

(2001) 04 AP CK 0124

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 4198 of 2001 and Batch

K. Satyanarayana

APPELLANT

Vs

Govt. of A.P. and others

RESPONDENT

Date of Decision : 27-04-2001

Acts Referred:

Andhra Pradesh (Andhra Area) Rivers Conservancy Act, 1884 — Section 14, 17
Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 9(B), 9(C)
Andhra Pradesh Panchayat Raj Act, 1994 — Section 268, 95
Constitution of India, 1950 — Article 14, 19, 21, 246
Defence of India (Amendment) Act, 1940 — Section 2
Defence of India Act, 1939 — Section 2, 2(1)
Mineral Concession Rules, 1949 — Rule 4
Mineral Concession Rules, 1960 — Rule 70, 9(1)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10, 11, 12, 13, 13(1)

Citation : (2001) 4 ALD 36 : (2001) 3 ALT 654

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. Badana Bhaskara Rao and Mr. P.S. Narayana, for the Appellant; Government Pleader, for Mines and Geology and Additional Advocate-General, for the Respondent

Judgement

S.B. Sinha, CJ

1. In these writ petitions, the petitioners have sought for a declaration that the various orders issued by the State Government in G.O. Ms. No.1, dated 1-1-2001, G.O. Ms. No.356, dated 22-11-1999, G.O. Ms. No.183, dated 1-3-2000 and G.O. Ms. No.165, dated 23-2-2000 of the Industries and Commerce (Mines-I) Department are arbitrary, illegal and violative of Articles 14, 19 and 21 of the Constitution of India and for a further declaration that they are beyond the legislative competence and rule making power of the State, conferred by virtue of Mines and Minerals (Regulation and Development) Act, 1957 (Parliamentary Act) being contrary to the objectives and provisions of the said

Act.

2. By reason of the G.O. Ms. No.1, Industries and Commerce (MI) Department dated 1-1-2001, the Governor of Andhra Pradesh in exercise of the powers conferred by sub-section (1) of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the said Act" for the sake of brevity) made certain amendments to the A.P. Minor Mineral Concession Rules, 1966 (hereinafter referred to as "the Rules" for the sake of brevity) issued in G.O. Ms. No.1172, Industries and Commerce (Mines) Department, dated 4-9-1967. by reason of the said amendment, Rule 9-B of the Rules has been substituted as under:

"9-B. Notification of the Sand Bearing areas for Granting leases by Sealed Tender-cum-Public Auction :--(1) All the sand bearing areas in the State shall be leased out by Sealed Tender-cum-Public Auction reach or village wise wherever applicable by Mandal Revenue Officer or Revenue Divisional Officer or Joint Collector for a specified period in any case not more than two years with an yearly enhancement of 10% of the knocked down amount and subject to the conditions prescribed in the notice of sealed tender-cum-public auction as specified in Rule 9-C.

Note :--No reach/village party or fully covered by scheduled areas shall be leased out to any person who is not a member of Scheduled Tribe."

3. Mr. P.S. Narayana, learned Counsel for the petitioners submitted that the attempt of the State to delegate its power to various departments of the State as regards the grant of lease for quarrying the sand, contrary to the provisions of the Act, persistently would appear from the orders issued by the Government in G.O. Ms. No.356, dated 22-11-1999, G.O. Ms. No. 183, dated 1-3-2000 and G.O. Ms. No. 165, dated 23-2-2000 were issued. The learned Counsel pointed out that the Government earlier issued G.O. Ms. No.71, Panchayat Raj and Rural Development Department, dated 29-2-2000 framing the rules, relating to auction of sand in water courses, tank beds etc., called A.P. Panchayat Raj (Auction of the sand in water courses vesting in Gram Panchayat) Rules, 2000, the validity of which was questioned in Writ Petition Nos.6242 and 8255 of 2000 and a learned single Judge by judgment dated 24-11-2000 set aside the said GO declaring it as ultra vires the Panchayat Raj Act, 1994. The learned Judge held that Section 268 read with Section 95 of the A.P. Panchayat Raj Act could not have been taken recourse to for the purpose of framing the said rules for holding auction in relation to sand which is a minor mineral as the same is governed by the provisions of the Parliamentary Act and the State Government can make rules only in terms of Section 15(1) thereof and it cannot traverse beyond the scope and ambit of the said Act. Admittedly, the impugned rules have been framed after pronouncement of the said judgment.

4. Mr. P.S. Narayana, learned Counsel appearing for the petitioners inter alia would submit that a bare comparison of the rules made in terms of the

aforementioned G.O. Ms. No.71, dated 29-2-2000 and the impugned amended rules would clearly show that the provisions thereof are absolutely identical except the fact that the source of power is different. The learned Counsel would submit that Section 15 of the Central Act suffers from vice of the excessive delegation of legislative power. In any event, the learned Counsel would contend that apart from the fact that the Central Act was enacted for the purpose of regulation of mines and minerals, as would appear from Sections 2 and 18 of Mines and Minerals (Regulation and Development) Act, 1957, no delegation by the State by reason of the exercise of its rule making power or otherwise was permissible so as to enable the extraneous authority viz., the District Level Committee constituted thereunder to deal with the matter.

5. The learned Counsel would contend that in terms of the Central Act, control over the mineral vests in the Union and it is the Central Government which could deal with such matter and despite the existence of its rule making power in favour of the State by reason of Section 15 of the said Act, it was impermissible for the State to delegate its functions in favour of the District Level Committee headed by the Panchayat authorities. Sri P.S. Narayana would urge that it would be wrong on the part of the State to contend that only because the Assistant Director of Mines and Geology is one of the members of the District Level Committee, sufficient safeguard has been provided therefore inasmuch the entire rule is ultra vires. Strong reliance has been placed on *Kunj Behari Lal Butail and Others Vs. State of H.P. and Others*, ; *Baijnath Kadio Vs. State of Bihar and Others*, , *Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.*, , *B. Shama Rao Vs. The Union Territory of Pondicherry*, , *Ramesh Birch and Others Vs. Union of India (UOI) and Others*, , *Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others*, , *Chandra Bali Prasad and Others Vs. Rex*, .

6. Sri Ramesh Ranganathan, learned Addl. Advocate-General submits that having regard to the definition of minor mineral -sand which is used only for construction purpose, the State must be held to have power to frame the said rule. In terms of Entry 54 List I of Schedule VII of Constitution of India, the Parliament enacted the said Act. By reason of Sections 2 and 18 of the said Act the Parliament had taken over the matter regarding the Mines and Mineral (Regulations Development) Act.

7. The submission of Mr. Narayana to the effect that Section 15 of Central Act is ultra vires and is violative of Article 14 and Article 246 of the Constitution as the same suffers from excessive delegation, cannot be accepted having regard to the fact that the same has been held to be intra vires by the decision of the Apex Court in *D.K. Trivedi v. State of Gujarat*, AIR 1986 SC 1323. The Apex Court in the aforementioned decision clearly held that sub-section (1) of Section 15 is constitutional and valid and the rule making power conferred thereunder upon the State Government does not amount to excessive delegation of legislative power to the executive. Sub-section (2) of Section 13 which is illustrative of the general power conferred by Section 13(1) contains sufficient guidelines for the

State Government to follow in framing the rules u/s 15(1), and the same way, the State Governments have before them the restrictions and other matters provided for in Sections 4 - 12 while framing their own rules u/s 15(1). The guidelines for the exercise of the rule making power u/s 15(1) are, thus, to be found in the object for which such power is conferred (namely, "for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith"), the meaning of the word "regulating", the scope of the phrase "for purposes connected therewith", the illustrative matters set out in sub-section (2) of Section 13, and in the restrictions and other matters contained in Sections 4 - 12.

8. It was held that there is no substance in the contention that no guidelines are provided in the 1957 Act for the exercise of the rule-making power of the State Governments u/s 15(1). As mentioned earlier, Section 15(1) is in pari materia with Section 13(1). Section 13, however, contains sub-section (2) which sets out the particular matters with respect to which the Central Government may make rules "In particular, and without prejudice to the generality of the foregoing power", that is, the rule-making power conferred by sub-section (1). It is a well settled law that where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power and do not in any way restrict the general power.

9. It was noticed that Section 2 of the Defence of India Act, 1939, as amended by Section 2 of the Defence of India (Amendment) Act, 1940, conferred upon the Central Government the power to make such rules as appeared to it "to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community". Subsection (2) of Section 2 conferred upon the Central Government the power to provide by rules or to empower any authority to make orders providing for various matters set out in the said sub-section. This power was expressed by the opening words of the said sub-section (2) to be "Without prejudice to the generality of the powers conferred by sub-section (1)". In AIR 1945 156 (Privy Council) , the Judicial Committee of the Privy Council held (at pages 258-9) (of IA): (at P. 160 of AIR):

"In the opinion of their Lordships, the function of sub-section (2) is merely an illustrative one; the rule-making power is conferred by sub-section (1), and the rules which are referred to in, the opening sentence of sub-section (2) are the rules which are authorised by, and made under, sub-section (1); the provisions of sub-section (2) are not restrictive of sub-section (1), as, indeed, is expressly stated by the words "without prejudice to the generality of the powers conferred by sub-section (1)".

The above proposition of law has been approved and accepted by this Court in *Om Prakash and Others Vs. Union of India (UOI) and Others*, and *Shri Shiv Kirpal*

A provision similar to sub-section (2) of Section 13, however, does not find place in Section 15. In our opinion, this makes no difference. What sub-section (2) of Section 13 does is to give illustrations of the matters in respect of which the Central Government can make rules for "regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith". The opening clause of sub-section (2) of Section 13, namely, "In particular, and without prejudice to the generality of the foregoing power", makes it clear that the topics set out in that sub-section are already included in the general power conferred by sub-section (1) but are being listed to particularise them and to focus attention on them.

10. The particular matters in respect of which the Central Government can make rules under sub-section (2) of Section 13 are, therefore, also matters with respect to which under sub-section (1) of Section 15 the State Government can 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". When Section 14 directs that "The provisions of Sections 4 - 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals", what is intended is that the matters contained in those sections, so far as they concern minor minerals, will not be controlled by the Central Government but by the concerned State Governments by exercising its rule-making power as a delegate of the Central Government. Sections 4 - 12 form a group of sections under the heading "General restrictions on undertaking prospecting and mining operations". The exclusion of the application of these sections to minor minerals means that these restrictions will not apply to minor minerals but that it is left to the State Governments to prescribe such restrictions as they think fit by framing rules u/s 15(1). The reason for treating minor minerals differently from minerals other than minor minerals is obvious. As seen from the definition of minor minerals given in clause (e) of Section 3, they are minerals which are mostly used in local areas and for local purposes while minerals other than minor minerals are those which are necessary for industrial development on a national scale and for the economy of the country. That is why matters relating to minor minerals have been left out by Parliament to the State Governments while reserving matters relating to minerals other than minor minerals to the Central Government. Sections 13, 14 and 15 fall in the group of sections which is headed "Rules for regulating the grant of prospecting licences and mining leases". These three sections have to be read together. In providing that Section 13 will not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals, what was done was to take away from the Central Government the power to make rules in respect of minor minerals and to confer that power by Section 15(1) upon the State Governments. The ambit of the power u/s 13 and u/s 15 is, however, the same, the only difference being that in one case it is the Central Government which exercises the power in respect of minerals other than minor minerals

while, in the other case it is the State Governments which do so in respect of minor minerals. Sub-section (2) of Section 13 which is, illustrative of the general power conferred by Section 13(1) contains sufficient guidelines for the State Governments to follow in framing the rules u/s 15(1), and in the same way, the State Governments have before them the restrictions and other matters provided for in Sections 4 - 12 while framing their own rules u/s 15(1)".

11. Section 3(e) of the Central Act defines "minor mineral" to mean building stones, gravel, ordinary clay, ordinary sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.

Section 15(1) confers upon the State the power to make rules in relation to minor mineral and by reason of Act 37 of 1983, sub-section (1-A) was inserted which reads as under:

(1-A) 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:--

(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, acknowledgment 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)

12. Section 26 of the Act deals with the power of delegation which is as follows:

Delegation of powers:--(1) The Central Government may by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any as may be specified in the notification be exercisable also by--

(a) such officer or authority subordinate to the Central Government; or

(b) such State Government or such officer or authority subordinate to a State Government; as may be specified in the notification.

(2) The State Government may, by notification in the Official Gazette, direct that

any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification.

(3) Any rules made by the Central Government under this Act, may confer powers and impose duties or authorise the conferring of powers and imposition of duty upon any State Government or any officer or authority subordinate thereto.

13. It is therefore evident by reason of the provisions of Section 26(2), the State is empowered to delegate its function to any other officer or authority which it deems fit and appropriate. Rule 70 of Mineral Concession Rules, 1960 provides that sand not to be treated as minor mineral when used for certain purpose: Sand shall not be treated as a minor mineral when used for any of the following purposes, namely:-

- (i) Purposes of refractory and manufacture of ceramic;
- (ii) Metallurgical purposes;
- (iii) Optical purposes;
- (iv) Purposes of stowing in coal mines;
- (v) For manufacture of silivercrete cement;
- (vi) For manufacture of sodium silicate;
- (vii) For manufacture of pottery and glass.

14. Sand has also been defined in the State Rules in the following terms:

"Ordinary sand or clay" means :--

- (i) the ordinary sand used for building or other similar purposes, but not used for industrial purposes such as refractory, ceramic, glass staring and metallurgical industries; and
- (ii) the ordinary clay used for small scale manufacture of bricks, tiles, pots and the like but not used for large scale manufacturing purposes, such as, for the manufacture of ceramics or cement.

15. The aforementioned provisions would clearly indicate that a distinction exists between "sand" used for specific purpose in relation whereto the Central Government has got its control therefore in terms of Rule 70 of 1960 rules, and the power of the State Government to deal with "sand" which is normally used for construction purpose in the State.

16. Even in relation to mining sands which are found in rivers, sufficient safeguards have been made by the State of A.P. insofar as sands found in inter-State river, the same has been made subject to the control of competent

authority appointed in terms of the provisions of A.P. (Andhra Area) River Conservancy Act. Sections 14 and 17 of the said Act read thus:

14. Power to direct removal of constructions, plantations etc., Penalty :--The Conservator of Rivers may, with the previous sanction of the Collector of the District, by an order in writing, require the owner occupier of any land within any such river bed to remove any groynes, buildings, constructions, plantations, grasses, trees or other thing upon such land which the said Conservator may deem to be an obstruction to the course of the stream of such river; and it shall be the duty of such owner or occupier to act in compliance with such order within a time to be mentioned in such order :

Provided that, in the case of removal of any building being so ordered, it shall be open to the owner or other person in charge thereof to appeal through the Collector of the District, against such order to the Board of Revenue within sixty days from the date of the receipt of such order, and in such case the order shall remain in abeyance until such appeal shall have been decided by the Board in such order. Notice of every appeal under this section, together with a copy of the petition of appeal shall be sent by the appellant to the Conservator of Rivers at the time the appeal is sent to the Collector.

Whoever fails to comply with any orders issued by the Conservator of Rivers under this section shall be liable, on conviction before a Magistrate to a fine not exceeding rupees one thousand, or in default of payment to simple imprisonment for a period not exceeding six months for every such offence.

17. Power to Conservators to do acts necessary to prevent danger to life of property recovery of expenses of such removal :--The Conservator of Rivers may do or may; cause to be done in connection with the conservancy of any river to which this Act has been applied any act which appears to him to be necessary to prevent erosion, breach of embankments or the flooding over them, encroachments by the stream or danger to life or property and for such purpose he may notwithstanding that his acts may involve interference with private rights of property, enter upon any public or private land whether within or outside the river bed and may dig and use earth from such land construct works, or plant and grow reeds, grass-shrubs, thereon or cut and remove therefrom such reeds, grass or shrubs or alter the course of any stream:

Provided that compensation shall be made to any person who shall sustain any damage by reason of any act authorised by this section.

The Conservator shall furnish the Collector of the District with a report of every act done by him under this section.

17. Rules have been framed under the provisions of the said Act and Rule 9(d)(ii) (a) of the A.P. (Andhra Area) River Conservancy Rules requires consultation with the Committees constituted thereunder.

18. It is trite that the Legislature cannot delegate its essential legislative

function. It is also trite that excessive delegation without any guidelines in favour of the executive has been found fault with by the Courts. The rule making power must satisfy the requirement of Articles 14 and 246 of the Constitution of India. Such rules must not be unreasonable and in a given case, the Court may strike down the supporting legislation inter alia on the ground that it suffers from the vice of *Wednesbury* unreasonableness, (see *I.E. Newspapers (Bombay) Private Ltd. v. Union of India* (1), (1986) 159 ITR 856 (SC) .

19. The "ordinary sand" is a State subject and by reason of Section 15 of the said Act, power has been conferred upon the State Government to make rules. The rules made by the State Government having regard to the provisions of Section 28(3) of the Act must be laid before the Parliament. It may be true that only because the rules are required to be laid before the Parliament, the same ipso facto does not mean that they cannot be challenged. Apart from the fact that the subordinate legislation may be declared to be *ultra vires* not only under the provisions of Schedule VII of the Constitution but also on the ground that such rules are violative of the rule making power made for the purpose not contemplated under the main statute. The only question which, therefore, arises for consideration is as to whether the aforementioned G.O. Ms. No.1, dated 1-1-2001 in terms whereof the A.P. Mineral Concession Rules had been amended is *ultra vires* the said Act.

20. The submission of Mr. Narayana to the effect that the Act suffers from excessive delegation apart from being unacceptable on the ground that the said question has been decided by the Apex Court in *D.K. Trivedi's* case (*supra*) cannot also be countenanced keeping in view the fact the petitioner had never questioned the constitutionality of A.P. Minor Mineral Concession Rules at any point of time.

21. What is contended only is that the State in exercise of its rule making power could not delegate the matter relating to holding of auction in favour of a third body. Before advertent to the said question, we may notice that Mr. Narayana has made a submission to the effect that the State Government had all along wanted the matter of holding of auction by the Panchayat Raj Department as it would appear from various GOs issued. The answer to the contention raised by Mr. Narayana, is that delegated legislation which validly made to become part of the Act cannot be said to be *ultra vires* on the ground that it suffers from malice in law. So far as the principal question raised by Mr. Narayana is concerned, the same in the opinion of this Court, is not acceptable as it would appear from the main provisions that sufficient guidelines have been provided therein. Further more, having regard to the provisions of Section 28(3) of the Act, the Legislature of the State could have refused to approve the said rules made by the executive in exercise of its rule making power. The guidelines exist for holding auction mandates that the mode and manner that had been provided therefor. Rule 9(c) (2) provides for fixation of upset price. Any decision taken by the District Level Committee, must be confirmed by the District Collector Rule 9(8) provides for an

appeal from such an order.

22. Section 15 of the Central Act has made the State as the authority under whose control the subject of minor mineral shall be made. The special provision does not say that control therefore must be exercised by a particular department.

23. In view of the fact that there does not exist any provision in terms of Section 15 of the said Act pursuant where to the State was obliged to delegate the matter relating to holding of auction in favour of a particular department, it cannot be said that only because any such department auctions and such matter shall be dealt with by a Committee, it would make the same per se unconstitutional. For the purpose of holding auction, no experience or expertise in the subject is necessary. Further even Dy. Director, Department of Mines and Geology is a member of the Committee. Thus even additional safeguard has been provided and the matter has not been left to the sole discretion of the elected bodies of Panchayat. In any event, as noticed hereinbefore, any action taken by the District Level Committee must be confirmed by the head of the department. An appeal there against is also provided before the competent authority. In this view of the matter, we are of the opinion that not only sufficient guidelines have been provided but also sufficient safeguards have been laid down.

24. In *The Quarry Owners Association Vs. The State of Bihar and Others*, the Apex Court referring to *D.K Trivedi*'s case (supra) held that the Court did not tie down the State Government to such restriction and on the contrary it allowed particular prescription as it may deem fit.

25. As regards the legislative competence of the Central Government in terms of Entry 54 of the List I of the Constitution of India vis-a-vis Entry 23 of List II thereof is concerned, it was observed keeping in view of the statement and objects:

Every word of a language is impregnated with and is flexible to connote a different meaning, when used in a different context. That is why it is said, words are not static but dynamic and Courts must adopt that dynamic meaning which upholds the validity of any provision. This dynamism is the cause of saving many statutes from their being declared void, it dissolves the onslaught of any rigid and literal interpretation, it gives full thrust and satisfaction to achieve the objectivity which the Legislature intended. Whenever there are two possible interpretations, its true meaning and the Legislature's intent has to be gathered, from the "Preamble", the Statement of Objects and Reasons and other provisions of the same statute.

26. The Apex Court held:

The words "regulation of mines and mineral development" are incorporated both in the Preamble and the Statement of Objects and Reasons of this Act. Before that we find that the Preamble of our Constitution in unequivocal words expresses to secure for our citizens social, economic and political justice. It is in

this background and in the context of the provisions of the Act, we have to give the meaning of the word "regulation". The word "regulation" may have a different meaning in a different context for considering it in relation to the economic and social activities including the development and excavation of mines, ecological and environmental factors including States' contribution in developing, manning and controlling such activities, including parting with its wealth viz., the minerals, the fixation of the rate of royalties would also be included within its meaning.

.....

With reference to the "regulation of mines and mineral development, with reference to the minor minerals, the policy of the Act is communicating loudly from its rooftop, that let it be done by the delegatee State who is fully aware of the local conditions as such minerals are also used for the local purposes and on whom this largesse falls. What the delegatee should do and what it should not do is also enshrined in the Act. Section 18 is also not excluded from its application to the minor mineral development. Under it, duty is cast on the Central Government to take all necessary steps for the conservation and systematic development of minerals in India. Its sub-section (2) focuses the periphery within which it has to do and what not to do. This itself is a guideline which the "State" may take note of while framing its own rules. Similarly Section 23-C gives detailed guidance on what the State should provide to check illegal mining, storage and transportation.

We have to keep in mind, in the present case, delegation of power is on the State Government which is the highest executive in the State, which is responsible to the State legislature which itself is an additional factor which keeps the State Government under check not to act arbitrarily or unreasonably. When a policy is clearly laid down in a statute with reference to the minor minerals with the main object under the Act being for its conservation and development, coupled with various other provisions to the Act guiding it, checking it and controlling it, then how could such delegation be said to be unbridled?

27. The Apex Court also held that jurisprudence of delegation of legislative power include the power of fixation of the policy of legislation in the matter of taxation. The Court traced the historical delegation of the power of the State Government and held:

.... It is significant that Entry 54 List I of the Seventh Schedule of the Constitution of India, reproduces Entry 36 in the Federal Legislative List in the Government of India Act, 1935, except by omitting the words "and oil fields". Under this Entry 36 the Mines and Minerals (Regulation and Development) Act, 1948 was enacted as we have now the present 1957 Act under Entry 54 List I. This Act conferred very wide rule making power upon the Central Government for regulating and granting of mining leases. The Constitution makers also knew that

the Central Government in exercise of this rule making power, made the Mineral Concession Rules, 1949 and by Rule 4 the extraction of minor minerals was left to be regulated by the rules made by the provincial Governments. When the present 1957 Act came into force, Parliament was aware that different State Governments in pursuance of this Rule 4 were regulating the grant of leases in respect of minor minerals including fixation of rate of royalties. This Parliament approved in the present Act through sub sections (2) and (3) of Section 15, the then existing rules which were in force immediately before the commencement of this Act which included the rate of royalty/dead rent for it to continue in force, unless superseded by the Rules made under sub-section (1). Thus, the Parliament was fully aware that even in the past it was the State Governments which were entrusted and were dealing with minor minerals as a delegatee.

28. The submissions of Mr. Narayana in our considered opinion are squarely covered by Quarry Owners" case (supra).

29. Let us now consider the decisions cited by Mr. Narayana.

30. In Kunj Behari Lal Butail"s case (supra), the Court held that the delegated power cannot be used to bring within its net a subject excluded by the Act itself or to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act.

31. In Agri. Market Committee"s case (supra), the Apex Court held that before delegating, the Legislature should enunciate either expressly or by implication the policy and principles for the guidance of the delegates.

32. In Ramesh Birch"s case (supra), the Apex Court held that even if it is assumed that this involves a choice of policy, the restriction of such policy to one that is approved by Parliament or a State Legislature constitutes a sufficient declaration of guidelines within the meaning of the "policy guidelines" theory.

33. In Shama Rao "s case (supra), the Apex Court was dealing with a statute which was void and still born Act. It was held by reason of the said provision, the Legislature has totally abrogated its legislative function in the matter of sales tax legislation and surrendered it in favour of the Pondicherry Legislature.

34. In Vasanlal Maganbhai Sanjanwala"s case (supra), the Apex Court held that the Legislature cannot delegate its essential legislative function. In any case, it must lay down the legislative policy and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf.

35. In our considered view, the above decisions have no application to the facts of the present case. There was no delegation of essential legislative function involved herein. As already stated hereinabove, not only sufficient guidelines have been provided for in the matter of dealing with the auctions by the authorities, sufficient safeguards have also been laid down therefor.

36. For the reasons aforementioned, there is no merit in these applications. They

are accordingly, dismissed. There will be no order as to costs.