

(2010) 08 MAD CK 0323

In the Madras High Court

Case No : W.A. Nos.716 of 2000, 2044 and 2045 of 2001, 94 to 115, 159 to 162, 2308 to 2322, 2543 to 2553, 2709 to 2719, 2739 to 2753, 2796 to 2815 of 2004, W.P. No's. 1930 and 1931 of 1999, W.A.M.P. No's. 141 to 173, 262 to 268, 4272 to 4286, 4684 to 4694, 5005 t

Gem Granites

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Constitution of India, 1950 — Article 19, 226, 254, 301, 304
Environment (Protection) Act, 1986 — Section 3(3)
Granite Conservation and Development Rules, 1999 — Rule 10, 11, 12, 13, 14
Indian Medical Council Act, 1956 — Section 10A
Medical Universities Act — Section 5(5)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10, 11, 12, 13, 14
Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 15(1A), 19A, 19B, 38, 38B

Citation : (2011) 1 MLJ 84 : (2010) WritLR 765

Hon'ble Judges : R. Banumathi, J;B. Rajendran, J

Bench : Division Bench

Advocate : Nalini Chidambaram for C. Uma, A. Abdul Hameed and H. Mohammed Rafi, in W.A. Nos. 716 of 2000 and W.P. Nos. 1930 and 1931 of 1999, P.S. Raman, General assisted by R. Thirugnanam, Spl. Govt. Pleader Writs in 2044 and 2045 of 2001, 94 to 107, 108 to 115, 159 to 162, 2308 to 2322, 2543 to 2553, 2709 to 2719, 2739, 2740, 2741, 2742, 2743, 2744 to 2748, 2753 and 2796 to 2815 of 2004, for the Appellant; V.T. Gopalan and K. Ramakrishna Reddy, for Respondent 1 in W.A. Nos. 94, 96, 97, 99 to 101, 103, 104, 105 to 107, 119 to 113, 115, 159 to 162, 2309, 2311, 2314, 2316 to 2320, 2322, 2544, 2546 to 2548, 2550, 2552, 2709 to 2719, 2739 to 2753, 2796, 2805 to 2808 and 2812 to 2814 of 2004, Nalini Chidambaram for C. Uma, A. Abdul Hameed and H. Mohammed Rafi, in W.A. Nos. 2044 and 2045 of 2001 and 108 to 114 of 2004 and P.S. Raman, General assisted by R. Thirugnanam, Spl. Govt. Pleader (Writs) in W.A. No. 716 of 2000 and W.P. Nos. 1930 and 1931 of 1999, for the Respondent

Judgement

R. Banumathi, J.

Writ Appeals except W.A. No. 716 of 1999:

1. These Writ Appeals arise out of common order in W.P. Nos. 24199 of 2001 etc., batch, whereby the learned single Judge struck down Rule 8-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 as amended by G.O.Ms. No. 86, Industries/MMC, dated 22.2.2001 is contrary to the Granite Conservation and Development Rules, 1999, as the State Government has not carried out the scheme of Granite Conservation and Development Rules and ultra vires Section 18 of Mines & Minerals (Development & Regulation) Act, 1957. Since all the Writ Appeals arise out of common order and the Writ Petitions also involve determination of same points, the Writ Petitions and all the Writ Appeals were heard together and disposed off by this common judgment.

2. For conservation and systematic development of and scientific mining to conserve the granite resources and to prescribe a uniform frame-work with regard to systematic and scientific exploitation of granite throughout the Country, Government of India introduced the Granite Conservation and Development Rules, 1999 (in short, "GCD Rules") and it came into effect from 1.6.1999. Introduction of prospecting licence and submission of approved mining plan, grant of lease for 20 years with provision of renewal, etc., are some of the features of the GCD Rules. The Government of Tamil Nadu in G.O.4(D) No. 3/ Industries/MMB2/dated 29.10.1999 have constituted a committee to examine in detail the GCD Rules with the existing provisions of Tamil Nadu Minor Mineral Concession Rules, 1959 (in short, "TN MMC Rules") and to suggest necessary amendments to TN MMC Rules. The Committee was also requested to consider the new draft Tamilnadu Granite Conservation Rules, 1999 proposed by the Commissioner of Geology and Mining.

3. The Committee carefully considered the provisions contained in GCD Rules and also the then existing provisions of TN MMC Rules. Based on the recommendations of the Committee, the Government of Tamilnadu amended the provisions of TN MMC Rules vide G.O.Ms. No. 86/Industries/MMC/dated 22.2.2001 after duly considering the provisions of GCD Rules stipulating the procedure for obtaining mining lease for quarrying granite and retaining the tender-cum-auction system for grant of lease in respect of granite quarrying lease. By the amendment, "prospecting licence" is not envisaged for grant of licence in respect of Government lands. Rule 19-A of TN MMC Rules stipulates grant of prospecting licence and for quarrying granite in respect of patta lands. According to the Government, TN MMC Rules are in consonance with GCD Rules and as per the powers delegated to the State Government u/s 15 of the Mines & Minerals (Development & Regulation) Act, 1957 (in short, "MMDR Act").

4. The Respondents/Quarry operators have challenged the amendments made to Rule 8-A of TN MMC Rules by G.O.Ms. No. 86/Industries/MMC/dated 22.2.2001 so far as it relates to granting of quarry lease in respect of Government lands as null and void and consequently sought for a direction to the Government to grant prospecting licence in respect of lands indicated in the Writ Petitions. In the Writ

Petitions, the Respondents/Writ Petitioners averred that GCD Rules direct the grant of prospecting licence on application and after prospecting, on application, quarry lease has to be granted and the Appellant c State Government cannot frame rules contrary to the GCD Rules. It was further averred that by virtue of GCD Rules, 1999, the Writ Petitioners have got statutory right to apply for prospecting and mining leases in respect of any granite bearing lands, whereas the Government by the impugned G.O. has taken away the rights to obtain prospecting licence. The plea of Respondents was that when the Central Government has provided a uniform Government policy throughout the country by bringing GCD Rules with effect from 1.6.1999 and in the TN MMC Rules there is no provision for prospecting licence and statutory right created by the GCD Rules has been taken away and the State Government is denuded of the power to legislate contrary to the said Rules. The Respondents/Writ Petitioners have challenged the amended TN MMC Rules by contending that once the Central Government has framed the rules State Government is denuded of its powers to frame any rules contrary to the said rules and the amended Rules 8-A Sub-rule 3(a) and 5(c) and Rule 8-A Sub-rule (2)(a)(iii) and Sub-rule (9)(g) and (h) are ultra vires the Section 15 of MMDR Act and GCD Rules.

5. The State Government resisted the Writ Petitions contending that the TN MMC Rules is in consonance with GCD Rules and as per the powers delegated to the State Government u/s 15 of the MMDR Act.

6. The learned single Judge held that the scheme of GCD Rules contemplate grant of prospecting licence and while so the State Government cannot refuse to entertain such applications stating that there is no provision in the TN MMC Rules for dealing with such applications. Learned single Judge further held that no Rule was framed by the State Government for the purpose of granting prospecting licence and State Government cannot take the stand that the State Government is empowered to evolve its own procedure for the grant of licence for quarrying granite. Referring to Rule 15 of the GCD Rules, the learned single judge observed that as per Rule 15, Government has to receive the applications and take decision on the same in accordance with law without rejecting the same and Rule 8-A of the TN MMC Rules calling for applications by way of tender and preventing the Writ Petitioners from making application for prospecting licence with respect to grant of quarry lease is inconsistent with the GCD Rules. The learned single Judge struck down Rule 8-A of TN MMC Rules holding that it is contrary to GCD Rules and is ultra vires Section 15 of the MMDR Act as the State Government has not carried out the scheme of GCD Rules strictly. The finding of the learned single Judge reads as under:

...the impugned Rule 8-A of the Rules 1959 is struck down as it gives power to the authorities to refuse to entertain the applications with respect to grant of quarry lease for which applications are made by the petitioners on the basis that they can make applications only if it is called for by way of tenders and not providing any procedure to grant prospecting licence even with respect to granite

quarry which is not prospected by the State Government. As the other sub-rules of Rule 8-A cannot stand independent of the above said provisions, the entire Rule 8-A of the rules 1959 is struck down....

Being aggrieved by the striking down of Rule 8-A as ultra vires the GCD Rules and Section 18 of MMDR Act, Government has preferred the Appeals.

7. On behalf of the State Government, the learned Advocate General Mr. P.S. Raman submitted it is not mandated upon the State Government to make available each and every one of the land and Rule 8-A has been framed only in consonance with the GCD Rules and the learned single Judge was not right in holding that Sub-rules (3) and (5)(c) of Rule 8-A are repugnant to GCD Rules. The learned Advocate General would further submit that the learned single Judge erred in interpreting Rule 15 in Chapter IV (Mining Plan) of GCD Rules, which refers to "approval and submission of mining plan" as if the State Government is bound to receive the application for prospecting and pass orders. The learned Advocate General would further submit that no person has vested right to demand for receiving the application for prospecting in respect of Government lands to which Sub-rules 3(a) and 5(c) of Rule 8-A of TN MMC Rules are applicable and the learned single Judge erred in saying that the State Government is bound to receive the applications from all the applicants irrespective of whether there is granite deposit or not. It was further contended that u/s 15 of MMDR Act, the State Government is empowered to make rules for regulating the grant of quarry leases and for purposes connected therein. The learned Advocate General further submitted that prospecting licence procedure in Government lands is not envisaged because to ensure transparency and augment the State Revenue the areas will be leased out under tender-cum-auction only after establishing occurrence of granite deposit in that particular area as envisaged under Rule 4 of GCD Rules.

8. On behalf of the Respondents, Mr. V.T. Gopalan, learned Senior Counsel submitted that by not framing the Rules for prospecting licence in respect of Government lands, statutory right created by the Central Rules in respect of obtaining prospecting licence has been taken away by the State Government.

9. Contending that the State Government cannot make any rules in derogation of GCD Rules, on behalf of the Respondents, the learned Senior Counsel V.T. Gopalan appearing along with Mr. Ramakrishna Reddy made the following submissions:

? 1. Grant of lease for quarrying granite has now become the occupied field of the Central Government framing GCD Rules, 1999 u/s 18 of the MMDR Act and the power of the State Government to frame the Rules u/s 15 of the MMDR Act will therefore had to be in conformity with the Rules made by the Central Government u/s 18.

? 2. By comparison of two sets of rules framed by the Central and State Governments, as per Central Rules (GCD Rules), the scheme is first to apply for

prospecting licence and on the potentiality of the granite being established, an application must be made for the grant of mining lease and on such application being made, under Rule 15 of the Central Rules, the same shall be granted and Rule 15 of GCD Rules clearly contemplates grant of mining lease and such grant is mandatory without power of rejection, whereas under Rule 8-A Sub-rule (3)(a) of TN MMC Rules, tender system has been adopted and as per Rule 8-A, Sub-rule 5(c), where there is no invitation of applications under Sub-rule (3), it shall be summarily be rejected as pre-mature application.

? 3. In State of Tamil Nadu Vs. M.P.P. Kavery Chetty, , Supreme Court specifically held that Section 15 of the Act gave no power to the State Government over the excavated mineral and State Government has no power to frame Rules to regulate internal or foreign trade in granite after it had been quarried.

10. Learned Senior Counsel Ms. Nalini Chidambaram appearing for some of the Respondents and also the Writ Petitioners in W.P. Nos. 1930 and 1931 of 1999 contended that the provision of Rule 8-A(2)(a)(iii) of MMC Rules, which imposes pre-condition that no lease shall be granted unless the applicant is having an existing industry in Tamil Nadu or is having a distinct industrial programme is ultra vires the provisions of the MMDR Act and is also violative of the provisions of the Constitution. Insofar as Rule 8-A Sub-rule (9)(g) and (h), learned Senior Counsel submitted that the minerals once extracted on the payment of seigniorage fee/royalty, the lessee becomes the owner of the mineral and imposing conditions under Rule 8-A(9)(g) and (h) and use the mineral in his own industry are not in conformity with Section 15 of MMDR Act.

11. We have carefully considered the rival contentions and both Central and State Rules. The following points arise for consideration in these Writ Appeals:

1. Whether Rule 8-A of TN MMC Rules, Sub-rule 3(a) and the relevant sub-rules providing for tender-cum-auction system for the grant of lease of areas where the existence of granite has been established otherwise is ultra vires the MMDR Act and whether is in derogation of the GCD Rules, 1999?

2. Whether the summary rejection of application made for an area where there is no invitation for application under Rule 8-A(5)(c) of TN MMC Rules is ultra vires the MMDR Act and whether the same is in derogation of the GCD Rules, 1999?

3. Whether Rule 8-A Sub-rule (2)(a)(ii) and the relevant Rules thereon and Sub-rule 9(g) and (h) of TN MMC Rules stipulating that the lessee should have an existing industry in Tamil Nadu or having a distinct industrial programme and to utilise the mineral in his own industry set up in Tamil Nadu are not in conformity with Section 15 of MMRD Act and inconsistent and repugnant to the GCD Rules?

12. Before dealing with the merits in detail and the impugned judgment, we may consider the scope of Mines and Mineral (Development & Regulation) Act, 1957, Granite Conservation and Development Rules, 1999 and Tamil Nadu Minor Mineral Concession Rules, 1959.

13. Entry 54 of List I of Seventh Schedule of Constitution of India deals with regulation of mines and mineral development, which reads as under:

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

To provide for the development and regulation of mines and Minerals under the control of the Union, the Parliament enacted Mines and Minerals (Development and Regulation) Act, 1957. By declaration u/s 2 of the Act that in the public interest, Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act, Section 3(e) of the said Act defines "minor minerals" with which we are concerned, reads as under:

"minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.

14. As per Section 14 of the Act as amended by Act No. 37 of 1986, Sections 5 - 13 of MMDR Act are made inapplicable to minor minerals. Section 15 empowers the State Government to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. In exercise of powers delegated to State Government, the State Government may make rules in respect of minor minerals on the matters stipulated in Section 15(1A).

15. Section 15(1) and 15(1A) reads as under:

15. Power of State Government to make rules in respect of minor minerals

(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other minor concessions in respect of minor minerals and for purposes connected therewith.

(1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

As per Section 15(1A), the State Government may make rules in respect of minor minerals on any one of the following matters:

(a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;

(b) the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent;

(c) the matters which may be considered where applications in respect of the same land are received within the same day;

(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;

(f)...

(g)...

(h)...

(i)...

(j)...

(k)...

(l)...

(m)...

(n)...

(o)...

16. By virtue of the power conferred u/s 15(1) of the Act, Tamilnadu Government framed Tamilnadu Minor Mineral Concession Rules, 1959. As per the Scheme of the said Rules, Section - I deals with Preliminary and definitions. Section - II deals with "Government lands in which the Minerals belong to the Government", Section - III deals with "Ryotwari lands in which the minerals belong to the Government". Section - IV deals with "lands in which the minerals do not belong to the Government." Section - V deals with "Miscellaneous provisions". In Section - II, "Government lands in which the minerals belong to the Government", Rule 8-A refers to "Lease of quarries to private persons in respect of granite" as amended by G.O.Ms. No. 86 Industries/MMC, dated 22.2.2001. Rule 8-A of the TN MMC Rules as amended by G.O.Ms. No. 608, dated 2.9.1989 in which tender system was introduced for grant of granite quarry lease and the rule stipulated that the quarried granite has to be used in their own industries. Subsequently, by G.O.Ms. No. 103/Industries/MMC(1) dated 13.7.1996, Government introduced tender-cum-auction system in lieu of the tender system. After GCD Rules, based on the recommendation of the Committee, TN MMC Rules were amended by G.O.Ms. No. 86, Industries/MMC, dated 22.2.2001.

17. Now we are to examine whether TN MMC Rules is ultra vires Section 15 of MMDR Act and repugnant to GCD Rules. It is well settled that a subordinate legislation can be challenged when there is (a) lack of legislative competence to make it; (b) violation of fundamental rights guaranteed under the Constitution of India; (c) violation of any provision of the Constitution of India; (d) failure to conform to the statute under which it is made or exceeding the limits of authority

conferred by the enabling Act; (e) repugnancy to the laws of the land, that is, any enactment and (f) manifest arbitrariness/unreasonableness. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But, where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity. The validity of a subordinate legislation is open to question if it is ultra vires the Constitution or the governing Act or repugnant to the general principles of the laws of the land or is so arbitrary or unreasonable that no fair minded authority could ever have made it. A subordinate legislation would not enjoy the same degree of immunity as a legislative act would. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power conferred.

18. Prospecting licence and tender-cum-auction procedure for grant of quarry lease in respect of granite:- The case of Writ Petitioners/Respondents is that in order to bring a uniform policy regarding granting of quarry leases and in the interest of minor minerals and public interest, exercising power u/s 18 of the MMDR Act, the Central Government has framed the Rules for conservation and systematic development of and scientific mining to conserve the granite resources and the said GCD Rules override the rules framed by the State Government. Further case of the Writ Petitioners is that as per Rule 4 of the GCD Rules, no lease shall be granted by the State Government unless the area applied for has been prospected earlier and when Chapter-II of the GCD Rules elaborates upon the procedure for prospecting and that prospecting has to precede mining operations, the State Government did not adopt the said Rules and as such, in TN MMC Rules, there is no prescribed format for applying for prospecting licence or quarrying lease. Further case of Writ Petitioners is that though the GCD Rules came into effect from 1.6.1999 and several State Governments have adopted in toto the said rules, Tamil Nadu Government has not framed any rules for prospecting licence.

19. Submitting that the GCD Rules envisage prospecting licence, the learned Counsel for Respondents Mr. V.T. Gopalan has drawn our attention to various provisions of the GCD Rules. Rule 3(i) defines the term "lease" as under:

"lease" means lease granted for the purpose of undertaking mining or quarrying operations for granite.

and Rule 3(m), which defines "prospecting licence" as under:

"prospecting licence" means a licence granted for the purpose of undertaking any operation for the purpose of exploring, locating or proving granite deposits.

20. Chapter II of GCD Rules deals with "Prospecting and Mining of Granite". Rule 4 of the GCD Rules reads as under:

4. Prospecting to precede mining operations:- No lease shall be granted by the State Government unless it is satisfied that there is evidence to show that the area for which the lease is applied for has been prospected earlier for granite or the existence of granite therein has been established otherwise.

Rule 5 of the said Rules reads as under:

5. Period for which prospecting licence may be granted or renewed.... The period for which a prospecting licence may be granted shall not exceed two years.

(underlining added)

21. Chapter III of GCD Rules elaborates upon "Prospecting Operations". As per Rule 8, every holder of a prospecting licence for granite shall submit to the State Government or any person authorised in this behalf by that Government within a period of sixty days from the date of execution of the prospecting licence, a scheme of prospecting indicating the manner in which he proposes to carry out the prospecting operation, in the area covered by the licence and the scheme shall incorporate the details contained in the Rule. Rule 9 deals with "Modification of scheme of prospecting". As per Rule 10, every holder of a prospecting licence for granite shall carry out the prospecting operations in accordance with the scheme of prospecting submitted under Rule 8 or with such modifications, if any, as intimated under Rule 9 or as directed by the State Government or any person authorised by the State Government in this behalf. As per Rule 11, every holder of a prospecting licence for granite shall submit to the State Government or any person authorised in this behalf the annual report in Form A so as to reach by 30th April for the previous year. Chapter IV of the GCD Rules deals with "Mining Plan". Chapter V deals with "Mining Operations".

22. Contention of the Respondents is that as per Rule 3(m) of GCD Rules, "prospecting licence" has been defined. After granting of prospecting licence, the prospecting licence holder shall comply with several formalities within sixty days from the date of execution of the prospecting licence as prescribed under Rule 8 of GCD Rules and the GCD Rules clearly stipulates that first prospecting licence shall be granted on application and after prospecting the mineral and after establishing the deposit and on separate application, the lease for quarrying granite shall be granted and while so the State Government is denuded of the powers to frame any rules contrary to the GCD Rules.

23. In order to appreciate the above contention, we may refer to the TN MMC Rules and consider them vis-à-vis the GCD Rules and whether they are repugnant to the GCD Rules. As pointed out earlier, Section - II of TN MMC Rules deals with "Government lands in which the minerals belong to the Government."

As referred earlier, after framing of GCD Rules, the Government of Tamilnadu in G.O.4(D) No. 3/Industries/MMB2/dated 29.10.1999 has constituted a committee to examine in detail the Granite Conservation Development Rules, 1999 with the existing provisions of Tamilnadu Minor Mineral Concession Rules, 1959 and to suggest necessary amendments to Tamil Nadu Minor Mineral Concession Rules, 1959 for grant of lease for quarrying granite. The Committee carefully considered the provisions contained in GCD Rules and also the then existing provisions of TN MMC Rules. According to the State Government, the Committee felt that for grant of lease of quarrying granite (Rule 4), the existence of granite can be established other than by undertaking prospecting work in the area. The Committee felt that the prospecting licence is not a pre-requisite for grant of quarry leases in Government lands and existence of granite could be established otherwise.

24. For establishing the existence of granite in any area, there are two methods available. One method is by carrying out prospecting operation and the other method is by obtaining expert reports. As far as Government land is concerned, the learned Advocate General submitted that after obtaining a basic report from the revenue authorities on the existence of granite, the Geology and Mining Department carry out the inspection and examine the deposits of granite, which includes the colour, grain size, joint pattern, mineral assemblage, etc., and technical report is brought out. The existence of granite is established otherwise on the basis of the expert report and the land availability report and that area is notified in the Gazette inviting applications under auction-cum-tender system.

25. Insofar as patta lands, expert Committee felt that when ever applications are received for grant of quarry leases after establishing the existence of granite deposits thereon the quarry leases can be granted straight away after inviting applications by tender-cum-auction system. Based upon the recommendation of the Committee, Government of Tamilnadu amended the provisions of TN MMC Rules by amending Rule 8-A vide G.O.Ms. No. 86 Industries/MMC/dated 22.2.2001. As per Rule 8-A(1), the State Government may grant quarry leases to any person subject to the conditions and the procedure given in the Rule for grant of lease in respect of granite. The District Collector shall invite applications for grant of lease of areas where the existence of granite has been established.

26. As pointed out earlier, Chapter III of GCD Rules deals with "Prospecting operations". But as per the TN MMC Rules, the Committee felt that prospecting licence could be granted only in respect of ryotwari lands and deposit of granite in respect of Government land could be established otherwise. In the TN MMC Rules, under Sub-rule 3(a) of Rule 8-A, the State Government retained tender-cum-auction procedure for grant of quarry lease in respect of granite. The Sub-rule 3(a) reads as under:

(3)(a) The District Collector shall publish a notice in the District Gazette and also issue an advertisement in two dailies one in Tamil and another in English having wide circulation in the State of Tamil Nadu inviting tender applications in sealed

cover for grant of lease of areas where the existence of granite has been established to quarry the mineral specified in Sub-rule (1)

Sub-rule (3)(b) of Rule 8-A refers to the particulars to be specified in the advertisement. Sub-rule (4)(a) of Rule 8-A deals with the applications to be sent in the form prescribed in Appendix VI-A and the particulars to be accompanied with every tender application. Sub-rule (5)(a) of Rule 8-A deals with tender applications delivered personally. Sub-rule (6) of Rule 8-A deals with the procedure, which we would refer shortly.

27. As per Sub-rule (5)(c) of Rule 8-A, if any application is made for an area when there is no invitation of application under Sub-rule (3), it shall summarily be rejected as premature application. The main contention of the Respondents is that when the GCD Rules directs grant of prospecting licence on application and after prospecting, granting of lease on application, the State Government cannot frame rules contrary to the GCD Rules and Sub-rule (5)(c) of Rule 8-A summarily rejecting the application when there is no invitation of application under Sub-rule (3) is repugnant to the Central Rules and the State Government cannot deviate from the uniform policy.

28. The learned Senior Counsel Mr. V.T. Gopalan submitted that by the impugned amendment, State Government have totally given a go bye to the GCD Rules and brought tender system, which is not prescribed by the GCD Rules and without looking into the GCD Rules, State Government has amended the Rules by the said G.O.Ms. No. 86 dated 22.2.2001 contrary to the said Rules and as such the State Government is denuded of its power to legislate contrary to the Central rules. It was further argued that when the GCD Rules are applicable throughout the country and the object itself is to have a uniform policy and statutory right vested with the intending applicants to apply for prospecting licence had been taken away by the amended rules. It was further argued that as per the Scheme of the GCD Rules, it is mandated upon the stipulated period format to apply for prospecting licence and the State Government shall have to grant prospecting licence and Sub-rule (5)(c) of Rule 8-A - summarily rejecting the application when there is no invitation of applications is repugnant to the GCD Rules and is liable to be struck down.

29. The learned Senior Counsel would further contend that the TN MMC Rules framed by the State Government in respect of minor minerals insofar as they relate to mineral "granite" must be subservient to the GCD Rules. In support of his contention, learned Senior Counsel placed reliance upon a judgment of a single Judge in the case of Hampi Enterprises, Santhavelur, Varasapalem Mandal, Chittoor Dist. Vs. Director of Mines and Geology, Hyd. and others, . Referring to the said judgment, the learned Senior Counsel submitted that in exercise the Rule making power delegated to the State u/s 15 of the MMDR Act, the TN MMC Rules should operate subservient to the GCD Rules made by the Central Government in exercise of powers u/s 18 of the MMDR Act. It was further submitted that the GCD Rules made by the Central Government were within the

sphere permitted by Section 18 and would prevail over the TN MMC Rules made by the State Government u/s 15, insofar as the Rules relate to the field of subordinate legislation enabled by Section 18 of the Act.

30. As per Rule 52 of the GCD Rules, the provisions of the Minor Mineral Concession Rules or any other rules framed by the State Government u/s 15 of the Act shall be applicable to granite quarry leases to the extent they are not repugnant to or inconsistent with the GCD Rules. The learned Senior Counsel Mr. V.T. Gopalan submitted that as per the said Rules, the State Government cannot alter or modify the Rules and they can frame rules in connection with the matters not covered by the Central (GCD) Rules such as the quantum of seigniorage fee to be payable, validation of permit, maintaining of accounts, adopting safety measures and other related miscellaneous matters. It was further contended that insofar as granting of prospecting licence or the mode of manner of lease is concerned, the Rules framed by the Central Government shall apply and when the area is occupied by the Rules framed by the Central Government, the State Government cannot frame the rules as to prospecting licence or stipulating tender-cum-auction. In support of the said contention, the learned Senior Counsel relied upon a decision of the Supreme Court in the case of *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, by relying on para No. 95 of the said judgment.

31. Placing reliance upon a decision of the Supreme Court in the case of *Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, , the learned Senior Counsel further contended that when there is a repugnancy between the State and Central Acts, test to determine the repugnancy is whether the Central Act expressly or impliedly intends to cover the entire field. In the said decision, the Supreme Court held that if there is repugnancy, Central Act would prevail over the State Act, which to the extent of repugnancy would be void under Clause (1) of Article 254 of the Constitution and observed as under:

24. In *Deep Chand v. State of U.P.* (1959) 2 Supp. SCR 8 this Court, while dealing with Article 254 of the Constitution, has held:

Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:

- (1) Whether there is direct conflict between the two provisions;
- (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State legislature; and
- (3) Whether the law made by Parliament and the law made by the State legislature occupy the same field.

25. In *State of Orissa Vs. M.A. Tulloch and Co.*, , it has been observed:

Repugnancy arises when two enactments both within the competence of the two

legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance.

26. It cannot, therefore, be said that the test of two legislations containing contradictory provisions is the only criterion of repugnance. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field. The contention of Shri Sanghi that there is no repugnancy between the proviso to Section 5(5) of the Medical University Act and Section 10A of the Indian Medical Council Act because both can be complied with, cannot, therefore, be accepted. What has to be seen is whether in enacting Section 10-A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to establishment of new medical colleges in the country....

32. In *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, , the Supreme Court held as under:

41. What emerges from the above discussion is as follows:

(i) The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be

inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v)....

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.

33. Dealing with the CRZ notification vis-a-vis the State legislation regulating aquaculture, in *S. Jagannath Vs. Union of India and others*, , the Supreme Court held that the Environment Protection Act, 1986, being a Central Legislature, has the overriding effect over the State Legislations including that of the State of Tamilnadu, which are not in consonance with CRZ notification issued by the Government of India u/s 3(3) of Environment Protection Act. Placing reliance upon the said decision, the learned Senior Counsel appearing for the Respondents contended that when the area is occupied by the GCD Rules framed by the Central Government, State Legislature is denuded of its power to frame rules contrary to the said GSD Rules. Regarding the question of "doctrine of occupied field", the learned Senior Counsel also placed reliance upon *Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union Vs. Srinivasa Resorts Ltd. and Others*, .

34. The tender-cum-auction procedure stipulated in Sub-rule (3)(a) of Rule 8-A is challenged by the Respondents contending that the GCD Rules stipulate the issuance of prospecting licence for grant of quarry lease and while so, inviting tenders is inconsistent and repugnant to the GCD Rules. Placing reliance upon a decision of the Supreme Court in *Chandra Kishore Jha Vs. Mahavir Prasad and Others*, , it was contended that as per the maxim "*Expressio unius est exclusio alterius*", if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. Learned Senior Counsel Mr. V.T. Gopalan contended that when a statutory authority is required to do a thing in a particular manner, the same must be done in the stipulated manner. It was further argued that when the power is conferred upon the State Government by the Central Government, the State Government should do it in the manner stipulated. The learned Senior Counsel would further contend that under Sub-rule (5)(c) of Rule 8-A, applications shall be rejected where no invitation for application under Sub-rule (3) is made and when other States have provided for

prospecting licence in consonance with the GCD Rules framed by the Central Government, the Tamil Nadu Government cannot frame different rule contrary to the said Rules. Drawing our attention to Rule 8-A of TN MMC Rules, learned Senior Counsel would further contend that the GCD Rules have not made any distinction between the lands owned by the State Government and the patta lands and while so the State Government is not justified in framing two different procedures for Government owned lands and patta lands.

35. The learned Senior Counsel for Respondents further contended that applying the doctrine of severability when pivotal provisions are challenged and when such pivotal provisions are held ultra vires the entire rules will have to be struck down and the learned Single Judge has rightly struck down Rule 8-A as contrary to the GCD Rules. In support of his contention, learned Senior Counsel placed reliance upon *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, . The same principle as reiterated in *Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union Vs. Srinivasa Resorts Ltd. and Others*, .

36. As pointed out earlier, as per Rule 4 of the GCD Rules, no lease shall be granted by the State Government unless it is satisfied that there is evidence to show that the area for which the lease is applied for has been prospected earlier for granite or the existence of granite therein has been established otherwise. To put it precisely, Rule 4 of GCD Rules contains two limbs:

(i) Evidence to show that the area for which the lease is applied for has been prospected earlier for granite;

(Or)

(ii) the existence of granite therein has been established otherwise.

The expression used is "or", that is two limbs being disjunct. Thus, as per Rule 4 of GCD Rules, for grant of lease by the State Government, the area applied for has been prospected earlier for granite or the existence of granite therein has been established otherwise. The existence of granite could be established either by prospecting or otherwise i.e., by the report of the experts/Geology and Mining Department. The State Government has opted for the second limb i.e., "the existence of granite therein has been established otherwise". As per Sub-rule (3) (a) of Rule 8-A, the District Collector shall publish a notice in the District Gazette for grant of lease of areas where the existence of granite has been established to quarry the mineral. As per the recommendation of the expert committee, State Government has consciously adopted the option "establishing the existence of granite deposits otherwise."

37. When it comes to prospecting, there is a clear distinction between the Government lands in which the minerals belong to the Government and ryotwari lands in which the minerals belong to the Government. Insofar as Ryotwari lands, as per Rule 19-A, "prospecting licence" is granted by the State Government. As rightly contended by the learned Advocate General, there is clear distinction

between lands held by the Government and the Ryotwari lands. Insofar as grant of prospecting licence/quarrying lease in respect of ryotwari lands/patta lands, it is not dependant upon the notification. But in respect of Government lands, no person can demand quarry lease to quarry granite without invitation. Existence of granite is in-built in Sub-rule (3)(a) itself and necessary safeguards are in-built in Sub-rules (3)(a) to Rule 8-A to the effect that where the existence of granite has been established, the District Collector publishes notification in the District Gazette and also issues advertisement in the news papers inviting tender applications and as such there is no conflict between Sub-rule (3)(a) of Rule 8-A with Rule 4 of the GCD Rules. In fact, Rule 4 of GCD Rules clearly stipulates that where the granite has been established otherwise, it can be leased out by the Government. The present Rule is totally in conformity with the GCD Rules. In fact, the Government has incorporated these rules in accordance with the GCD Rules. Therefore, there is no vested right with any person to insist for grant of prospecting licence in respect of Government land.

38. Regulation of mines and mineral applications can be divided into three phases:- (1) Pre-lease (2) Procedure for grant of lease (3) Post-lease monitoring and control. Prospecting licence relates to pre-leasing period. While examining the contention of the Respondents, it is necessary to bear in mind the nature of activity in the granite mining. Unlike any other mining, in granite mining/quarrying, it is not actually digging pits; but cropping and mining of the tops of hillocks and mountains, thus destroying and scarring the landscape for ever. If a prospecting licence is to be granted, it is for the purpose of exploring or locating or proving the granite deposits. While so exploring for granite deposits, though prospecting has to be executed in accordance with the Scheme, the granite miners would certainly crop and cut the hillocks and mountains.

39. In case granite is not found or located, the area will be destroyed scarring the landscape for ever. The biggest problem is the unsustainable activity of granite mining. In case granite is not prospected, private granite miners/prospecting licence holders hardly have any plan for rehabilitation of the area. Rehabilitation is generally non-existent resultantly if granite is not prospected, the responsibility of the rehabilitation of the area is with the Government. In such cases, prospecting licence would impact negatively on the proposed mining apart from the negative impact on the Environment.

40. After granting prospecting licence, assuming the granite deposit is prospected for exploring/locating the granite deposits, the prospecting licence holder, who has already done a substantial investment in exploring would claim preferential right and in such case the Government may have to consider the preferential right of the prospecting licence holder. In granting of quarrying lease, the concern of the Government could only be (i) effective quarrying, (ii) to fetch more revenue either by trade within the country or by export of polished minerals. Viewed from any angle, there are justifiable reasons for the Government not to grant prospecting licence in case of Government lands. On

the other hand, by getting the report of the revenue officials and the experts and when the existence of the granite is established otherwise and thereafter the particular area is notified in the Gazette inviting applications under tender-cum-auction system ensuring transparency and also augmenting the State revenue. Having regard to larger issues of conserving the mines and environment, no person has any right to demand issuance of prospecting licence in respect of Government lands.

41. The power of the State Government in the matter of grant of lease, contracts, licences and rules framed under TN MMC Rules are only in response to environmentally damaging granite mining. Article 48-A of the Constitution of India states that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Under Article 51-A of the Constitution, one of the fundamental duties on every citizen is the duty to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. It is for the State Government to decide how the deposits should be exploited and environmental considerations and how the industrial requirement should be satisfied. The State Government has to balance by having greater control and vigil and at the same time strike a balance between the preservation of environment and utilisation of the granite. While State Government foresees in terms of Revenue, at the same time greater responsibility lies upon it to preserve the precious mineral for future generations. The Committee constituted by the Government examined in detail the GCD Rules and also TN MMC Rules and the Committee made suggestions. Based on the advice of the Committee, the Government has amended the Rules by introducing tender-cum-auction for the Government owned lands, where existence of granite has been established and at the same time, distinguishing patta lands. Rule 8-A of TN MMC Rules is in consonance with the GCD Rules in its letter and spirit. As such, we do not find any inconsistency of Rule 8-A with the Central Rules.

42. The Granite is a natural precious mineral. Rules are framed mainly for conservation and systematic development of and scientific mining to conserve the granite resources and to prescribe a uniform frame-work with regard to systematic and scientific exploitation of granite throughout the Country. u/s 15, when the State is conferred with the powers to frame rules as to grant of mining lease and regulating the same, the State is enjoined with a duty to ensure scientific mining to conserve the natural resources. Environmental protection, being a constitutional mandate, in respect of Government lands, State Government is well within its legislative competence in not opting for prospecting licence and the Respondents cannot demand for prospecting licence.

43. Further contention of Respondents is that if the State Government reject their application for prospecting licence, the Respondents will be deprived of their right as being the first applicant. The contention of the Respondents that they will have the preferential right as first applicant cannot be countenanced. In

Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others, , holding that the principle of "first come, first served" is not applicable for grant of lease, the Supreme Court held as under:

35. Now, to turn to the contentions urged before us: Dr Singhvi, who appeared for ORIND, vehemently contended that the rejection of the application of ORIND for a mining lease was contrary to the statutory mandate in Section 11(2); that, subject only to the provision contained in Section 11(1) which had no application here, the earliest applicant was entitled to have a preferential right for the grant of a lease; and that a consideration of the comparative merits of other applicants can arise only in a case where applications have been received on the same day. It is no doubt true that Section 11(2) of the Act read in isolation gives such an impression which, in reality, is a misleading one. We think that the sooner such an impression is corrected by a statutory amendment the better it would be for all concerned. On a reading of Section 11 as a whole, one will realise that the provisions of Sub-section (4) completely override those of Sub-section (2). This Sub-section preserves to the S.G. (State Government) a right to grant a lease to an applicant out of turn subject to two conditions: (a) recording of special reasons and (b) previous approval of the C.G.(Central Government) It is manifest, therefore, that the S.G. is not bound to dispose of applications only on a "first come, first served" basis. It will be easily appreciated that this should indeed be so for the interests of national mineral development clearly require in the case of major minerals, that the mining lease should be given to that applicant who can exploit it most efficiently. A grant of ML, in order of time, will not achieve this result.

44. In Dharambir Singh Vs. Union of India (UOI) and Others, , the Supreme Court held that for the grant of mining lease, State Government has to exercise its discretion to grant or refuse to grant any prospecting licence to any applicant by observing as under:

4. Thus it would be seen that while granting a prospecting licence or mining lease, the area of discretion has been circumscribed by several factors enumerated in Section 11. In grant of mining lease of a property of the State, the State Government has a discretion to grant or refuse to grant any prospective licence or licence to any applicant. No applicant has a right, much less vested right, to the grant of mining lease for mining operations in any place within the State. But the State Government is required to exercise its discretion, subject to the requirements of the law. Therefore, the Tribunal of the Central Government has rightly held that it being in the area of discretion of the State Government, merely because the applicant had applied for, the State Government was not enjoined to grant the mining lease. The petitioner had taken the plea that since he alone had discovered the mines, he has got a preferential right over any other person. The Tribunal of the Central Government and the High Court rightly rejected that contention of the petitioner; that contention has not been pressed before us. We find no illegality in the order of

the Tribunal refusing to grant mining lease to the petitioner nor is there any illegality in the order of the High Court.

(underlining added)

45. Rule 19-A deals with prospecting licence and quarrying lease for granite in ryotwari lands, wherein the procedure for grant of prospecting licence in respect of ryotwari lands has been stated. On behalf of the Respondents, it was contended that no distinction could be made by the State Government between Government owned lands and Ryotwari lands, since in both the categories of lands underneath minerals belonging to the State Government. As pointed out earlier, as regards patta lands, the Committee felt that where ever the applications are received for grant of quarry lease, after establishing the existence of granite deposits thereon, quarry leases can be granted straight away. However, it as suggested that to establish the existence of granite deposits, the rules for the grant of prospecting licence in patta lands could be framed.

46. As we pointed out earlier, under Rule 4 of GCD Rules, no lease shall be granted by the State Government unless it is satisfied (i) there is evidence to show that the area for which lease is applied for has been prospected earlier for granite; or (ii) the existence of granite therein has been established otherwise. Insofar as Ryotwari lands, it may not be possible for the State Government to satisfy about the existence of granite as it may not be possible for the State Government to enter into the ryotwari lands and to explore the existence of the granite deposits. To enter into the ryotwari lands and to do such an exercise of exploring the existence of granite deposit, the consent of the land owner has to be obtained. But as per Rule 4, for grant of quarry lease, the State Government has to be satisfied as to the existence of the granite. In such circumstances, State Government thought it fit to amend Rule 19-A in granting prospecting licence. That apart, in case of patta lands, after granting prospecting licence, if existence of granite is not established, either the pattadar or at his instance, the holder of prospecting licence will rehabilitate the area, if not from the point of ecology, atleast to put the land to other uses either for agriculture or other purpose the pattadar would certainly take steps to rehabilitate the lands, in case if the granite is prospected or not prospected. In our considered view, the difference in the procedure contemplated for grant of quarry lease in respect of Government owned lands and patta lands is not only reasonable but also necessary one. As per Section 15 of MMDR Act, since it is for the State Government to regulate grant of quarry leases, mining leases in respect of minor minerals, it is well within the legislative competence to make such distinction between Government owned lands and patta lands. Merely because a distinction is made in patta lands granting prospecting licence, it does not render Rule 8-A inconsistent with the Central Rules.

47. Insofar as the Government owned lands, for grant of quarry lease, tender-cum-auction procedure contemplated is only to ensure transparency and to

augment the revenue of the State. The procedure of tender-cum-auction introduced in respect of Government lands is also well within the legislative competence. u/s 15 of the Act, the State Government may 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. As pointed out earlier, as per Section 15(1A), the State Government may make rules in respect of minor minerals on any one of the matters - (a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor; (b) the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent; (c) the matters which may be considered where applications in respect of the same land are received within the same day; (d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed; (e) the procedure for obtaining quarry leases, mining leases or other mineral concessions; (f) (g) ... (h) ... (i) (j) ... (k) (1) (m) (n) ... (o)....." 48. The tender-cum-auction procedure and other terms and conditions contemplated under Rule 8-A squarely fall within the manner in which the application may be made, which is well within the powers conferred upon the State Government u/s 15 of the Act. In G.O.Ms. No. 608, dated 2.9.1989, tender system was introduced in Rule 8-A for grant of granite quarry lease and the same was upheld by the Division Bench of this Court in W.P. Nos. 8542 of 1990 etc., batch - V. Gangarathinam v. State of Tamil Nadu 1990 T.L.N.J. 374. Subsequently, by G.O.Ms. No. 103/Industries/MMC(1) dated 13.7.1996, Government introduced tender-cum-auction system in lieu of the tender system. As per Rule 52 of GCD Rules, the provisions of the Minor Mineral Concession Rules or any other rules framed by the State Government u/s 15 of the Act shall be applicable to granite quarry leases to the extent they are not repugnant to or inconsistent with these rules. In view of Rule 52 of GCD Rules, tender-cum-auction system cannot be challenged as ultra vires the main Act or Central Rules.

49. On behalf of the Respondents, much emphasis was made upon the averments in Para 2(iv) of the counter filed in W.P. No. 16359 of 2001, wherein it is averred that the State Government has communicated with the Central Government that Rules 4, 8 and 10 of GCD Rules, 1999 dealing with the provisions of prospecting licences are in contradiction to the provision of the existing Rule 8-A of the TN MMC Rules, which provides for the tender-cum-auction system. On behalf of the Respondents, it was submitted that the State Government itself felt that Rules 4, 8 and 10 of GCD Rules are in contradiction to the existing Rule 8-A of TN MMC Rules and requested for deleting the provisions relating to prospecting licence and therefore apparently Rule 8-A is repugnant to the Central Rules and the entire Rule 8-A has to be struck down. Of course, the averments in Para 2(iv) refers to a communication of the State Government with the Central Government stating that the Rules 4, 8 and 10 of GCD Rules are in contradiction to the provision of the existing Rule 8-A and requesting to have the

provisions relating to the prospecting licence deleted from the Central Rules.

50. The learned Advocate General has drawn our attention to the reply sent by Government of India in D.O.1(3)/98 MVI (Pt) dated 20.10.1999 that the Central Government has informed that the Rule 8-A of TN MMC Rules 1959 as amended are not mutually contradictory. The views of the Central Government in the said letter reads as under:

.... Please refer to your D.O. letter No. 1062/MMB2/99-7 dated the 9th September, 1999 regarding the Granite Conservation and Development Rules 1999 (GCDR, 1999).

2. We have had the statutory position ascertained. Rule 4 of the GCDR 1999 states that no lease shall be granted by the State Government unless it is satisfied that there is evidence to show that the area for which the lease is sought has been prospected earlier for granite or the existence of granite therein has been established otherwise. Hence if under the Tamil Nadu Minor Mineral Concession Rules, 1959 (T.N. MMCR, 1959) applications for mining lease are invited by the State Government after satisfying itself about the existence of granite in the blocks, the provisions of Rule 4 of the GCDR 1999 are not violated. Evidently, under Rule 8A of TN MMCR, 1959 the State Government of Tamil Nadu would be putting blocks for auction only after it is satisfied about the existence and quality of granite deposits on the basis of some post-exploratory/mining operations; thus, Rule 4 of GCDR, 1999 and Rule 8A of TN MMCR, 1959 are not mutually contradictory.

3. Moreover GCDR 1999 does not cover the procedure for obtaining mining leases for granite as these are specifically excluded from the purview of the Central Government u/s 14 of the Mines & Minerals (Regulation & Development) Act, 1957, granite being a minor mineral.

4. As for your suggestion to delete Rules 4, 8 and 10 of GCDR, 1999 dealing with the provisions of prospecting licences, it is felt that it is neither necessary, nor desirable, to do so in the larger interest of conservation and systematic development of granite resources in the country....

(underlining added)

51. The views of the Central Government that the TN MMC Rules are not mutually contradictory with Rule 4 of GCD Rules, as the mining lease would be granted by the State Government only after being satisfied about the existence of granite and the provisions of Rule 4 are not violated. Further, this letter is written by the Secretary, Ministry of Steel & Mines, department of Mines, Government of India, who is competent to clarify and he has also done so after ascertaining statutory provisions in this regard. In our considered view, the above views of the Central Government carries much weight and militates against the contention of Respondents.

52. Contending that any communication from the Central Government cannot

override the rules and executive instructions cannot override the statutory provisions, the learned Senior Counsel placed reliance upon *Godrej and Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra and Others*, by relying on para No. 65 of the said judgment and *General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and Others*, page 205 at Para No. 31.

53. There is no doubt over the proposition that Executive instructions cannot override the statutory provisions. But the observation of the Central Government in its correspondence dated 20.10.1999 is that Rule 8-A of TN MMC Rules and Rule 4 of GCD Rules are not mutually contradictory. In our considered view, its effect is not to override the statutory provisions but only in the nature of clarification.

54. Finding of learned single Judge:- Chapter IV of GCD Rules deals with "Mining Plan". As per Rule 12, no lease shall be granted or renewed by the State Government unless there is a mining plan duly approved by the State Government. Rule 13 deals with mining plan to be prepared by a recognised person and Rule 14 deals with grant of recognition by the State Government. Rule 15 deals with approval and submission of mining plan. Rule 15 reads as under:

15. Approval and submission of mining plan.- On receipt of the application for grant of mining lease for undertaking mining operations for granite, the State Government shall take decision to grant precise area for the said purpose and communicate such decision to the applicant and on receipt of the communication from the State Government of the precise area to be granted, the applicant shall submit a mining plan within a period of three months from the date on which such communication is received or such other period as may be allowed by the State Government for approval and the said mining plan shall incorporate... (the particulars therein).

55. Rule 15 is not concerned with prospecting licence but with mining plan. By reading of Rules 12 to 15 occurring in Chapter IV of GCD Rules, it is evident that the mining plan comes in the next stage after the intention to grant lease/letter of commitment to grant lease. As per Rule 4, where the area has been prospected for granite or the existence of granite has been established otherwise, the lease shall be granted by the State Government. The next stage is, the approval of mining plan as a pre-requisite to the grant of lease. The mining plan comes into play only in the next stage. While so, the learned single Judge erred in examining Rule 8-A Sub-rule 5(c) of TN MMC Rules with Rule 15 of GCD Rules in holding that Rule 8-A is inconsistent with the GCD Rules. Rule 8-A Sub-rule (8)(a)(iii) of TN MMC Rules deals with "mining plan". As per Rule 8-A(8)(a)(iii) of the TN MMC Rules, the applicant should submit the approved mining plan as per Rule 12 of the GCD Rules to the State Government within three months from the date of receipt of communication from the State Government. Rules 12 to 15 of GCD Rules comes into operation only when the State Government takes decision to grant lease to grant/letter of commitment

and directing to remit the balance amount.

56. Though Chapter IV starts with the "Mining Plan", learned Senior Counsel placing reliance upon Karnataka Power Transmission Corpn. and Another Vs. Ashok Iron Works Pvt. Ltd., submitted that the title of the Chapter or marginal notes cannot afford any legitimate aid to the construction of the Section. Though there is no quarrel over the well settled proposition that we cannot be governed by the title of the Section/Chapter, it is pertinent to note that Chapter IV of GCD Rules deals with the second stage of submitting mineral plan. That is after the intention of the Government to grant lease has been communicated to the lessee, the "Mining Plan" has to be submitted and in such context the heading of Chapter IV "Mining Plan assumes importance.

57. The learned single Judge was not right in referring to Rule 15 and saying that when ever the application is filed the State Government has to take decision on the same in accordance with law without rejecting the same. The conclusion of the learned single Judge striking down Rule 8-A holding that it is inconsistent with the scope of Rule 15 cannot be sustained and is liable to be set aside.

58. Rule 8-A Sub-rule (2)(a)(iii) and Sub-rule (9)(g) and (h) - Existing Industry or having industrial programme to use quarried mineral in his own cutting and polishing industry proposed to be set up in Tamil Nadu:- As per Rule 8-A Sub-rule (2)(a)(iii), no lease shall be granted unless the applicant is having an existing industry in Tamil Nadu or is having a distinct industrial programme to utilise mineral in his granite cutting and polishing industry proposed to beset up in Tamil Nadu. As per Rule 8-A(6)(b)(iii) of TN MMC Rules, the State Government may grant the lease in favour of the single applicant if in their opinion the tender amount offered by the applicant is reasonable and the grant of the lease to the applicant will be in the interest of mineral development and the industry already set up by the applicant, if the applicant has a distinct industrial programme for setting up of an industry in Tamil Nadu shall be issued only with a letter of commitment subject to the conditions stipulated therein. As per Rule 8-A Sub-rule (7), after the conclusion of the auction-cum-tender procedures, the District Collector shall forward all the applications received to the State Government through the Director of Geology and Mining. On receipt of proposal from the District Collector, the Director of Geology and Mining will request the Technical Committee constituted by the State Government, from time to time to inspect the existing industry of the highest bidder/tender applicant, verify the industrial programme of the applicant and give its report to the Director of Geology and Mining who shall forward the same to the State Government. As per Rule 8-A Sub-rule (8)(a)(i), on receipt of the recommendations of the Director of Geology and Mining for grant of lease for an area, the State Government shall communicate its decision to grant the lease or issue the letter of commitment. As per Rule 8-A Sub-rule (8)(a)(ii), in the case of the applicant having existing industry, the State Government shall communicate its decision to grant the lease for the precise area and to remit the balance amount. In the case of the

applicant who has furnished a distinct Industrial Programme to set up an industry, the State Government shall issue a letter of commitment communicating the Government's intention to grant the lease. As per Sub-rule (8)(a)(iii), when the applicant has remitted the balance amount within the specified period and submitted a report on the completion of the setting up of the Industry, the State Government shall place the same before the Technical Committee about the satisfactory completion of the industrial unit. In case the holder of the letter of commitment fails to set up the industry even in the extended period, the letter of commitment issued by the State Government shall be deemed to have been cancelled and the entire amount remitted by the applicant towards the grant of lease shall stand forfeited to the Government.

59. As per Rule 8-A Sub-rule (9)(g) and (9)(h), the mineral should be utilised in own industry set up in Tamil Nadu. The said Sub-rules (9)(g) and (9)(h) reads as under:

(g) The lessee shall remove and transport the mineral from the leasehold area only to his industry set-up in Tamil Nadu after obtaining transport permit from the District Collector concerned or any Officer authorised by him in this behalf and complying with the other conditions stipulated in these rules.

(h) The lessee shall not utilise the mineral in any manner other than utilising in his own industry set-up in Tamil Nadu. The lessee shall keep correct accounts showing the quantity and other particulars of all minerals quarried and transported from the quarry site; obtained at the factory and despatched from the factory. The lessee shall also allow any officer authorised by the State Government or the Director of Geology and Mining or the District Collector in this behalf to inspect the industry and verify his records and accounts and furnish such information and returns as may be required by him.

60. The contention of Respondents is that Rule 8-A(2)(a)(iii), which imposes pre-condition that no lease shall be granted unless the applicant is having existing industry in Tamil Nadu or is having a distinct industrial programme to utilise the mineral in his granite cutting and polishing industry proposed to be set up in Tamil Nadu is ultra vires MMDR Act. Further contention of the Appellant is that Rule 8-A Sub-rule (9)(g) and (h) stipulating that the lessee shall remove and transport the mineral only to his industry set up in Tamil Nadu and that he shall not utilise the mineral in any manner other than utilising in his own industry set up in Tamil Nadu is ultra vires the Central Rules and Section 15 of MMDR Act. According to the Respondents, there can neither be a pre-condition by the State Government nor a policy of the State Government in respect of a matter, which is in the occupied field so far as development of granite and therefore pre-requisite for grant of lease or even imposing the same as post-grant condition is ultra vires the Central Rules.

61. The learned Senior Counsel Ms. Nalini Chidambaram contended that Section 15 of MMDR Act cannot overrule the provisions of the Act, which is formulated

under Entry 54 of the List I of Seventh Schedule to the Constitution, which is within the exclusive province of the Parliament and hence the State Government introducing such pre-condition for grant of lease and imposing condition as to how the excavated mineral should be used is beyond the scope of the power of State Legislature conferred u/s 15 of MMDR Act.

62. Challenging Rule 8-A(2)(iii) of TN MMC Rules, it was contended that imposing a pre-condition for grant of licence that the lessee should have an existing industry or a distinct industrial programme to utilise the mineral in his granite cutting and polishing industry proposed to be set up in Tamil Nadu, it was contended that the said sub-rule in violation of the GCD Rules cannot be incorporated as a pre-condition for grant of licence. In support of his contention, learned Senior Counsel Mr. V.T. Gopalan placed reliance upon Union Territory, Chandigarh Admn. and others Vs. Managing Society, Goswami, GDSDC, , wherein the Supreme Court has held that a contract in violation of mandatory provisions of law can only be read and enforced in terms of the law and no other way and the question of equitable estoppel does not arise because there can be no estoppel against a statute.

63. In General Merchant Association and others Vs. The Corporation of Chennai, , where the First Bench of this Court was considering the grant of licence in respect of public fruit market, it was held that the contract which does not conform to the requirements and statutory formalities (or) the Act is not enforceable. To the same effect, reliance was placed upon Mrs. Shoba Viswanatha v. D.P. Kingsley 1996 (I) CTC 620, wherein it was held that "the position of law is clear that when the enforcement of the contract is against any provision of law, that will amount to enforcement of an illegal contract. The contract per se may not be illegal. But its enforcement requires compliance of statutory conditions, failure of which will amount to statutory violation. A court which is expected to enforce the law, cannot be a party to such a decree."

64. The tender-cum-auction procedure and Rule 8-A(2)(a)(iii) imposing a pre-condition of having an existing industry or having an industrial programme to utilise the mineral in own industry is only regulatory, which is in accordance with provisions of Section 15. Such a regulatory condition is incorporated as pre-condition for grant of lease to accomplish the object of GCD Rules i.e., scientific mining and to conserve the granite resources. In our considered view, such a pre-condition for grant of licence is only for the purpose of regulating the grant of lease of quarry i.e., the applications for grant of quarry lease, post-mining lease and the conditions subject to which the authority may grant quarry leases and mining leases are well in accordance with Rule 15(1A) of the MMDR Act. Such a condition to have existing industry and having a distinct industrial programme is to ensure sustainable development. Main goal is to preserve the environment and preserving what is left for future generation and at the same time promoting industries in the State by generating direct and indirect employment opportunities.

65. It was further argued that Sub-section (1) of Section 15 of MMDR Act provides that the State Government should make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for the purposes connected therewith and Section 15 of the Act or any provisions of the Act do not provide for contingencies viz., deal with trade, mandatory requirements of establishing a cutting and polishing unit within the State of Tamil Nadu and such contingencies imposed by TN MMC Rules are outside the scope of delegation of powers conferred u/s 15 of the Act. To substantiate their contention that there is no power upon the State Government under the said Act to exercise control over minor minerals after they have been excavated, reliance was placed upon decision of the Supreme Court in State of Tamil Nadu Vs. M.P.P. Kavery Chetty, . In the said case, while considering the preference given to the State Government Company/Corporation in quarrying granite in Ryotwari lands and considering the post-excavation control by fixing the minimum price for sale, the Supreme Court held as follows:

23. It is difficult to see how granite resources can be protected by controlling the sale of granite after its excavation and fixing the minimum price thereof.

24. There is no power conferred upon the State Government under the said Act to exercise control over minor minerals after they have been excavated. The power of the State Government, as the subordinate rule-making authority, is restricted in the manner set out in Section 15. The power to control the sale and the sale price of a minor mineral is not covered by the terms of Clause (o) of Sub-section (1-A) of Section 15. This clause can relate only to the regulation of the grant of quarry and mining leases and other mineral concessions and it does not confer the power to regulate the sale of already mined minerals.

(underlining added)

66. The above observation of the Supreme Court has to be understood in the light of the grounds of challenge and the context in which the Supreme Court made the above observations and are relevant to be noted. In Kavery Chetty's case, as per G.O. No. 214 dated 10.6.1992, first proviso was added to Rule 19-A giving preference for State Government Company/Corporation for quarrying granite and other specified minor minerals in ryotwari lands, which was upheld by the Supreme Court by holding that valid differentia exists between the State Government company/Corporation and private miners and the classification has rational nexus with the object sought to be achieved. By the same G.O. No. 214 dated 10.6.1992, Rules 8-D and 19-B of TN MMC Rules were inserted by introducing post-excavation control by State Government over minor minerals, whereby the Rules empowered the State Government or its officers or State Government Company or Corporation to control sale of quarried granite or other rock suitable for ornamental or decorative purposes and also to fix the minimum price for sale thereof. Having regard to the post-excavation control by State Government by fixing minimum price for the sale of mineral, the Supreme Court held that there is no power conferred upon the State Government to exercise

control over minor minerals after they have been excavated. The challenge before the Supreme Court in Kavery Chetty's case was entirely different. The question of using the mineral in own industry and industrial development within the State was not the subject matter before the Supreme Court.

67. In *Ranjana Granites (P) Ltd. and Others Vs. The State of A.P. and Others*, , the Division Bench of High Court of Andhra Pradesh considered the validity of certain provisions of Andhra Pradesh Minor Mineral Concession Rules 1966. Rule 12(5)(f)(i) prescribes that notwithstanding anything contained in Rule 31(a) Rule dealing with conditions of permit or lease), the quarry leases granted against the establishment of a granite cutting and polishing unit are liable for termination, if the unit is not established within a period of two years from the date of grant of lease within the State. The proviso to Rule 12(5)(f)(i) empowers the State Government to extend the time for such establishment of the unit for a further period of one year in deserving cases and for reasons to be recorded in writing. Rule 12(f)(ii) prescribes that the lessees can transport, including inter-state movement, and export the rough blocks within the first two years of the grant of the lease or till the cutting and polishing unit is set up, whichever is earlier. It also prescribed that after the unit is set up or after two years from the date of grant, the lessee is allowed to make inter-State movement or export the rough blocks in the ratio of 1:1 for black granite and 3:7 for coloured granite, namely, in respect of black granite the export should satisfy the ratio of one block of processed granite for one block of raw granite and three blocs of processed granite for seven blocks of raw granites in regard to coloured granite.

68. Considering the validity of Note under Rule 12(5)(e) and Rule 12(5)(f)(i) and Rule 12(5)(f)(ii) of A.P. Minor Mineral Concession Rules, 1966 and holding that once granite is extracted, the ownership of the granite so extracted passes on from the Government to the leaseholder, placing reliance upon Kavery Chetty's case, the Andhra Pradesh High Court held as under:

As per the scheme of the Act and the Rules, mining leases are granted on payment of royalty and seigniorage fee as fixed by the State Government. As soon as the royalty and the seigniorage fee are paid tot he Government in respect of mining lease, lessee becomes the owner of the minor mineral and he is free to sell the same in domestic market or export the same subject to laws made by the competent authority. Whatsoever may be the right of the Government initially over the underground minerals, once the mining lease is granted, royalty and seigniorage fee are paid by the lease-holder to the Government and granite is extracted, the ownership of the granite so extracted passes on from the Government to lease-holder and for all purposes he will be deemed to be the owner. Once the lease holder becomes owner of the property, any control or interference not provided for in the act, amounts to violation of his rights.

69. Insofar as the contention that the lessees under a contract cannot challenge the conditions of lease in a Writ Petition, the Andhra Pradesh High Court held as

under:

The petitioners are challenging the statutory rules framed by the State Government by virtue of the power conferred u/s 15 of the Act. The said rules are statutory in character though they are in the form of conditions of lease. Merely because the statutory rules are in the form of conditions of lease, they are not immune from challenge in proceedings under Article 226. It is well settled principle of law that where the statutory rules go against the main Act, or travel far beyond the scope of the Act or go against the provisions of constitution, they can be challenged in writ proceedings. Therefore, we are not able to agree with this contention of the learned Advocate General.

70. Laying emphasis upon the judgment of the Andhra Pradesh High Court, which was upheld by the Supreme Court of India, learned Senior Counsel Ms.Nalini Chidambaram contended that imposing of mandatory conditions to have an industry of processing unit in the State of Tamil Nadu in Rule 8-A Sub-rule (2)(a)(iii), Sub-rule (6)(iii) and Sub-rule (7) and using the excavated mineral in own industry set up in Tamil Nadu Sub-rule (9)(g) and (h)) are ultra vires the MMDR Act. The contention of the Respondents is that mining leases are granted on payment of royalty and seigniorage fee by the State Government and once royalty and seigniorage fee are paid by the lessees, as held in the Kavery Chetty's case, there is no power conferred upon the State Government under the said Act to exercise control over minor minerals after they have been excavated and any such restriction would be violative of Articles 301 and 304 of the Constitution.

71. With due respect, we are unable to subscribe to the views taken by the Andhra Pradesh High Court. As pointed out earlier, the observation of the Supreme Court in Kavery Chetty's case as to the power of the Supreme Court over excavated minerals was in a different context. As per Sub-rules 6(b)(iii), 7, 8, 9(g) and 9(h) of Rule 8-A of TN MMC Rules, it is only to promote the industrial development in the State of Tamil Nadu and to earn more revenue by trade within the country and by foreign exchange by way of exporting finished products i.e., value added products (polished granites) to foreign countries. The State Government has imposed such a condition that the quarried granite in the Government lands will be granted to the persons, who are having an existing granite cover and polishing unit in the Tamil Nadu. In case of lessee, who is not having existing industry, should have an industrial programme and should set up the granite cutting and polishing industry to whom the letter of commitment shall be given.

72. The learned Advocate General submitted that the very purpose of such provision in the Rules is only to encourage the export of value added products viz., polished granite so that the Rule provides for double purpose of active quarrying and encouraging industrial activity of polishing in the State and to preserve employment opportunities within the State. We find much force in the contention of learned Advocate General that such a policy would enhance not

only the enhanced foreign exchange but also the employment opportunities for quarrying and polishing industry and thereby promote the industrial development in the State of Tamil Nadu.

73. The provisions of Rule 8-A of TN MMC Rules was introduced in 1972 for direct grant of quarry lease for granites to private persons on condition that they should have either an existing industry or proposed to set up an industry for value addition by cutting and polishing of granites obtained from the leasehold lands. As per Rule 8-A(2)(a)(iii) of TN MMC Rules, no lease shall be granted unless the applicant is having an existing industry in Tamilnadu or is having a distinct industrial programme to utilise a mineral in his cutting and polishing industry proposed to be set up in Tamil Nadu. Unless those pre-conditions are fulfilled, the applicant was not entitled to obtain lease at all.

74. The grant of lease was tied up with the setting up of industry and industrial programme as a pre-grant condition was in vogue even prior to GCD Rules. Likewise, Sub-rules 9(g) and 9(h) of Rule 8-A - utilisation of mineral in own industry set up in Tamilnadu was also in force even prior to GCD Rules, 1999. In *V. Gangarathinam v. State of Tamil Nadu* rep. by commissioner & secretary to Government reported in 1990 TLNJ 374, a Division Bench of this Court has considered the validity of Rule 8-A Sub-rule (2)(a)(iii) that lease for quarrying black granite can be granted to those persons, who require the mineral for their existing industry/industries within the State of Tamil Nadu or who are having a distinct industrial programme for utilisation of the said minerals in their polishing unit/units within the State of Tamil Nadu. The Division Bench of this Court in *Gangarathinam v. State of Tamil Nadu* reported in 1990 TLNJ 374 upheld the above provisions and held that the rules are intended to conserve the minerals and development of the minerals in public interest, inasmuch as the validity of Rule 8-B, 8-C, 19-A and 38 of TN MMC Rules has been upheld by the Division bench of this Court, it is not open to the Respondents to raise the same contentions.

75. It is needless to mention here that so far as the question of tender-cum-auction, it is not new to the State. Similarly the question of granting of the lease only to those persons who have got industry was in fact introduced as early as 1972 itself. In fact, *Gangarathinam's* case 1990 T.L.N.J. 374 itself is a case, which was decided on the question of granting of lease in respect of owner of an industry or to persons who establish industry also. In fact, the State Government, after the enactment of GCD Rules by the Central Government Rules, has taken precaution that the existing rules to be conformity with the Central Government Rules, where it is inconsistent or otherwise. And having done so, they have rightly incorporated the very enactment into the State Rules so as to effectively manage and effectively control the affairs of the minerals in the State so that the same could be used for the betterment of the State. So, in this connection, it is worthwhile to mention that the inclusion of Rule 8-A is only on the basis of the implementation of the GCD Rules, 1999. Especially when the

Respondents herein are aware and were parties to the earlier proceedings and the earlier Rules also denote the same it is not known in what way they could challenge the present provisions, which was nothing but a replica of the earlier provisions and as suitably modified in accordance with the Central Rules.

76. Learned Senior Counsel Mr. V.T. Gopalan has submitted that as against the judgment of the Division Bench in *Gangarathinam v. State of Tamil Nadu* reported in 1990 T.L.N.J. 374, SLP was preferred before the Supreme Court in SLP (Civil) No. 415 of 1991 and while admitting the S.L.P, the Supreme Court has granted status quo as on 12.10.1990 and the SLP was tagged with the pending Writ Petitions filed against the Hind Stone case. Further contention of Respondents is that from 1.6.1999, the State Government did not enforce Rule 8-A in view of the pendency of the Writ Petitions filed against the validity of Rule 8-A.

77. Learned Advocate General placed reliance on a decision of a Division bench of this Court dated 13.4.2007 in W.A. NO. 55 of 2007 (*The Secretary, Industries Department v. K.N. Solairajan*), wherein Rule 8-A(2)(a)(iii), 9(g) and (h) - pre-condition of having existing industry or industrial programme were challenged. After extracting the relevant provisions, the Division bench of this Court upheld Rule 8-A(2)(a)(iii) holding that the intention of the Government is to promote industries within the State by observing as under:

18. From the aforesaid statutory rules it will be evident that the lease to quarry granite could be granted only to "an existing industry of the State of Tamil Nadu for cutting and polishing granites or to such proposed industry". Except for owner of such industries of the State of Tamil Nadu, no lease could be granted to any person, who do not intend to go for cutting and polishing granites within the State. On the other hand, if the lease holders fail to set up such industry within the prescribed limit, the competent authority of the appellant may refuse to grant extension of lease.

19. The intention of the State Government is clear from the rule, the relevant portion of which has already been quoted above, that the persons, who have been granted lease under the rule cannot take out nor could sell the granite in open market without taking it to their respective industry and without cutting and polishing the granites. Learned single Judge, while rightly held that an executive insutrction cannot override a statutory rule, failed to notice Rule 8-B as per which licence is granted only to an existing or proposed industry in Tamil Nadu for utilisation of the mineral in his granite cutting and polishing industry.

We fully agree with the above view taken by the Division Bench.

78. Learned Advocate General has also placed reliance upon another Division Bench decision of this Court dated 27.4.2009 in W.P. Nos. 23317 and 24211 of 2008 (*D. Sivakumar v. Government of Tamil Nadu*), whereby the Division Bench of this Court has upheld Rule 38-B of the TN MMC Rules by which right to exploit sand in the State of Tamil Nadu became vested with the Government through the

Public Works Department. Holding that such rule was intended to eliminate indiscriminate and scientific sand quarrying and also to protect environment invoking doctrine of public trust, the Division Bench, referring to the other decisions, observing as under:

17. Doctrine of Public Trust

In *State of Tamil Nadu Vs. Hind Stone and Others*, , it has been held as follows:

6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation....

Thus, the Hon'ble Supreme Court has evolved the principle of doctrine of public trust. As of the said theory, the natural resources are not only meant for the present generation but should be preserved for the posterity. The Government and the present generation acts as a trustees for the future generation. The said principle was also followed by the Hon'ble Supreme Court in *T.N. Godavarman Thirumulpad Vs. Union of India (UOI) and Others*, , wherein the Supreme Court was pleased to hold that the natural resources are the assets of the entire nation, that is the obligation of all concerned including the Union Government and the State Government. Therefore, under the principle of public trust doctrine also, the impugned rule will have to be sustained....

Therefore, under the principle of "doctrine of public trust", the impugned Rule 8-A Sub-rule (2)(a)(iii) and 9(g) and (h) will have to be sustained.

79. Contending that the judgments are not to be read as a whole and not to be read as statute and even one different in fact would make vast difference, the learned Senior Counsel Mr. V.T. Gopalan placed reliance upon *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, , wherein the Supreme Court has held as under:

143. It will not, therefore, be correct to contend, as has been contended by Mr Nariman, that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefor, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties.

80. In *Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others*, , the Supreme Court held as under:

23. It is now well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is equally well settled that a little

difference in facts or additional facts may lead to a different conclusion.

81. We do not have any doubt over the proposition that the words and expressions used in the judgment are not to be construed in the same manner as statutes or words or expressions defined in statutes. But the fact that Rule 8-A(2)(a)(iii) has been upheld by the Division Bench of this Court goes a long way strengthening the contention of the Government. Likewise, the principle of doctrine of public trust evolved by the Supreme Court and referred to in W.P. Nos. 23317 and 24211 of 2008 is applicable in all cases of conserving natural resources. There is a huge demand for granite both within the country and in the international market. Such precious natural resources of the nation cannot be allowed to be exploited in a manner not being properly regulated.

82. In our considered view, the purpose of the object behind the Rules of insisting to have an industry in the State of Tamil Nadu and to use the excavated minerals in own industry in the State of Tamil Nadu is only to encourage the export/inter-State sale of value added product viz., polished granite so that the Rule provides for total purpose of active quarrying and also encouraging industrial activity of polishing and generating employment opportunity within the State of Tamil Nadu.

83. Sustainable development can be achieved only by caring for involvement by scientific quarrying. Primarily the State is concerned to consider the importance of minerals and also impose appropriate conditions in preserving environment and at the same time ensuring industrial development. When the State Government has imposed the condition of utilisation of mineral in own industry set up in Tamilnadu to promote the industries within the State of Tamil Nadu and in furtherance of its industrial policy, it cannot be said to be ultra vires the MMDR Act or beyond the legislative competence of the State Government's power conferred u/s 15 of the Act. In our considered view, Rule 8-A Sub-rule (2)(a)(iii), and Sub-rules (6), (7), 8, 9(g) and (h) of Rule 8-A are not in violation of MMDR Act or the provisions of GCD Rules or cannot be said to be beyond the legislative competence of the State Government and not in any way repugnant to the GCD Rules.

84. W.P. Nos. 1930 and 1931 of 1999:- W.P. Nos. 1930 and 1931 of 1999 are filed seeking for issuance of (i) writ of declaration to declare Rule 8-A(2)(iii) of TN MMC Rules, 1999 as amended by G.O.Ms. No. 103, dated 13.7.1996 as ultra vires the MMDR Act as arbitrary and violative of Article 19(1)(g) of the Constitution of India in so far as the Petitioner is concerned and for issuance of (ii) writ of certiorarified mandamus to call for the records of the proceedings of the Government, the first respondent, dated 4.11.1998 having reference No. 26867/MMBI/98-2, Industries Department and quash the same and consequently direct the Government to grant lease to the firm with reference tot he land measuring an extent of 7.28 hectares of Government poramboke land in S. No. 2/2, Kanalapadi village, Thiruvannamalai Taluk, Thiruvannamalai District and in S. No. 2/2, Kanalapadi village, Tiruvannamalai Taluk and District.

85. In these writ petitions, case of Writ Petitioner is that Writ Petitioner requested to utilise the processing unit of M/s. Gem Granites near Chennai, which is the sister concern of the Writ Petitioner - Imperial Granites Limited and the undertaking from the sister concern - M/s. Gem Granites was also sent along with their request and without considering their request, the Government rejected their request on 4.11.1998 stating that the quarry leases could not be granted without the Writ Petitioner starting up its own granite cutting and polishing industry in Tamil Nadu. The grievance of the Writ Petitioner is that in the case of M/s. Pallava Granites lease has been granted to them without setting up its own industry in Tamil Nadu and that it had only taken the processing unit on lease basis for five years from Apsara Granites Private Limited and even though Pallava Granites had taken processing unit on lease basis, lease was granted in favour of Pallava minerals and the Writ Petitioner even though was under similar footing as that of Pallava minerals, the request of the Writ Petitioner was rejected.

86. From the counter affidavit filed in W.P. Nos. 1930 and 1931 of 1999, it is seen that the Gem Granites had also obtained number of quarry leases stating that their quarried material will be processed in the Gem Granite factory at Injambakkam. According to the Government, number of Applicants cannot be allowed to join hands to process all the quarried materials in a single unit and such a move would bring in industrial deceleration instead of industrial acceleration and the very purpose of Rule 8-A 2(b)(i) of TN MMC Rules would be defeated. If the granites as obtained from the other quarry leases (of Gem Granite) and the quarried material are processed in their factory at Injambakkam or at Pudur, the Writ Petitioner also cannot process the unit at the Gem granite factory at Injambakkam or at Pudur. The case of Writ Petitioner pleading discrimination does not merit acceptance.

87. The Writ Petitioner, who is the letter of commitment holder, as per the conditions in the letter of commitment, should set up a granite cutting and polishing unit within the State of Tamil Nadu for obtaining quarry lease and the Writ Petitioner cannot challenge the validity of Rule 8-A(2)(iii) of TN MMC Rules and the Writ Petitioner is not entitled to the reliefs sought for

88. W.A. No. 716 of 2000:- W.A. No. 716 of 2000 has been preferred against the Order in W.P. No. 10593 of 1998 dated 15.11.1999. W.P. No. 10593 of 1998 was filed challenging the collection of seigniorage fee for the granite blocks quarried from the leasehold areas. The Appellant had obtained interim order dated 22.2.1998 restraining the Government and their officers from in anyway interfering with the Writ Petitioner/Appellant's right to transport the quarried granite blocks and to restrain the Respondents in any way demanding or collecting the seigniorage fee or the dead rent in respect of the quarries operated by the Appellant. As per the interim order, the Government instructed to issue transport permit until the interim order is modified or vacated subject to the condition that the Appellant firm should give an undertaking to the effect that the

firm should pay the seigniorage fee or dead rent, whichever is more, as soon as the final orders are passed in the Writ Petition. The learned single Judge dismissed the Writ Petition by order dated 15.11.1999, which is subject matter of challenge in W.A. No. 716 of 2000.

89. The contention of the Appellant that the demand for seigniorage fee or dead rent apart from the lease amount/tender amount is nothing but double taxation for the same mineral. The said contention of the Appellant cannot be countenanced. It is fairly well settled by catena of decisions that the lease amount remitted by the Appellant is the amount quoted by the Appellant for obtaining lease rights for the quarry and to enter the premises for carrying on quarrying operation. The leaseholder has to pay the due seigniorage fee as per Appendix II to Tamil Nadu Minor Mineral Concession Rules for the quantity of the mineral intended to be removed from the quarry. As per Section 15(3) of MMDR Act, the holder of a mining lease or any other mineral concession granted under any rule made under Sub-section (1) shall pay royalty or dead rent which ever is more in respect of minor minerals removed or consumed by him or his agent, manager, etc. Hence, besides the lease amount, the State Government is entitled to collect seigniorage fee or dead rent, which ever is higher. The lease amount paid by the lessee is only for obtaining the quarry lease for the lease period alone and the lessee has to pay seigniorage fee or dead rent, which ever is higher, after obtaining a quarry lease and after obtaining the lease deed. The lease amount and the seigniorage fee are different levies and Appellant is bound to pay both the lease amount as well as the seigniorage fee as per TN MMC Rules.

90. Similar question was raised in Writ Appeals viz., W.A. Nos. 137 to 144 of 2000, which have been disposed by the Division Bench by order dated 22.12.2006, where the similar contention was repelled by the Division Bench holding as under:

3. A similar question was raised in a batch of writ petitions, namely, W.P. No. 2529 of 1999 and batch, which has been disposed of separately today. In paragraph 15 of the judgment, a similar contention has been repelled in the following words:

15. The submission made by the learned Senior Counsels on behalf of the petitioners that Section 15(3) only contemplates payment of royalty or dead rent, and therefore no other amount can be claimed cannot be countenanced. Section 15(3) only contemplates the minimum which is required to be provided. In other words, holder of mining lease is at least required to pay royalty or dead rent whichever is more. Obviously the rules to be framed by the State Government must include provisions relating to payment of royalty or dead rent by the lessee. This, however, does not circumscribe the ambit and the width of the rule making power contained in Section 15(1), 15(1A)(d) and 15(1A)(g). The amount fixed as lease amount can be considered as another form of collection of rent or part of terms and conditions for the lease.

91. Therefore, the contention raised by the present Appellant is not acceptable. That apart, after dismissal of the Writ Petition No. 10593 of 1998, the Appellant is also said to have remitted the seigniorage fee of Rs. 5,52,410/- for the period covered under interim orders of the High Court. Since the issue is covered by the order in W.A. Nos. 137 to 144 of 2000 dated 22.12.2000. W.A. No. 716 of 2000 is dismissed.

92. In our considered view, the learned single Judge fell in error in striking down the entire Rule 8-A of TN MMC Rules. In the light of our discussion, we summarise our conclusions as under:

(i) The Rule 8-A Sub-rule (3)(a) of TN MMC Rules introducing tender-cum-auction system is in the interest of mineral development and to ensure transparency and also in the interest of the revenue to the State.

(ii) Rule 8-A Sub-rules (3)(a) and 5(c) of TN MMC Rules are well within the vires and there is no repugnancy to Section 15 of MMDR Act and GCD Rules.

(iii) Rule 8-A Sub-rule (2)(a)(iii) and Rule 9(g) and (h) under which the grant of lease is tied up with the setting up of industry and having a distinct industrial programme in the State of Tamil Nadu and utilisation of the mineral in own industry is well within the legislative competence of the State and is not in any way contravention of Section 15 of MMDR Act or the provisions of the Constitution or GCD Rules.

93. In the Result, the order dated 26.3.2003 of learned single Judge made in W.P. Nos. 24199 of 2001 etc., batch is set aside and the Writ Appeals filed by the Government are allowed. W.P. Nos. 1930 and 1931 of 1999 are dismissed. W.A. No. 716 of 2000 is also dismissed as infructuous. Consequently, all the connected miscellaneous petitions including the implead petition in W.A.M.P. No. 242 of 2007 are closed.