

(2012) 06 MAD CK 0182

In the Madras High Court

Case No : Writ Petition No. 14180 of 2011, W.P. No's. 14072, 14073, 14278, 14309, 14310, 14311, 14322, 14345, 14602, 14603, 14633, 15270, 15271, 15550, 16049, 16401, 16408, 16496, 16509, 16554, 16558, 16559, 16565, 16567, 16593, 16598, 16616, 16617, 16888, 16917,

M. Palanisamy

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 19-06-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 19, 19(1)(g), 245
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 15(1A)(i), 15(3), 21, 23C

Citation : (2012) 4 CTC 1 : (2013) 3 EFLT 208

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : V.T. Gopalan, for K. Ramakrishna Reddy in W.P. No. 14180 of 2011 V. Raghavachari, for M. Sathish Kumar, for Implead Petitioner in M.P. No. 1 of 2012 in W.P. MD No. 1017 of 2012, for the Appellant; A. Navaneethakrishnan, Advocate General Assisted by S. Venkatesh, Government Pleader, S. Rajeshwaran, Special Government Pleader and T.N. Rajagopalan, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J.—These Writ Petitions have been filed for a Writ of Certiorarified Mandamus to call for the records pertaining to G.O.Ms. No. 32, Industries (MMC2) Department, dated 11.02.2011, quash the same and direct the Respondents not to interfere with the Petitioners' right to carry on their business from the Petitioners' stockyard situated through out the State of Tamil Nadu. Since all these Writ Petitions raise the common question of law viz., quashing of G.O.Ms. No. 32 dated 11.02.2011 issued by the Respondent-State Government, they have been heard together and are being disposed of by this common judgment.

2. A summarization of the relevant facts, which are necessary and germane for the disposal of this batch of Writ Petitions, would run thus (for the sake of convenience, the facts in W.P. No. 14180 of 2011 are taken up for discussion):

Petitioners are registered dealers in river sand. They purchase sand from the Public Works Department and transport the same under valid bills issued by the Public Works Department to the leasehold stockyard. After transporting the sand, as the same cannot be used for construction as it is, the Petitioners engage labourers, process the said sand by manual grading/machine grading for removal of stones, dust, unwanted elements such as shells, gravel, etc. and make the processed sand fit for construction. By the said process, out of the quantity purchased, only 75% will be fit for construction and the remaining 25% will become waste. "A" grade sand is used for plastering, while "B" grade for construction, whereas "C" grade is used for filling purposes. For transporting the purchased sand, the Petitioners use their own vehicles and also vehicles hired from outside. The processed, purified and filtered sand is being purchased by the intending buyers and is being transported to the destination of the purchaser's choice under bills issued by the Petitioners after paying necessary sales tax to the Government of Tamil Nadu. Such invoices/sale bills normally contain details such as (a) Date of invoice (b) Quantity of Mineral (c) Vehicle Number (d) Destination (e) Vehicle leaving time from the stockyard (f) expected time to reach the destination, etc.

3. According to the Petitioners, Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (for short "the Act") deals only with the granting of leases and purposes connected therewith and it does not deal with the trade in minerals or the movement of minerals from the stockyard or from the processing units. As per Section 15(3) of the Act, the holder of the mining lease or any other mineral concession granted under any Rule made under sub-section (1) shall pay royalty or dead rent, whichever is more, for the minerals quarried and consumed as per the rates fixed by the State Government. In the case of minor minerals, the royalty is called seigniorage. It is stated that from 01.10.2003 onwards, quarrying of sand by private persons has been banned in the State of Tamil Nadu by introducing Rule 38-A to the Tamil Nadu Minor Mineral Concession Rules, 1959 (for short "the Rules") and the same was taken over by the Public Works Department. Ever since, the PWD is quarrying and selling sand at the quarry site by collecting the sale amount for each two units of sand. The sale price includes the value of the sand, quarrying cost, loading charges and seigniorage. Till 25.08.2008, the sand so purchased was permitted to be transported either within the State or outside the State without any restrictions. However, the Government of Tamil Nadu banned such transport outside the state by introducing Rule 38-B to the said Rules. When challenged, Rule 38-B was held to be valid by a Division Bench of this Court, since the quarrying is done by the PWD and the sale is made on condition that the sold sand should not be taken outside the State and also in view of Section 23-C of the Act dealing with illegal mining. The said Section enables the State Government to establish check posts,

weigh bridges, regulation of mineral transport from the leased area, inspection at the place of excavation or storage or during transit, etc. According to the Petitioners, neither Section 15 nor Section 23-C of the Act deal with the control of transportation of the processed minerals from the stockyard or from the processing unit to the destination of the intending purchasers. Neither the Act nor the Rules deal with the trading of minerals. It is stated that the authorities have got the right and jurisdiction to check the vehicles transporting the minerals from the stockyard/processing unit to the place of purchaser's destination to see whether the same is transported under valid bills or not, and they have got every right to check the quantity of the minerals and the records of the stockist at the stockyard, but that does not authorize the authorities to control either the sale from the stockyard/processing unit or control of the mineral trade. It is stated that once the mineral is transported from quarry site by paying necessary seigniorage with valid transport permits or with valid PWD Bills, the control and the ownership over the said mineral vests with the stockist/purchaser, and the authorities cannot interfere with its trading and transportation from the stockyard to the place of the intended purchaser except to check the vehicles to see whether the records are clear and the quantity of the mineral coincides with the bills. It is alleged that the authorities can have checkpoints, weighing bridges, and even surprise checking squad to curtail illicit transport, but it cannot by any stretch of imagination be extended to either controlling or restricting lawful trade from the stockyard. Trading of minerals is outside the purview of the Act and the Rules. While being so, the Respondent-State Government by G.O.Ms. No. 32, Industries (MMC2) Department dated 11.02.2011, has introduced Rule 38-C, by which it has been made mandatory to obtain a licence for setting up of a stockyard and it also mandates that the sale slip shall be obtained by the stockist from the local Deputy Tahsildar. For the said purpose, the stockist or the licensee shall send the original transport permits issued by the authorities while transporting the mineral from the quarry and also the sale slip for countersigning by the Deputy Tahsildar. It is stated that the transport permit or the sale bill issued by the PWD is pertaining to sale and transport of particular quantity of mineral and the said mineral after being transported to the stockyard will get merged with the stock already existing in the stockyard or with the sand subsequently purchased by the stockist from the PWD. Therefore, it is practically impossible to identify the quantity of the sand which relates to a particular transport permit from the huge stock lying at the stockyard, that too after processing the same. Since, the processing procedure eliminates 25% of the purchased sand, the actual quantity available in the stockyard cannot tally with the sale bills issued by the PWD. It is stated that the conditions imposed by way of impugned Government Order are totally without jurisdiction, per se illegal and without authority. The conditions imposed violate the provisions contained under Article 14 & 19(1)(g) of the Constitution, and they are against the law laid down by the Supreme Court and the High Court.

4. The case of the Respondents, as could be seen from the common Counter

Affidavit filed in this batch, is stated in brief as follows:

The purchasers of sand from the PWD quarries are issued with permits for the transportation of sand from the quarry site to the construction point. But some of the purchasers of sand claim that they have established stockyard for sand and they are selling sand from the stockyard. They further claim that their vehicles carrying sand from the stockyard should not be checked by any authority. One of the main objectives of the Government for making available the sand to the common man at a reasonable rate and to curtail illicit transportation of sand is defeated as the sand stockyard holders, after purchasing the sand from the PWD quarry, escalate the price of sand several times before selling and there is scope for illicit transportation and subsequent sale under the guise of stockyard sales. It is stated that the averment of the Petitioner that the sand quarried from the PWD cannot be directly used for construction and other purposes is not factually correct. It is stated that Rule 38-C of the Rules stipulates the procedure for establishing sand stockyard and it is not the intention of the Government to prohibit the sale of sand from the stockyard. However, those persons who intend to store sand have to necessarily obtain the licence for such establishment of sand stockyard and the licence is also subject to certain conditions as stipulated in the Rules. The person who is a licensee for such stockyard should establish that the quantity stocked has already suffered seigniorage fee and produce documents in support of the same before the authorities. The further transport of sand from the stockyard to any place can be done without any further remittance of seigniorage fee provided that the documents such as the transport permits issued by the PWD for transporting same from the quarrying point to the stockyard are produced in original and the sale slip for re-transporting such sand from the stockyard to the place of the purchaser are authenticated by the Head Quarter's Deputy Tahsildar of the concerned Taluk as per the Rules. The Respondents' case is that the objective of Rule 38-C of the Rules will get defeated if the Petitioners are allowed to carry on the business of selling sand from stockyards established without obtaining licence on their own accord and preventing authorities from checking the vehicles. It is stated that the receipt of invoice, sale bill, registration with the commercial tax department, etc. are only the procedures with regard to the commercial tax leviable on the sale of commodities, but they will not entitle the Petitioners to establish a sand stockyard without observing the procedures laid down under Rule 38-C of the Rules. It is stated that the quarried sand does not require any cumbersome process, as mentioned by the Petitioners, for being used in construction work. By paying the seigniorage fee for sand, even though the Petitioners have become the owners of the sand, they cannot sell the sand at an escalated price by way of stocking it in their stockyards, making artificial scarcity. It is stated that Rule 38-C contains only reasonable restrictions which can be implemented without any practical difficulties. Those restrictions ought to be viewed in an objective manner and in the interest of common public. The contention of the Petitioners that it is practically impossible for a retailer and petty stockist to get such a

licence cannot be accepted. With regard to sale of sand, there is no concept of wholesale dealers or retailers. The common public can directly approach the Public Works Department quarry and purchase sand from there directly or through agencies. If anyone wants to trade sand through storing it in stockyards, then he should necessarily obtain licence as stipulated in the rules. It is stated that the impugned Rule viz., Rule 38-C does not violate the provisions contained in Article 14 or 19(1)(g) of the Constitution. It is stated that the fundamental rights guaranteed under Article 19 are not absolute, but they are subject to reasonable restrictions. The State Government has enacted Rule 38-C as per the power conferred u/s 23-C of the Mines and Minerals (Development and Regulation) Act, 1957 to protect the environment and ecology as well as taking into consideration the alarming condition of depletion of ground water levels, cost of sand to the common consumer, illegal mining, storage and transports. Moreover, the Petitioners have not established or shown any right or permission under which they can engage in such a business. The action on the part of the State Government is valid as per Doctrine of Public Trust and it is a precautionary principle under which the State should always anticipate environmental harm and take measures to avoid and prevent illegal mining, storage and transportation of sand in the State. The State being a welfare state is under a Constitutional obligation to regulate such things. The implementation of a procedural law cannot be termed as interference with the business activity of the Petitioners. If the procedures enacted by the Government are not implemented, Petitioners and their clan would involve in illegal storage of sand and it will lead to unaccounted sand stored in unrecognized places, and consequently the Government will face huge loss of revenue, and these persons would make merry by creating an artificial scarcity of sand in the market. The impugned order in G.O.Ms. No. 32, Industries Department, dated 11.02.2011 is only a procedural law enacted by the State Government under the powers vested with it as per Section 15 of the Mines and Minerals (Development and Regulations) Act, 1957. The procedures enunciated by the Government in the said Government Order have to be implemented to avoid illicit actions of the Petitioners in order to avoid loss of revenue to Government and to protect the larger interest of the common public, and therefore, the Respondents prayed for the dismissal of the Writ Petitions.

5. In order to find out the legislative background of the impugned legislation by the State Government, we would like to refer an order passed by a Division Bench of this Court on 26.07.2002 directing the State Government to constitute a High Level Committee consisting of Geologists, Environmentalists, and Scientists to study the pattern of rivers and riverbeds in the State of Tamil Nadu with reference to the impact of the sand quarrying. The Division Bench noticed that the rivers are being plundered by a powerful mafia controlling the sand mining business. The illegal trade is driven by the unholy nexus between contractors, politicians, trade union leaders, Panchayat and Revenue officials and corrupt policemen, making a mockery of the Regulations imposed by the Government. In compliance with the directions of the High Court, a six member

High Level Committee was constituted by the Government vide its G.O.Ms. No. (2D) 46, Industries Department, dated 25.09.2002. The High Level Committee so appointed submitted its report pointing out that illicit, indiscriminate and haphazard sand mining has led to deepening of the riverbeds, widening of the rivers, damage to civil structures, depletion of ground water table, degradation of ground water quality, damages to the river system and reduction of biodiversity. On the basis of the recommendations of the High Level Committee, the Government of Tamil Nadu inserted Rule 38-A to the Tamil Nadu Minor Mineral Concession Rules, 1959. Rule 38-A as introduced in the said Rules of 1959 reads as under:

38-A. Quarrying of sand by the State Government.-- Notwithstanding anything contained in these Rules, or any order made or action taken hereunder or any judgment or decree or order of any Court, all existing leases for quarrying sand in Government lands and permissions/leases granted in ryotwari lands shall cease to be effective on and from the date of coming into force of this Rule and the right to exploit sand in the State shall vest with the State Government to the exclusion of others. The proportionate lease amount for the unexpired period of the lease and the unadjusted seigniorage fee, if any, will be refunded.

6. The object of inserting Rule 38-A was to eliminate indiscriminate and unscientific sand quarrying and also to prevent further damages to the rivers and riverbeds. By virtue of the said Rule, the right to exploit sand in the State of Tamil Nadu was vested with the State Government. Consequently, the State of Tamil Nadu has been exploiting and quarrying the sand through its Public Works Department. Again in the year 2008, the Government of Tamil Nadu inserted Rule 38-B in the said Rules of 1959, restricting transportation of sand covered under Rule 38-A of the Rules across the border to other States. Rule 38-B of the Rules of 1959 is quoted herein below:

38-B. Transport of sand outside the State not to be made.-- No transport of sand covered under Rule 38-A of these Rules shall be made across the border of other States.

7. It is worth to be mentioned here that the vires of Rule 38-A, which was inserted in the year 2003, was challenged before this Court by the existing lessees and the matter was heard in appeal by a Division Bench of this Court in the case of State of Tamil Nadu Vs. P. Krishnamoorthy and Others, The Division Bench, while upholding the validity of Rule 38-A, held that the State is entitled to exploit the sand by quarrying itself on the Government lands. However, it further held that the existing lessees in whose favour mining leases were granted could not be terminated. The State Government challenged that portion of the judgment passed by the Division Bench of this Court before the Supreme Court on the ground that the Rule 38-A has to be upheld unconditionally so that there could be cessation of quarrying activities relating to sand in the State by private agencies. The Supreme Court, by its judgment dated 24.03.2006 reported in State of Tamil Nadu and Another Vs. P. Krishnamurthy and Others, allowed the

Appeal filed by the State of Tamil Nadu and modified the conditions imposed by the Division Bench of this Court. Paragraphs 36 & 37 of the said judgment, which are relevant, are reproduced hereunder:

36. In regard to mining leases subsisting as on 2.10.2003, we have read down Rule 38-A as terminating such leases in terms of the contract (lease deeds) by six months, without assigning cause and without any liability to pay compensation. Such of those Writ Petitioners (the Respondents herein) whose leases were subsisting on 2.10.2003 (and whose activities were stopped with effect from that day) will be entitled to carry on the quarrying activities for a period of six months or for the actual unexpired period of the lease (as on 2.10.2003), whichever is less. This benefit will be available to even those who have orders of the Court for grant of mining leases, but where mining leases were not executed for one reason or the other. It is, however, made clear that the State Government is at liberty to prematurely terminate the leases for any of the causes mentioned in Section 4-A(2), by giving a notice and hearing u/s 4-A(3), if they want to terminate any lease within the said period of six months.

37. We, accordingly, allow these Appeals in part. In place of the conditions stipulated by the Division Bench while upholding the validity of Rule 38-A, we hold and direct as follows:

(i) That part of Rule 38-A which vests the exclusive right to quarry sand, in the State Government, is upheld.

(ii) That part of Rule 38-A which purports to terminate quarrying leases/permissions forthwith (from 2.10.2003) is read down in terms of para 26 above.

(iii) The provision in Rule 38-A for refund of proportionate lease amount for the unexpired period of lease and unadjusted seigniorage fee, shall remain undisturbed.

(iv) It is made clear that except to the limited relief as a consequence of reading down as per para 26 above, the Respondents will not be entitled to any other reliefs which have been granted by the High Court.

(v) Parties to bear their respective costs.

8. Rule 38-B so inserted by G.O.Ms. No. 158, Industries, dated 25.08.2008 was also challenged by the registered dealers and civil contractors in D. Sivakumar v. Government of Tamil Nadu, 2009 (3) CTC 97. A Division Bench of this Court upheld the validity of Rule 38-B and held thus:

18. Impact of Rule 38-A: Rule 38-A of the Tamil Nadu Minor Minerals Concession Rules, 1959 was introduced based upon the recommendations of the Expert Committee and also in pursuant to the orders passed by the Hon"ble High Court. The said Rule has been introduced with a view to regulate and control indiscriminate, over exploitation and illicit sand mining. As stated earlier both the Division Bench of the Hon"ble High Court as well as the Hon"ble Supreme Court

have upheld the validity of the Rule 38-A. We are of the opinion that Rule 38-B is nothing but a natural sequence to Rule 38-A. The object and purpose of Rule 38-B is similar to that of Rule 38-A. Therefore, Rule 38-B will have to be read in the context of Rule 38-A which is upheld by the Hon''ble Supreme Court of India.

9. In the year 2011, the Government of Tamil Nadu yet again came up with a Government Order viz., G.O.Ms. No. 32, Industries (MMC2) Department, dated 11.02.2011, which is impugned in this batch of Writ Petitions, whereby Rule 38-C has been inserted in the Rules of 1959. For better appreciation, the Government Order contained in G.O.Ms. No. 32 dated 11.02.2011 is reproduced herein below:

ORDER:

Taking cognizance of the indiscriminate quarrying in the river systems of the Tamil Nadu, the Hon''ble High Court in their order dated 26.07.2002 in Contempt Application No. 561 of 2001 for non-implementation of the orders of the High Court dated 08.02.2000 in W.P. No. 985/2000, directed the State Government to constitute a Committee of Experts consisting of Geologist, Environmentalist and Scientist to study the river and riverbeds in the State with particular reference to the damages caused on account of indiscriminate and illicit sand quarrying. The Hon''ble High Court also directed that the Government on receipt of the report from the Committee shall act in conformity with the guidelines and take all necessary further steps to arrest the exploitation of natural resources and to protect and improve the situation and restore status quo ante that the Government shall pass suitable regulatory legislation in this regard and that the action on the part of the Government after the receipt of the report should not brook any delay.

2. In compliance with the direction of the Hon''ble Court, the Government in the order first read above, constituted a six member High Level Committee. The Committee, after extensive study of the river systems in the State, submitted its report to the Government. The Committee, in its report, expressed the view that illicit and haphazard sand mining has led to deepening of the river beds, widening of the rivers, damage to civil structures, depletion of ground water table, degradation of ground water quality, sea water intrusion in costal areas, damages to the river systems and reduction of bio-diversity. The Committee reported that the existing system of sand quarrying failed to protect the environment and the river system. The Committee observed that even though Several Rules on sand mining exist, illicit quarrying of sand is out of control as the authority for regulating sand mining is vested with different organizations such as State Geology and Mining Department, Revenue Department and Public Works Department and, hence, implementation and monitoring of Rules and Regulations regarding sand quarrying are not effective. The Committee, therefore, recommended that this important task of sand mining should be entrusted to a Single Agency.

3. The recommendations of the High Level Committee were examined by the

Government. With a view to eliminate indiscriminate and unscientific sand quarrying, to ensure uninterrupted availability of sand to the common people in a regular and orderly manner at affordable price and to augment the revenue of the State Government, the Government in public interest issued amendment to the Tamil Nadu Minor Mineral Concession Rules, 1959, in the Government Order second read above by introduction of Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, whereby all existing leases for quarrying sand in Government lands and permissions granted in Ryotwari lands ceased to be effective with effect from 02.10.2003. The right to quarry sand in the State now vests with the State through the Public Works Department.

4. The policy of the Government finalized on the directions of the Hon'ble Court and on the recommendations of the High Level Committee to entrust the task of sand quarrying to Single Government Agency was reviewed by the Government in May 2008. During the All Legislature Party Leaders meeting, the Government expressed concern over illicit sand quarrying and transportation as there is a constant demand for river sand in view of increasing development in the city and surrounding areas. During the meeting, the Government after the deliberations on various possible ways to effectively monitor sand mining, took a policy decision to continue the existing system of sand quarrying and sale. The Government also decided to prohibit the transportation of river sand across the State borders with a view to check the uncontrolled illicit quarrying all along the riverbeds and to ensure uninterrupted availability of sand to the common people in a regular and orderly manner at affordable prices. Accordingly, orders have been issued in the Government order third read above prohibiting transport of sand across the State borders.

5. The Commissioner of Geology and Mining, in his letter fourth and seventh read above, has reported that the private persons who purchase sand from the Public Works Department quarry, are issued with permits for the transportation of sand from the quarry site to the construction point. But some of the purchasers of sand claim that they have established stockyard for sand and they are selling sand from the stockyard. They further claim that their vehicles carrying sand from the stockyard should not be checked by any authority. The Commissioner of Geology and Mining has further reported that the intention of State Government to entrust the sand quarrying work to Public Works Department is to achieve twin objectives viz., (1) Scientific and systematic quarrying to be carried out resulting in preservation of the river system; (2) making available the sand to the common man at a reasonable rate and to curtail illicit transportation of sand. The second objective is defeated as the sand stockyard holders after purchasing the sand from the Public Works Department, escalate the sand price several times before selling. He has also indicated that there is scope for illicit quarrying and subsequent sale under the guise of stockyard sales. Keeping in view the above stated position, the Commissioner of Geology and Mining has requested the Government to amend the Tamil Nadu Minor Mineral Concession Rules, 1959, by introducing new Rule 38-C to regulate the storage and transportation of sand to

curb illicit quarrying.

6. The Government have examined the proposal of the Commissioner of Geology and Mining in detail. The situation reported by the Commissioner of Geology and Mining has been given due consideration and with a view to curb illicit quarrying of sand, the Government have decided to introduce New Rule 38-C under Tamil Nadu Minor Mineral Concession Rules, 1959, stipulating the requirement of a valid permit from the Public Works Department authority/the District Authorities concerned for storage and transportation of sand.

7. The Notification appended to this order will be published in the Tamil Nadu Government Gazette Extraordinary, dated 11.02.2011 and in the District Gazettes. The Works Manager, Government Central Press, Chennai-79, is requested to publish the Notification in the Tamil Nadu Government Gazette Extraordinary, dated 11.02.2011 and supply 25 copies of the Notification to this Department and Commissioner of Geology and Mining, Chennai-32 each and to all District Collectors.

8. The Director, Tamil Development, Religious Endowment and Information (Translation) Department, is requested to send the Tamil Translation of the Notification appended to this order to the Works Manager, Government Central Press, Chennai-79 for publishing in the Tamil Nadu Government Gazette and to the Collector of all Districts for publishing it in the District Gazettes, immediately.

(BY ORDER OF THE GOVERNOR)

-Sd- Principal Secretary to Government

This is how Rule 38-C came to be inserted in the Tamil Nadu Minor Mineral Concession Rules, 1959.

10. Rule 38-C, the vires of which has been challenged in the present batch of Writ Petitions, is reproduced herein below:

38-C. Storage and transportation of sand.--

(1)(a) No person shall transport sand without a valid transport permit issued by the Public Works Department or without a sale slip of license duly authenticated by the taluk headquarters Deputy Tahsildar of the jurisdiction from which the sand is transported.

(b) No person shall stock sand for sale in any place without a valid licence.

(2)(a) No person shall transport sand in any vehicle from the quarry of the Public works Department without a transport permit issued by the Public Works Department as in Appendix-XVII.

(b) No person shall transport sand in any vehicle from the stockyard without the sale slip issued by the licensee as in Appendix-XVIII and duly authenticated by the taluk headquarters Deputy Tahsildar as in Appendix-XIX.

(3) Any person who intends to store sand for sale shall make an application for grant of licence in the form in Appendix-XX to the District Collector concerned:

Provided that if any person who has stored sand for the purpose of sale on the date of coming into force of this Rule shall apply to the District Collector in the said form for grant of licence for the purpose of this Rule within sixty days from the date of coming into force of this Rule.

(4) The person who makes an application as in Appendix-XX for the grant of licence, shall remit a non-refundable application fee of Rs. 5,000/- (Rupees five thousand only) to the District Collector concerned.

(5) On an Application made provided that where the Application is not complete in all material particulars, or is not accompanied by the required documents, the District Collector shall return or by notice require the Applicant to supply the omission or furnish the document as the case may be within a period of ten days from the date of receipt of such notice under sub-rule (3). The District Collector may refer the said Application to the Assistant Director or the Deputy Director of Geology and Mining concerned in the district for inspection of the area and report.

(6)(a) On receipt of inspection report from the Assistant Director or the Deputy Director of Geology and Mining as the case may be, the District Collector may grant a licence in the form in Appendix-XXI or for the reasons recorded in writing, refuse to grant such licence.

(b) The District Collector shall pass orders on the Application within a period of thirty days from the date of receipt of the Application:

Provided that the aforesaid period of thirty days shall be applicable only if the Application for licence is complete in all respects. In respect of re-submitted Applications, the said period shall be reckoned only from the date of resubmission of such Application.

(7) The period of licence shall not exceed one year from the date of grant of licence.

(8) A licence may be renewed for a period of not exceeding one year from the date of expiry of licence granted under clause (a) of sub-rule (6). The Application for renewal shall be submitted thirty days before the date of expiry of licence. The procedure specified for grant of licence and fee shall apply for renewal mutatis mutandis.

(9) When the licensee sells the sand from the stockyard, the licensee shall submit the original transport permit issued by the Public Works Department to the concerned Taluk Headquarter Deputy Tahsildar along with the sale slip issued by him. The Taluk Headquarter Deputy Tahsildar shall affix the seal as in Appendix-XIX on the quantum of sale slip which is equivalent of the quantum of sand transported with the Public Works Department transport permit slip and also make necessary endorsement on the original transport permit submitted by

the licensee.

(10) Every licensee shall submit a monthly return as in Appendix-XXII to the District Collector before 10th of succeeding month.

(11) Non-possession of transport permit or sale slip for transport of the sand shall be construed as illicit transportation of sand.

(12) Whenever any person stocks the sand or transports or causes to be transported the sand without any lawful authority, and for that purpose uses any tool, equipment, vehicle or any other thing, such sand, tool, equipment, vehicle or any other thing shall be liable to be seized by the Competent Authorities and shall also liable for confiscation of the same. For such confiscation, the Competent Authorities shall make a Complaint in this behalf before the competent Court. Before making such Complaint, the Competent Authorities shall obtain specific sanction of the District Collector, for making such a Complaint.

(13) The Taluk Headquarter Deputy Tahsildar who authenticates the sale slip shall maintain a Day Book Register, indicating date wise number of authentication made by him, to whom it has been made and the quantum of sand for which sale slips are issued and such other particulars as are required.

(14) The Taluk Headquarter Deputy Tahsildar at the end of each month shall prepare and submit a return on the number of sale slips authenticated, to whom it has been issued and the quantum of sand covered therein to the District Collector concerned and such return shall be submitted before 10th of succeeding month.

(15) If any violation of condition of licence is found, the District Collector concerned shall cancel the licence after affording an opportunity of hearing to the licensee.

Explanation.-- For the purpose of this Rule:

(i) "Competent Authority" means the person as authorized under the Mines & Minerals (Development & Regulation) Act, 1957;

(ii) "stockyard" shall mean a place where a licensee stores the sand purchased from Public Works Department;

(iii) "sale slip" shall mean an authenticate proof for sale of sand from the stockyard;

(iv) "sand" means ordinary sand used for construction purpose which includes processed and filtered sand other than industrial sands like silica sand or Garnet sand.

11. Mr. V.T. Gopalan, learned Senior Counsel appearing for a group of Writ Petitioners questioned the impugned Rule on various grounds including that the same is wholly unconstitutional and beyond the legislative competence of the State Government. Learned Counsel submitted that the amendment introduced

to Rule 38-C of the Rules is unconstitutional, ultra vires and void, inasmuch the State Government, in exercise of the power conferred on it u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (in short, "Act"), cannot restrict and regulate the storage and transportation of sand. Learned Counsel placed heavy reliance on the decision of the Division Bench of this Court in the case of *M.P.P. Kaveri Chetty v. State of Tamil Nadu*, 1993 W.L.R. 63. Learned Counsel submitted that in view of Article 162 of the Constitution of India, the Executive power of the State is co-extensive with its legislative power. The State Government is denuded of its legislative competence to legislate and the State's Executive power does not extend to that subject. Learned Counsel then submitted that there is no power conferred upon the State Government under the 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 regulate the storage and transportation of sand is not covered by the terms of Clause (o) of sub-section (1-A) of Section 15 of the Act. In this connection, learned Senior Counsel relied upon a decision of the Supreme Court in the case of *State of Tamil Nadu Vs. M.P.P. Kavery Chetty*, . The said ratio decided by the Supreme Court in *K.T. Varghese and Others Vs. State of Kerala and Others*, . Learned Senior Counsel drew our attention to the order passed in *Seven Star v. District Collector, Karur*, W.P. Nos. 1251 of 2004, etc. batch dated 30.9.2005 and submitted that the right of the dealers of setting up stock yard has been upheld by this Court in the aforesaid batch of Writ Petitions.

12. Per contra, learned Advocate General submitted that the State Government has introduced the impugned Rule 38-C to curtail the illicit transportation of sand and to wipe out escalation in the price of sand at the hands of private dealers. If the present State of Affairs is allowed to be continued, it will lead to the defeat of the main objective of the Government to sell the sand to common public at an affordable price. He further submitted that it is not the intention of the State Government to totally prohibit the sale of sand from the stockyards. The object of introducing the impugned provision is to streamline the procedures involved in the stockyard selling. The stockyard owners are required to obtain licence from the authorities concerned. The person who obtained such a licence for running a stockyard should establish that the quantity stocked has already suffered seigniorage fee and produce documents in support of the same to the authorities. Such licence holders are not required to pay any further fee for transporting sand from the stockyard to any place, but they are only required to show the original Transport Permit issued by the PWD for transporting the sand from the quarrying point to the stockyard and the sale slip for re-transporting such sand from the stockyard to the place of the purchaser. This is only a formal procedure and it does not involve any further payment by the stockyard owners. He submitted that by paying the seigniorage fee for sand, even though the Petitioners have become the owners of the sand, the Government cannot allow them to sell the sand at an escalated price by making artificial scarcity by way of

stocking it in their stockyards. He submitted that Rule 38-C contains only reasonable restrictions and it does not violate the provisions contained in Article 14 or Article 19(1)(g) of the Constitution. He submitted that the action on the part of the State Government is fully justified under the Doctrine of Public Trust. He submitted that the implementation of a procedural law cannot be termed as interference with the business activity of the Petitioners. If such procedures are not implemented, the persons like Petitioners would involve in illegal storage of sand and it will lead to unaccounted sand stored in unrecognized places, and they will sell it at an escalated price by making artificial scarcity in the market, and consequently the Government will face huge loss of revenue. He finally submitted that the Government is fully justified in introducing Rule 38-C to the Rules of 1959 by way of passing the impugned Government Order in G.O.Ms. No. 32, Industries Department, dated 11.02.2011, and therefore, the Writ Petitions are liable to be dismissed. In support of his contentions he mainly relied upon a Division Bench judgment of this Court reported in D. Sivakumar v. Government of Tamil Nadu, 2009 (3) CTC 97.

13. Before we proceed to examine the merit of the submissions and the counter submissions made on behalf of the parties, it would be useful to delve into the relevant provisions of the Constitution and the relevant entries made in the VII Schedule of the Constitution.

14. Article 245 and Article 246 of the Constitution make provision for distribution of legislative powers, which read as under:

245. Extent of laws made by Parliament and by the Legislatures of States.-- (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

246. Subject-matter of laws made by Parliament and by the Legislatures of States.-- (1) Notwithstanding anything in Clauses (2) & (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List).

(2) Notwithstanding anything in Clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List).

(3) Subject to Clauses (1) & (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of

the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List.

15. Entry 54 made in List-I (Union List) of the VII Schedule is with reference to - Mines and Minerals, 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.

In the State List (List-II), Entry 23 also deals with the regulation of mines and minerals, which reads as under:

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

16. It would also be relevant to take note of Article 304 read with Article 301 of the Constitution, which reads as under:

301. Freedom of trade, commerce and intercourse.-- Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

304. Restrictions on trade, commerce and intercourse among States.-- Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law-

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interests:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

17. Coming back to the Mines and Minerals (Regulation and Development) Act, Section 15 of the Act empowers the State Government to make Rules in respect of minor minerals, which reads as under:

15. Power of State Governments to make Rules in respect of minor minerals.-

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

[(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) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;
- (g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;
- (h) the manner in which rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;
- (i) the manner in which rehabilitation of flora and other vegetation such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;
- (j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concession may be transferred;
- (k) the construction, maintenance and use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passage for water for mining purposes on any land comprised in a quarry or mining lease or other mineral concession;
- (l) the form of registers to be maintained under this Act;
- (m) the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;
- (n) the period within which and the manner in which and the authority to which Applications for revision of any order passed by any authority under these Rules

may be made, the fees to be paid therefor, and the powers of the Revisional Authority; and

(o) any other matter which is to be, or may be, prescribed.]

(2) Until Rules are made under sub-section (1), any Rules made by a State Government regulating the grant of [quarry leases, mining leases or other mineral concessions] in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

(3) 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, whichever is more], in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the Rules framed by the State Government in respect of minor minerals:

Provided that the State Government shall not enhance the rate of [royalty or dead rent] in respect of any minor mineral for more than once during any period of [three years].

18. The next important provision in the Act is Section 23-C, which was inserted by Act 38 of 1999, reads as under:

23-C. Power of State Government to make Rules for preventing illegal mining, transportation and storage of minerals.-- (1) The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

(2) 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) establishment of check-posts for checking of minerals under transit;

(b) establishment of weigh-bridges to measure the quantity of mineral being transported;

(c) regulation of mineral being transported from the area granted under a prospecting license or a mining lease or a quarrying license or a permit, in whatever name the permission to excavate minerals, has been given;

(d) inspection, checking and search of minerals at the place of excavation or storage or during transit;

(e) maintenance of registers and forms for the purposes of these Rules;

(f) the period within which and the authority to which applications for revision of any order passed by any authority be preferred under any Rule made under this Section and the fees to be paid therefor and powers of such authority for disposing of such Applications; and

(g) any other matter which is required to be, or may be, prescribed for the purpose of prevention of illegal mining, transportation and storage of minerals.

(3) Notwithstanding anything contained in Section 30, the Central Government shall have no power to revise any order passed by a State Government or any of its authorized officers or any authority under the Rules made under sub-sections (1)&(2).

19. From a conjoint reading of the provisions of the Constitution, the Act, the Rules and the Government Order the following legal position emerges:

(i) The Constitutional provisions referred to hereinabove, viz. Articles 245 & 246 grant the power to the Parliament as well as the State Legislatures to make laws extending to the Union and the respective State territories.

(ii) Notwithstanding the provision contained in Article 301 of the Constitution, Article 304 grants power to the State Legislatures to make laws with regard to restrictions on trade, commerce and intercourse amongst States.

(iii) The Entries in the VII Schedule, viz. Entry 54 of the Union List and Entry 23 of the State List, also place the field under the control of the Union and the State, as is applicable.

(iv) Section 15 of the Mines and Minerals (Regulation and Development) Act empowers the State Government to make Rules in respect of minor minerals with regard to various matters such as granting quarry/mining leases for stipulated periods, imposing conditions as may be required for this purpose, fixing and collecting rent, royalty, seigniorage, etc., protecting environment by reason of such quarrying/mining, making provisions for basic amenities in the land allocated for quarrying, etc.

(v) Section 23-C of the Act empowers the State Government to make Rules for preventing illegal mining, transportation and storage of minerals. It also empowers the State to establish check-posts and weighbridges for checking the minerals and for measuring the quantity of minerals in transit and also for inspecting, checking and searching of minerals at the place of excavation or storage or during transit.

(vi) The non-obstante clause to this Section provides that the Central Government shall have no power to revise any order passed by a State Government under sub-sections (1) & (2) of Section 23-C.

(vii) After the Government of Tamil Nadu banned quarrying of sand by private persons by introduction of Rule 38-A in the Tamil Nadu Minor Mineral Concession Rules, 1959, it was taken over by the Public Works Department, which is now quarrying and selling the sand at the quarry site.

(viii) By introducing Rule 38-B, transportation of sand outside the State was banned, which provision was also upheld by this Court.

(ix) The State Government by G.O. Ms. No. 32, Industries (MMC2) Department, dated 11.02.2011 has introduced Rule 38-C, by which it has been made mandatory to obtain a licence for setting up of a stockyard and it also mandates that the sale slip shall be obtained by the stockist from the local Deputy Tahsildar.

(x) The purpose behind this is to prevent sand dealers from selling the quarried sand at an escalated price by way of stocking it in their stockyards, creating an artificial scarcity of sand, and make sand available to the common man at a reasonable rate, which is the main objective of the Government for introducing the aforesaid provision. It also seeks to alleviate degradation of environment and ecology, taking into consideration the alarming condition of depletion of ground water levels.

(xi) The action of introducing the aforesaid provision is in terms of the Doctrine of Public Trust and it is a precautionary principle under which the State should always anticipate environmental harm and take measures to avoid and prevent illegal mining, storage and transportation of sand in the State, the State being a welfare State under a Constitutional obligation to regulate such things.

(xii) The introduction of the impugned provisions was actuated by the recommendations of the High Level Committee appointed by the State Government pursuant to the order of a Division Bench of this Court, resulting in the Government inserting Rule 38-A in the Tamil Nadu Minor Mineral Concession Rules, the object behind it being to eliminate indiscriminate and unscientific sand quarrying and also to prevent further damages to the rivers and riverbeds. By virtue of the said Rule, the right to exploit sand in the State of Tamil Nadu was vested with the State Government.

(xiii) The challenge to the aforesaid provision was rejected by this Court holding that the State is entitled to exploit the sand by quarrying itself on the Government lands. It was, however, held that the existing lessees in whose favour mining leases were granted could not be terminated. The challenge made by the State to the latter portion of the Division Bench order was upheld by the Supreme Court which modified the conditions imposed by the Division Bench.

(xiv) Accordingly, Rule 38-B came to be inserted by the State, which was also upheld by this Court, upon being challenged. Subsequently, the State came up with the impugned Government Order inserting Rule 38-C, which is challenged herein.

20. In order to appreciate the issue involved in these Writ Petitions, we may have to look at the larger picture - the impact of indiscriminate, uninterrupted sand quarrying on the already brittle ecological set up of ours. According to expert reports, for thousands of years, sand and gravel have been used in the construction of roads and buildings. Today, demand for sand and gravel continues to increase. Mining operators, instead of working in conjunction with cognizant resource agencies to ensure that sand mining is conducted in a responsible manner, are engaged in full-time profiteering. Excessive in-stream sand-and-

gravel mining from river beds and like resources causes the degradation of rivers. In-stream mining lowers the stream bottom, which leads to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers and estuaries and enlargement of river mouths and coastal inlets. It also leads to saline-water intrusion from the nearby sea. The effect of mining is compounded by the effect of sea level rise. Any volume of sand exported from stream-beds and coastal areas is a loss to the system. Excessive in-stream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river. Further, according to researches, in-stream sand mining results in the destruction of aquatic and riparian habitat through wholesale changes in the channel morphology. The ill effects include bed degradation, bed coarsening, lowered water tables near the stream-bed, and channel instability. These physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction of sand from river beds may also cause the entire stream-bed to degrade to the depth of excavation.

21. The decisions on where to mine, how much and how often require the definition of a reference state, i.e., a minimally acceptable or agreed upon physical and biological condition of the channel. The present understanding of alluvial systems is generally not sufficient to enable the prediction of channel responses quantitatively and with confidence; therefore, reference states are difficult to determine. Still, a general knowledge of fluvial processes can provide guidelines to minimize the detrimental effects of mining. Well-documented cases and related field data are required to properly assess physical, biological, and economic tradeoffs.

22. The most important effects of in-stream sand mining on aquatic habitats are bed degradation and sedimentation, which can have substantial negative effects on aquatic life. The stability of sand-bed and gravel-bed streams depends on a delicate balance between stream flow, the sediments supplied from the watershed and the channel form. Mining-induced changes in sediment supply and channel form disrupt the channel and the habitat development processes. Furthermore, movement of unstable substrates results in downstream sedimentation of habitats. The affected distance depends on the intensity of mining, particles sizes, stream flows, and channel morphology.

23. Apart from threatening bridges, sand mining transforms the riverbeds into large and deep pits; as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry. Bed degradation from in-stream mining lowers the elevation of stream flow and the floodplain water table, which in turn, can eliminate water table-dependent woody vegetation in riparian areas and decrease wetted periods in riparian wetlands. So far as locations close to the sea are concerned, saline water may intrude into the fresh water body.

24. It may sound disheartening, but the bitter truth is that such scenarios are

evident in almost every State of the Indian territory, irrespective of its climactic and ecological background. Experts, activists and many a politicians realized the environmental problems posed by unchecked sand mining, which resulted in bringing about various legislations to curb mining. But despite legal barriers on exploitative sand mining, institutional framework and enforcement mechanisms are insufficient and mining does persist, unabated. In the southern States, especially in Tamil Nadu, the Government and the media vigorously attack illegal miners. According to the Chennai India Times, a state-run inspection revealed a complex, organized, and efficient network, enacting mining in the States of Kerala and Tamil Nadu. This network operates so far outside the legal boundaries that in the last ten years, there have been numerous reports of the blatant murders of Revenue officials. This type of organized, indiscriminate mining could sound the death-knell not just for Revenue officials, but also for the ecological system, the natural habitat and livelihood of many inhabitants. In the State of Karnataka, upright Government Officers, who had come down heavily on sand mining had been shunted out.

25. There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and safeguard the forests and wild life of the country. Similarly, Article 51-A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for all the living creatures.

26. In view of the Constitutional provisions, the Doctrine of Public Trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, waters and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership.

27. In the case of *M.C. Mehta Vs. Kamal Nath and Others*, , the Supreme Court, while elaborately discussing about the doctrine of Public Trust, observed as follows:

33. It is no doubt correct that the Public Trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the Concept of the Public Trust Doctrine. The observations of the Supreme Court of California in *Mono Lake case*, 33 Cal 3d 419 clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in *Mono Lake case*, 33 Cal 3d 439 to the effect that the protection of ecological values is among the purposes of Public Trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the Public Trust Doctrine. The Courts in United States are

finally beginning to adopt this reasoning and are expanding the Public Trust to encompass new types of lands and waters. In *Phillips Petroleum Co. v. Mississippi*, 791 S.Ct 108 (1988) the United States Supreme Court upheld Mississippi's extension of Public Trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. *Phillips Petroleum case*, 108 S.Ct 791 (1988) assumes importance because the Supreme Court expanded the Public Trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the Public Trust Doctrine should not be expanded to include all ecosystems operating in our natural resources.

34. Our legal system "based on English common law" includes the Public Trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the Courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the Doctrine of Public Trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the Courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

28. In the case of *Karnataka Industrial Areas Development Board Vs. Sri. C. Kenchappa and Others*, , the Supreme Court, following the ratio laid down in *M.C Mehta's case* (supra), observed as follows:

The Concept of Public Trusteeship may be accepted as a basic principle for the protection of natural resources of the land and sea. The Public Trust Doctrine (which found its way in the ancient Roman Empire) primarily rests on the principle that certain resources like air, sea, water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature should be made freely available to everyone irrespective of their status in

life. The doctrine enjoins upon the Government and its instrumentalities to protect the resources for the enjoyment of the general public.

29. As noticed above, since illegal and illicit mining, transportation and storage of sand was rampant all over the country, the Parliament introduced Section 23-C in the Mines and Minerals (Regulation and Development) Act in the year 1957. This Section empowers the States to make rules preventing illegal mining, transportation and storage of minerals. Such power includes establishment of check-posts for checking of minerals under transit, establishment of weigh-bridges, regulation of minerals being transported from the quarry area, inspection, checking and storage of minerals at the place of excavation or storage or during transit and maintenance of register and forms for the purpose of these rules. In addition to the above, clause (g) of Section 23-C empowers the State to frame Rules in any other matter, which is required to be or may be prescribed for the purpose of preventing illegal mining, transportation and storage of minerals.

30. In exercise of that power, the impugned Rule 38-C has been inserted by the State of Tamil Nadu in the Tamil Nadu Minor Minerals Concession Rules, 1959, mainly for the purpose of preventing and restricting illegal mining, transportation and storage of minerals. As per this Rule, transportation of sand without a valid transport permit issued by the P.W. D. or a sale slip authenticated by Deputy Tahsildar of the Taluk Headquarters concerned was prohibited. It also prohibits stocking sand for sale in any place without a valid licence. Further, licence for storing sand for the purpose of selling it shall be obtained by making application in due form to the District Collector concerned along with the requisite fee. The Rule empowers the District Collector to refer such application to the Assistant Director or Deputy Director of Geology and Mining for inspection of the area and for filing a report and the Assistant/Deputy Director may recommend refusal of such permission. Such licence, if granted, shall be for a period of one year, which may be renewed for another year. The Section also warrants the licensee selling sand from the stockyard to submit the original transport permit issued by the P.W. D. to the Deputy Tahsildar along with the sale slip and non-possession of such transport permit or sale slip shall be construed as illicit transportation of sand. The Rule empowers the authorities concerned to confiscate any stock of sand while in transit without lawful authority, as also any equipments, tools or vehicles used for that purpose and the District Collector concerned is empowered to cancel the licence in case of violation of any of the licence conditions.

31. From the above discussion, it can safely be concluded that in exercise of the power conferred upon the State by Section 23-C of the Act the State Government became entitled to frame Rules for the purpose of preventing illegal mining, transportation and storage of minerals. The contention of Mr. V.T. Gopalan, learned Senior Counsel appearing for the Petitioners that Rule 38-C relates to only illegal mining, illegal transportation and illegal storage of sand and

it has no universal application, cannot be accepted. It is well settled that even if the statute does not give power to the Government to make Rules, such power can be traced to the enabling provisions. The whole object and purpose for which Section 23-C was inserted in the Act and the corresponding Rule 38-C was made by the State Government is to prevent illegal and illicit mining, transportation and storage of sand. For the purpose of achieving the object, Rule 38-C made it obligatory on the part of the dealers to follow the procedure provided in the said Rule.

32. Recently in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., the Supreme Court dealt with a similar issue. In that case the validity of auction notices issued by the Department of Mines and Geology, Government of Haryana proposing to auction the extraction of minor minerals, boulders, gravel and sand quarries in different districts of Haryana with certain restrictions for quarrying in the riverbeds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, etc. were challenged, apart from the complaint of illegal mining going on in the States of Rajasthan and Uttar Pradesh. The Supreme Court after elaborately discussing the provisions of the Act and the Rules, and the reports of various expert committees came to the conclusion that the operation of mines of minor minerals needs to be subjected to strict regulatory parameters. Their Lordships held thus:

20. The report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a re-look to the definition of "minor" minerals per se. The necessity of the preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.

21. Further, it was also recommended that States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining Plan should take note of the level of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in 2010 Rules. A proper framework has also to be evolved on cluster of mining of minor mineral for which there must be a Regional Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked Rules/Notifications governing such zones and the judicial pronouncements, if any, need to be duly noted."

The Court further observed:

23. The Ministry of Mines, Govt. of India sent a communication No. 296/7/2000/MRC dated 16.05.2011 called "Environmental aspects of quarrying and of minor minerals - Evolving of Model Guidelines" along with a draft model guidelines calling for inputs before 30.06.2011. Draft rules called Minor Minerals Conservation and Development Rules, 2010 were also put on the website. Further, it may be noted Section 15(1-A)(i) of the Act specifies:

15. (1-A)(i) the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reasons of any quarrying or mining operations shall be made in the same area or in any other area once selected by the State Government, whether by way of reimbursement of the cost of rehabilitation or otherwise by the persons holding the quarrying or mining lease;

24. We are of the view that all State Governments/Union Territories have to give due weight to the above mentioned recommendations of the MoEF which are made in consultation with all the State Governments and Union Territories. Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and bio-diversity point of view and therefore the State Governments have to frame proper Rules in accordance with the recommendations, u/s 15 of the Mines and Minerals (Development and Regulation) Act, 1957.

25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive in-stream sand and gravel mining causes the degradation of rivers. In-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

33. In an earlier round of litigation, some of the present Writ Petitioners along with others sought a mandamus restraining the authorities of the Respondents from insisting the dealers and their customers either to obtain transport permit or to get mentioned final place of destination in the bills issued by the PWD to transport sand from the stockyard of the dealers to the destination. Since, there were divergent views of the Division Benches of this Court, the matter was finally referred to a Full Bench for its decision. The Full Bench (in which both of us were parties) dismissing the Writ Petitions held as under:

9.....Therefore, by virtue of the subsequent Rule, which has come into effect by way of amendment to the Tamil Nadu Minor Mineral Concession Rules, 1959, a statutory duty is imposed on the purchasers of sand from the Public Works Department, who store the same in the stockyard to issue sale slip to remove it from the stockyard to subsequent purchasers and such sale slip should be

attested by the Headquarters Deputy Tahsildar under seal. Therefore, there is an embargo or restriction upon the movement of the processed sand even from the stockyard to the place of purchasers.

10. In such circumstances, by virtue of the amendment imposing such obligation on the part of the purchasers from the Public Works Department to store it in the stockyard, to obtain further sale slip authenticated by the Taluk Headquarters Deputy Tahsildar, the prayer of the Petitioners in these Writ Petitions to forbear the Respondents from insisting the Petitioners and their customers to obtain transport permit or to get mentioning the final place of destination in the bill issued by the Public Works Department to transport the processed or filtered or raw sand from the stockyard of the Petitioners to the place of destination of Petitioners' purchasers cannot be granted. If the Petitioners have any grievance against the newly introduced Rule 38-C, it is for them to work out their remedy in the manner known to law.

34. It is to be noted that the then Joint Secretary to the Government, Industries Department, Government of Tamil Nadu, in his affidavit, stated that though the Public Works Department has been quarrying sand in the entire State, the Government has received reports of illicit quarrying and transportation of sand by unscrupulous elements. In order to curtail such activities of illicit quarrying in the State of Tamil Nadu, the offence of sand quarrying has been brought within the purview of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982. In order to strengthen the regulation of mineral administration, the Government has included the officials of the Police Department, not below the rank of Inspector of Police, to exercise the power contained in sub-section (4) of Section 21 of the Act.

35. this Court takes judicial notice of the fact that many other States have framed Rules in exercise of the power conferred upon them u/s 23-C of the Act. The State of Andhra Pradesh has framed the Andhra Pradesh Mineral Dealers Rules, 2000; the Government of Bihar has framed the Bihar Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003; the Government of Maharashtra has framed the Maharashtra Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2001; the Government of Chhattisgarh has passed the Minerals Transit Pass Regulations, 1996; and the Government of Orissa has framed the Orissa Minerals (Prevention of Theft, Smuggling and other Unlawful Activities) Act, 1999. Thus, Section 23-C of the Mines and Minerals (Regulation and Development) Act, 1957 authorizes the State Governments to frame Rules in particular and without prejudice to the generality of the power for preventing illegal mining, transportation and storage of minor minerals.

36. The Principal Secretary to the Government, Industries Department, in his Affidavit, has stated that in exercise of such a power under the amended Rules, the illegal mining of sand and smuggling to neighbouring States has been brought under control to a great extent. It is stated that over a period of one

year, 4173 cases of illegal sand mining have been filed, 5033 persons have been arrested, 5501 vehicles have been seized and dozens of persons have been taken into preventive custody and a sum of Rs. 14 Crores has been collected as penalty from such offenders.

37. After giving our anxious consideration to the matter and after considering the relevant Constitutional provisions, the Act and the Rules, we are of the definite opinion that the statutory duty imposed upon the sand dealers under Rule 38-C of the Tamil Nadu Minor Mineral Concession Rules, 1959 for the purpose of preventing illegal mining, storage and transportation of sand, cannot be held as illegal, arbitrary, ultra vires the Constitutional provisions or any of the provisions of the Act. We hold that Rule 38-C of the said Rules is fully in conformity with the provisions of the Act and the Rules, and it cannot be held as an excessive exercise of power by the State Government.

38. For all the above reasons, finding no merits, we dismiss this entire batch of Writ Petitions. Consequently, all the respective connected Miscellaneous Petitions are dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. In view of the order passed in the above batch of Writ Petitions Review Application (MD) No. 34 of 2011 in W.P. No. 8670 of 2011 and Contempt Petition (MD) No. 251 of 2012 are also closed.