarrying operations are required to be carried out. The process of removal of mineral simply involves collection of already deposited sand "bajri" on the banks of river and, therefore, it appears that exemption has been granted by the State Legislature from the requirement of compliance with provisions of Environment Protection Act and the Rules framed thereunder.

30. For the aforesaid reasons, we hold that provisions of notification dated 14-9-2006 issued in exercise of powers under Rule 5 (3) (a) of the Environment (Protection) Rules, 1986 do not apply to quarrying operations of sand and "bajri" in view of Rule 49 (1) of M.P. Minor Mineral Rules, 1996. Consequently, no prior environmental clearance is required to be obtained in respect of quarrying of sand and "bajri". Needless to state that if any mining or quarrying activity which is covered under notification dated 14-9-2006 is being carried on in contravention of provisions of Notification dated 14-9-2006, the State Government shall take effective steps immediately to stop such an activity in accordance with law. Resultantly, Writ Petition No. 1574/2008 and W.P. No. 13329/2009 are dismissed whereas Writ Petition No. 13118/2009 is allowed. Consequently, letter/orders contained in Annexures P-1 to P-4, dated 12-6-2009, 6-7-2009, 13-7-2009 and 30-9-2009 respectively are quashed.