

(2022) 04 MP CK 0098

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9330 Of 2021

M/S Ultratech Cement Limited Thr

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 29-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1) (g), 246, 301, 304
Madhya Pradesh Minerals (Prevention Of Illegal Mining Transportation And Storage) Rules, 2006 — Rule 2(p), 3, 3(1), 3(2), 5(2)(I), 5(3) (ii), 7(3)(a)
Madhya Pradesh Minor Mineral Rules, 1996 — Rule 2(xxiiiA), 29(6), 29(7)
Karnataka Minor Mineral Concession Rules, 1994 — Rule 42(7), 43, 46, 46(1)
Mines And Minerals (Development And Regulation) Act, 1957 — Section 2(f), 3, 4, 4A, 5, 6, 7, 8, 9, 10, 11, 12, 13, 13 (2) (i), 14, 15, 15(A), 15(1), 15(1)(g), 15(g)(1A), 15A, 15(1)(o), 15(1A)(o), 15(2)(g), 18, 23C, 23C(2)(a) 23C(2)(c)

Citation : (2022) 04 MP CK 0098

Hon'ble Judges : Vivek Rusia, J; Subodh Abhyankar, J

Bench : Division Bench

Advocate : Naman Nagrath, Sparsh Prasad, Pushyamitra Bhargav

Final Decision : Allowed

Judgement

Vivek Rusia, J

The petitioner has filed the present petition challenging the validity of the Notification No.F-19-3-2017-XII-1 dated 22.01.2021 published by the State Government in the exercise of the powers conferred under Section 15 and 15-A of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act, 1957') whereby regulatory fee Rs.25 per cubic meter has been imposed on minor minerals brought within State of Madhya Pradesh from other State.

Petitioner's case

1. The Petitioner is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 'B' Wing, Ahura Centre, 2nd

Floor, Mahakali Caves Road, Andheri (East), Mumbai-400 093. The petitioner is part of Aditya Birla Group and is one of the largest Cement manufacturing Companies in India having its manufacturing unit located at Khor, Tehsil-Jawad, District Neemuch, Madhya Pradesh (458470). For the production of cement, the petitioner requires a continuous supply of specific raw minerals viz. limestone, gypsum and additives like red ochre, laterite, bauxite etc. Some of the minerals reserves are already allotted to the petitioner by the State Government but some minerals which are not available in the State of Madhya Pradesh like Aluminum Oxide, Iron Oxide which are essential components\ of cement manufacturing, hence, the petitioner is importing these minor mineral from the neighbouring State of Rajasthan. According to the petitioner, the minor minerals legally excavated in the State of Rajasthan after payment of royalty amount to the State Government and complying with all statutory requirements, the suppliers dispatch to the petitioner by trucks/carriers.

2. The State of Madhya Pradesh has issued a Notification No. F-19-3-2017-XII-1 dated 22.01.2021 in the exercise of the powers conferred under Section 15 and 15-A of the MMDR Act 1957 for amending Madhya Pradesh Mineral Rules, 1996 (hereinafter referred to as ' Rules, 1996') by substituting sub-rule (6) of Rule 29 whereby a levy in the name of 'Regulation Fee' at the rate Rs. 25 per cubic meter has been imposed on minor minerals coming from other States into the State of Madhya Pradesh. In pursuant to the aforesaid notice, the District Mining Officer (in short' D.M.O.') has issued a press note dated 01.02.2021 directing business institutions and individuals to get themselves registered on the e-mineral portal to get transit pass. Respondent No.4 vide notice dated 22.02.2021 has demanded the Regulation Fee at the rate of Rs.25 per cubic meter on minor minerals coming from other States to the petitioner's unit located at Neemuch. The petitioner has submitted a detailed reply dated 26.02.2021 objecting to such demand. The petitioner has also submitted an exhaustive representation to the Principal Secretary-Mining, State of Madhya Pradesh alleging the imposition of the regulation fee is an arbitrary Act of Government. Being aggrieved by the aforesaid impugned amendment, the petitioner has filed the present writ petition seeking issuance of a writ of certiorari, order/direction for quashment of Rule 29 (6) so far as it relates to levy of regulation fee for issuance of a transit pass for mineral brought from outside the State of Madhya Pradesh through Notification No.F-19-3-2017-XII-1 dated 22.01.2021. Consequently, the petitioner is also seeking quashment of the demand notice dated 22.02.2021.

Grounds of challenge in Writ Petition

3. The petitioner is assailing the aforesaid notification and demand inter alia on the ground that the State Government is not competent to impose regulation fees under sections 15 and 15-A of the MMDR Act, 1957 as under the aforesaid sections, the State Government can only regulate the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. The petitioner is attacking the validity of the

aforesaid notification on the ground that even under Section 15 or 15-A of MMDR Act, 1957, the State Government has no authority to charge any fee on legally excavated minerals brought from the other States as has been held by the Apex Court in case of State of Gujrat v. Jayeshbhai Kanjibhai Kalathiya & Ors [(2019) 16 SCC 513]. According to the petitioner, the levy in the name of the regulation fee is a colourable exercise of power beyond the competence of the State Government. The respondents/State by way of Form IX issued under Rule 29(7) of 'the Rules, 1996' charges the transit fee under the M.P. Minerals (Prevention of Illegal Mining, Transportation and Storage Rules, 2006 read with M.P. Minor Mineral Rules, 2006 (hereafter referred to as 'Rules, 2006') which applies to the movement of minerals within the State and not on the minerals coming outside of the State. Under Rules, 2006, the Government is already charging transit fees in the name of royalty on the minerals. Therefore, by amending Rule 29(6) of M.P. Minor Mineral Rules, 1996 no other fee can be levied in the name of the regulation fee. It is further submitted that there is no nexus between the regulation fee and the incidence of import of legally excavated minor minerals. The State Government has no legal competence to impose such a fee on minor minerals legally excavated in other States as there is no element of quid pro quo as a levy cannot be termed as regulatory in nature.

4. It is further submitted that under the VII Schedule of the Constitution of India, the State is not conferred with the power to regulate the minerals coming from the other States as the same is beyond the scope of Entry 66 and Entry 23 of the State List. In the case of minerals, only the Central Government has power under MMDR Act, 1957 to regulate the minerals by virtue of Entry 54 of List 1 of VII Schedule of the Constitution of India. A similar view has been taken by the High Court of Karnataka in the case of Shri Sai Keshava Enterprises & others vs. State of Karnataka [(2021) SCC Online KAR 10].

Objection by the Respondents/ State

5. The State Government has filed a reply refuting the aforesaid grounds by submitting that imposition of regulation fee by issuing an impugned notification on all the minor mineral coming from the other States is well within the competence and power of the State Government. The aforesaid notification has been issued in exercise of the power conferred to the State Government under Section 15,15-A and 23-C of MMDR Act, 1957. It is further submitted that regulation of mines and minerals development and imposition of taxes/fees on minerals and also the imposition of any other fee in respect of minor minerals development, transportation and regulation in the State of MP is well within the authority, power and competence of the State Government under Entry No.23,50 and 66 of the List-II of VIIth Schedule (State List) of the Constitution of India. The State Government gets the source of power to legislate on the aforesaid subject under Article 246 of the Constitution of India. Challenge to the amendment to Rules, 1996 can only be considered only on the grounds of firstly lack of legislative competence and secondly violation of Fundamental Rules

guaranteed or of any other constitutional provision and both the grounds are not available in this petition. Hence, no interference is called for and the petition is liable to be dismissed.

6. It is further submitted by the respondents that as a measure to implement the statutory rule, the Department of Mines and Geology has prescribed "E Transit Pass/ Inter-State Transit Pass (ISTP)" and that would be issued to the transporters, who are transporting minerals excavated in other States and transporting into the territory of the State of M.P. and the E-Transit pass/ISTP is issued to the persons complying with the requirement of deposition of regulation fee, as prescribed under Rule 29(6) of the Rules, 1996 brought by way of impugned notification. However, it is mentioned with a force that the impugned amendment has also been brought under the powers conferred under Section 23-C of the 1957 Act, being read with sections 15 and 15-A of the 1957 Act. So far as the reference to section 15 is concerned, sub-section 1 of the provision required special emphasis wherein it has been contemplated that the State Government may make rules for any other mineral concession and, with emphasis, for the purpose connected therewith. It is thus submitted that sub-section 1 of section 15 itself confers powers upon State Government to enforce and promulgate the amended rules. More so, the petitioner has also emphasized sub-section 1-A(g) of Section 15, wherein revenue related items arising from the present subject have been amended. A bare reading of clause (g) of Sub-section 1 makes it evidently clear that the regulation fee being imposed by the impugned provisions is squarely covered within the term "other charges". A reference at this stage to the principle of statutory interpretation viz., ejusdem-generis also further the reading of the term "other charges" in favour of the respondent making it evident that the regulation fee as imposed under Rule 29(6) of the Rules, 1996 is covered therein. It is further submitted that the petitioner has placed heavy reliance on the judgment passed in the case of the State of Gujarat Vs. Jayeshbhai Kanjibhai (Supra) is distinguishable on the sole fact the State of Gujrat had imposed a blanket ban by the executive order against the transportation of minerals to the State of Gujarat. The aforesaid verdict was given considering the provisions of Rule 15(1) (o) of the MMDR Act whereas the present case falls under Section 15(1) (g) . It is pertinent to point out that the transit fee is levied upon transportation of minerals from outside the State of Madhya Pradesh into the territory of the State of Madhya Pradesh under the amendment rule 29(6) regulation fee @Rs. 25 per cubic meter to check and control the illegal transportation and storage of minerals as per law Hence, prayed for the dismissal of the writ petition.

Rejoinder by the petitioner

7. Petitioner has filed a rejoinder by submitting that under the provision of Section 23 (C) MDDR Act, 1957, the power of State Government does not include or envisage restriction on inter-state trade, commerce and intercourse, which shall be free. Entry 66 in List-II of VII Schedule of the Constitution is about fees

in respect of any of the matters in List-II. The State Legislature is empowered to make plenary legislation by invoking Entry-66 of List-II. However, the subject of regulating mining operations outside the State is not included in Entry-66 of List-II. Under entry 66 in List-II, the power of the respondents to levy fees is limited to any of the matters in List-II. As stated above, since any of the entries in List-II does not vest the respondents with the power to regulate minor minerals outside the State of Madhya Pradesh, the respondents ought not to be allowed to derive the power of passing the impugned sub-rule under Entry 66 of List-II. The reason for buying Red Ochre from the State of Rajasthan is that the said mineral is not available in the State of M.P. to the petitioner, hence the petitioner is constrained to buy Red Ochre minor mineral from the State of Rajasthan to provide the best quality of cement to its consumers, and thus levying of Regulations Fee on the petitioner is arbitrary, excessive and unreasonable resulting in violation of Articles 14 and 19(1) (g) of the Constitution. The petitioner has vehemently denied the above contention of the respondents that the Regulations fee is levied to ensure that only legally excavated minor minerals are brought into the State of Madhya Pradesh and the same is unfounded and is liable to be rejected. The petitioner humbly submits that a similar fee has also been struck down by the Hon'ble High Court of Karnataka on the ground that the State of Karnataka does not have legislative competence to levy such a fee. In any case, the respondents are liable to show independently that it has the legislative competence to enact the impugned sub-rule, which it has failed to do so. A similar provision has been struck down by the Karnataka High Court in the case of Shri Sai Keshava Enterprises Vs. State of Karnataka W.P.8851/2020 (07.01.2021) by holding that the State of Karnataka is not competent to enact sub-Rule (7) of Rule 42 of the Karnataka Minor Mineral Concession Rules, 1994, authorizing the collection of the entry fee from a person who transports certain category of minor minerals from other States with valid transit permit to the State of Karnataka.

Submission of petitioner's senior counsel

8. Shri Naman Nagrath, learned Senior Counsel for the petitioner submitted that the State Government has amended Rule 29(6) of Rules, 1996 in the exercise of power under Section 15, 15-A of MMDR Act, 1957 by imposing the regulation fee on the minor minerals coming from other State through transportation @ Rs.25 per cubic meter but section 15 of MMDR Act, 1957 gives authority to State Government to make rules to regulate the grant of quarry leases, mining leases and for purposes connected therewith which does not include charging of fee on transportation of minor minerals from other States. Although the State Government is relying on section 23-C of MMDR Act, 1957 but the said provision is not mentioned in the impugned notification, even otherwise, 23-C only talks about the State Government making rules for preventing illegal mining, transportation and storage of mineral within the State. The petitioner purchases the legally excavated mineral from the State of Rajasthan that too royalty has been paid, therefore, the said mineral cannot be subjected to charging of

regulation fee after coming within the territory of State of M.P. Shri Nagrath learned senior counsel has relied on the judgment passed by the Apex Court in case of State of Gujarat Vs. Jayeshbhai Kanjibhai (Supra) and High Court of Karnataka in the case of Shri Sai Keshava Enterprises (Supra) in which it has been held that the provision of both sections 15 and 23-C does not authorize the State Government to make a rule for regulating the mineral lawfully excavated from other State. Under Section 23-C rules can be made only for preventing illegal mining, transportation and storage of legally excavated minerals and its transportation cannot be said to be illegal mining and transportation, therefore no such regulatory fees cannot be charged on it. According to Shri Nagrath learned senior counsel there is no reason to take a different view from the view already taken by the High Court of Karnataka in the case of Shri Sai Keshava Enterprises (Supra) and impugned notification is liable to be struck down which is an ultra virus the section 15 and 23-C of the MMDR Act, 1957. In the end, Shri Nagrath learned senior counsel has submitted that any person purchasing and transporting raw material from outside the state into the state of M.P. pays Integral Goods and Services Tax (IGST) on each transaction at the applicable rate of 12% of the sale consideration. Pursuant to charging IGST the Central Government transfers the due tax to the destination State i.e. M.P. in this case, hence the State would not be losing revenue in case of the minor mineral as raw material is brought to the State without paying any fee, hence there is no need to levy regulatory fee.

Submission of Additional Advocate General

9. Shri Pushyamitra Bhargav, Additional Advocate General appearing on behalf of the respondent has refuted the aforesaid submission by contending that judgment passed in the case of Shri Sai Keshava Enterprises (Supra) is completely based on the judgment passed by the Apex Court in case of State of Gujarat Vs. Jayeshbhai Kanjibhai (Supra) and in the case of State of Gujarat Vs. Jayeshbhai Kanjibhai (Supra) section 15(1-A) (o) has been considered in facts and circumstances where the ban was imposed on complete transportation of minerals from outside the State. The Apex Court has held that such restriction cannot be imposed on inter-state trade hence, the notification issued under Section 15(1-A) (o) has been struck down. It is further submitted that although section 23 -C is not mentioned in the impugned notification, State Government gets the power under Section 23-C to make a rule to prevent illegal mining, transportation and storage of minor minerals. No mineral can be transported without permission or permit issued by the State Government. If the petitioner is transporting the mineral, then the permit is mandatory under the Madhya Pradesh Minerals (Prevention of Illegal Mining, Transpiration and Storage) Rules, 2006 and for which the State Government is competent to charge a fee. It is further submitted that the power and competence of the State Government in respect of the regulation of mines and mineral development and imposition of tax/fee flows from the entry No.23,50 and 66 of List II of the Seventh Schedule of the Constitution of India since there is no lack of competency, hence, such

provision cannot be struck down. According to the learned Additional Advocate General is that one of the objectives to levy the Regulation fee is to ensure that only legally excavated minerals and royalty paid minerals are brought into the State of Madhya Pradesh from other States. Learned Additional Advocate General has further contended that the said E-Transit pass/Inter-State Transit Pass (ISTP) would be a one-stop-certificate for the transporters to bring the minor minerals from other States into the State of Madhya Pradesh. thus petition is liable to be dismissed.

We have heard the learned counsel for the parties and perused the record.

Conclusions.....

10. By notification dated 22.01.2021, in the exercise of power under Section 15 of MMDR Act, 1957 the State Government has brought an amendment in Rules, 1996. Validity of amendment in Rule 29(6) is only under-challenged in this Writ Petition which is reproduced below:-

29(6). The Transit Pass shall be in Form IX. Regulation fee on minor mineral coming from other State through transportation will be charged at the rate of Rs.25/-(rupees twenty-five) per cubic meter as per the prescribed procedure."

The petitioner is aggrieved by charging a regulation fee of 25 per cubic meter by the State Government on the mineral purchased from other States mainly the State of Rajasthan and brought within the State through transportation. Although section 23-C is not mentioned in the impugned notification but undisputedly that the State Government has the power to make rules or amendments to the rules to prevent illegal mining, transportation, and storage of minerals. Section 13 of the MMDR Act, 1957 gives power to Central Government to make rules in respect of major minerals for regulating the grant of reconnaissance permits, prospecting licenses and mining leases with respect to minerals. Section 13 (2) (i) of MMDR Act, 1957, provides fixing and collection of fees for surface rent, security deposit, fines, and other fees. Section 15 of the MMDR Act, gives the same power to State Government to make rules in respect of minor minerals and according to which 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. Likewise, section 15(A) of the MMDR Act, 1957 deals with the fixing and collection of rent, royalty, fees, dead rent, fines or other charges. The power of the Central Government and State Government are identical in these two sections i.e. 13 and 15 of the MMDR Act 1957. Section 14 clarifies that the provisions of section 13 [sections 5 to 13] (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals, therefore, for all these subjects, in respect of minor mineral, the State Government is competent to make rules.

11. Apart from section 15, Section 23-C of the MMDR Act also give power to the State Government to make rules for preventing illegal mining, transportation and

storage of minor minerals. In exercise of the power conferred under sections 15 and 23-C, the State of Madhya Pradesh has framed M.P. Minor Minerals Rules 1996 and M.P. Minerals (Prevention of Illegal Mining, Transportation and Storage Rules, 2006 (hereinafter referred as Rules of 1996). Section 2 (p) of Rules, 2006 defines the transit pass which means a pass issued by an officer authorized under the provision of Madhya Pradesh Minor Mineral Rules, for lawful transportation of any mineral/minerals and/ or its products from the lease area or from one place to another by a carrier. CHAPTER-II deals with the transportation of minerals and their products. CHAPTER -V of Rules 2006 deals with the penalty for unauthorised transportation or storage of minerals and their products, therefore, within the State of Madhya Pradesh, the transportation of minerals is controlled and regulated by Rules, 1996 and Rules, 2006 and without any permit, the transportation of mineral shall be illegal as held by Division Bench of this Court in the case of Maa Jalpa Enterprises Versus State of M.P. reported in AIR 2012 MP 1. Hence the contention of Shri Nagrath learned senior counsel is unacceptable that since section 23-C is not mentioned in the impugned notification it cannot be said to have been passed under section 23-C of the MMDR Act.

12. The MMDR Act, 1957 has been enacted by the Parliament for the development and regulation of mines and minerals under the control of the Union. Section 3 provides various definitions and section 4 deals with the mining operation and according to which no person shall undertake any reconnaissance prospecting or mining operation in any area except under in accordance with terms and conditions of the permit or a prospecting license as the case may be, of a mining lease, granted under this Act and the Rules made thereunder. Section 4A provides termination of prospecting licences or mining leases. Section 13 describes the power of the Central Government to make rules in respect of minerals like reconnaissance permits, prospecting licences and mining leases. Section 13 (2) (i) provides fixing and collection of the fee. Section 15 gives the same power to the State Government to make the rule in respect of mining minerals, therefore, by virtue of section 14 the power has been given to the Central Government to make rules for measurement and in respect of mining minerals power has been given to the State Government to make rules regulating the quarry leases, mining leases or other mineral concessions. In addition to the power conferred under section 15, section 23C which has been inserted w.e.f. 18.12.1999 also gives power to the State Government to make a rule for preventing illegal mining, transportation and storage of minerals make rule by way of notification in the Official Gazette.

13. Section 23C (2) (c) deals with the regulation of minerals being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given, therefore, under this power the State Government can regulate the transportation within the territory of State from the area granted under the license or lease or by way of permit. In exercise of power under

Section 15, the State Government has framed the rules in the name of the Madhya Pradesh Minor Mineral, Rules, 1996 (hereafter referred to as Rules of 1996). Section 2 (xxiii-A) Rules, 1996 defines 'Transport Permit' and according to which the permit granted for transportation of the mineral secured by operations other than a mining operation.

In the exercise of the power conferred under Section 23C, the State Government has framed the Rules of 2006 in order to prevent illegal mining, transportation and storage of minerals. These rules have been framed to control illegal mining, illegal transportation and illegal storage and whosoever found contravening these provisions, shall be subjected to the penalty as provided in Section 18 of CHAPTER-V, of the Rules, 2006. Therefore, in the State of Madhya Pradesh, mining storage and transportation are controlled under the Rules, 2006. Section 3 of Rules, 2006 prohibits that no person shall transport or cause to be transported any mineral/minerals or/ and its products by any carrier from the place of raising or from one place to another without having a valid Transit Pass issued under these rules. Sub Rule (2) of Section 3 deals with major minerals as well as minor minerals. As per proviso 2 rule 3(1), no such Transit Pass shall be required in case a mineral/mineral or its products are being transported directly from the lease area by means of mechanical device viz railway wagon or aerial ropeway or conveyor belt, it means a permit is required for transportation of minerals outside the lease area by way of the carrier only. CHAPTER-II deals with the transportation of Minerals and their products. According to Rule 5 (2) (I) the holder of a reconnaissance permit, prospecting license, mining lease for transportation of a mineral or its products from the permit/license/lease area, as the case may be, shall make an application in the form to the Officer Incharge of the Mining Section. He shall have to bear the costs of the Transit Passbook and the royalty due of the mineral to be transported shall be deposited in the same manner, as prescribed in Clause (a) sub-rule (3) of Rule 7. It is clear from Rule 5 (2) (I) that only the holder of the permit or prospecting licensee or lease/quarry holder can get a transport permit to transport the mineral from the quarry lease area to other places under the prescribed format attached with the Rules. Rule 5 (2) (i) is reproduced below:-

"5 (2) (i). The holder of a reconnaissance permit, prospecting licence, mining lease for transportation of a mineral or its products from the permit/ licence/ lease area, as the case may be, shall make an application in Form 1 to the Officer in Charge of the Mining Section of concerned District Collectorate. The cost of the Transit Pass Book and the royalty due of the mineral to be transported shall be deposited in the same manner, as prescribed in Clause (a) of sub-rule (3) of Rule 7 and the original treasury' challan shall be attached with the Form 1;

14. The FORM-1 which is reproduced below, in which also the name and address of permit/license/leaseholder, place of permit/licence/ lease area, period of the permit, and name of the mineral are to be disclosed.

15. FORM-2 is the format for the transport permit in which also the name of

mines, district etc. is required to be filled. Both these forms have been made to be obtained by the owner of the lease or licensee. Likewise, Form -3 is also liable to be obtained by the licensee. Only Form -4 under Rule 5(3) (ii) which is a transit pass for transportation of minerals by dealer licensee and Form-4-A provides registration of carrier for transpiration of minerals. Therefore, Form 4-A to Form-4-D are required to be obtained by the owner of the carrier for transportation of minerals and after that, the owner of the carrier is required to submit a quarterly return for transportation of minerals, therefore, in the State of M.P., the transportation of mineral is controlled under CHAPTER-II. Hence as per the definition of 'Transport Permit' under Section 2 (xxiii-A) of M.P. Minor Mineral, Rules, 1966 the permit shall also be granted for transportation of the mineral won by any person i.e. other than a mining operation. The petitioner being a procurer of the mineral from a state other than M.P. is also required to obtain the "Transit Permit".

16. That either in Rules 1996 or 2006, there are no provisions for prohibition of transportation of minerals from other States to the State of M.P. No prescribed format is given to obtain licence/permit to get a licence for the transportation of inter-state movement of mineral. The first time, vide impugned notification, provision has been made only for charging regulation fees without corresponding amendment in CHAPTER-V of Rules, 2006. Under Rule 3 of Rules, 2006 there is no such prohibition for transportation of minerals from other States to the State of M.P. The only prohibition is that no person shall transport and store minerals within the State of M.P. from the quarry area to another place without a transit permit. Rule 5 also deals with only the necessity of obtaining the permit for transportation of minerals from quarry area, lease area to another place. Therefore, making an amendment by way of Rule 29 (6) in M.P. Minor Minerals Rules, 1996 for charging a regulation fee for minerals transported from other States to the State of M.P. would be beyond the power of the State Government. Unless that mineral transportation from other States into the State of M.P. is declared as illegal transportation without a permit no regulation fee can be charged. That, under Section 23-C of MMDR Act, 1957 power has been given to the State Government to control the illegal transportation and unless such transportation is declared illegal under the Rules, 1996 or Rules 2006, no regulatory fees can be charged, as held by Apex Court in case of State of T.N. Vs. M.P.P. Kavery Chetty reported in (1995) 2 SCC 402, State of Gujrat v. Jayeshbhai Kanjibhai Kalathiya & Ors (supra) and the Division Bench of High Court of Karnataka in the case of Shri Sai Keshava Enterprises (Supra). It has been held that section 15 and section 23C does not authorize the State Government to make rule concerning minor mineral lawfully excavated in the other State. It has been said to the extent that both the provisions do not authorize to State Government to make rules for regulating the mineral lawfully excavated in other States. By way of delegated legislation under Section 15 and 15-A, the Central Government has given the power to State Government only to make a law to control the grant of quarry lease, license, storage and transportation within the

State. After considering the aforesaid judgment passed by Apex Court in the case of State of T.N. Vs. M.P.P. Kavery Chetty reported in (1995) 2 SCC 402, State of Gujrat v. Jayeshbhai Kanjibhai Kalathiya & Ors (supra), the High Court of Karnataka has held as under:

22. As can be seen from the said two Gujarat Rules, it appears that there was a complete prohibition imposed on transportation of the sand from the State of Gujarat to the neighboring States even with authorized royalty pass or delivery challan. The said two rules prohibited the movement of sand beyond the border of the State of Gujarat. In the statement of object and reasons it was stated that new provision has been made with a view to prevent illegal mining. The Apex Court noted in paragraph 9 of the said Judgment that the impugned rules were framed in exercise of power conferred under Section 23-C of the said Act of 1957. Paragraphs 10 and 11 of the decision of the Apex Court are relevant which read thus:

"10. A perusal of Sections 15 and 23-C in relation to the aforesaid discussion would clearly suggest that the power of the State Government to make rules is restricted to: 10.1. making rules for grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for the purposes connected therewith; and 10.2. making rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

11. In the aforesaid context, the question arose before the High Court as to whether in exercise of such powers delegated by the legislature upon the State Government, could the State Government make a rule to the effect that the sand which is a minor mineral would not be allowed to be taken beyond the borders of the State of Gujarat and making such movement as punishable offence. According to the High Court, delegation of powers to the State Government under the aforesaid provisions does not include or envisage restriction on inter-State trade, commerce and intercourse which shall be free. Thus, the impugned rules are held to be ultra vires the provisions of Sections 15 and 23-C of the MMDR Act. They are also held to be violative of Article 301 of the Constitution".

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24. While dealing with the submissions, the Apex Court formulated two questions which are quoted in paragraphs 34. 1 and 34.2 which read thus:

"34.1. Whether the impugned Rules framed by the State of Gujarat as a delegate of Parliament are beyond the powers granted to it under the MMDR Act? In other words, whether the impugned rules are ultra vires Sections 15, 15-A and 23-C of the MMDR Act?

34.2. Whether the impugned Rules are violative of XIII of the Constitution of India? Part

25. The Apex Court also considered its earlier Judgment in the case of State of Tamil Nadu -vs- M.P.P. Kavery Chetty. In paragraph 42 while dealing with the said

judgment, the Apex Court held thus:

"42. It is in this context the words "transportation" and "storage" in Section 23-C are to be interpreted. Here the two words are used in the context of "illegal mining". It is clear that it is the transportation and storage of illegal mining and not the mining of minor minerals like sand which is legal and backed by duly granted licence, which can be regulated under this provision. Therefore, no power flows from this provision to make rule for regulating transportation of the legally excavated minerals".

(underlines supplied)

26. Hence, the Apex Court held that the words 'transportation' and 'storage' used in Section 23-C of the said Act of 1957 are in the context of illegal mining and not the mining of minor minerals like sand which is legal and backed by duly sanctioned licence. Hence, the Apex Court specifically held that there is no power vesting in the State under Section 23-C of the said Act of 1957 to make a rule for regulating transportation of lawfully excavated minerals.

27. A careful perusal of the impugned sub-rule in the present petitions shows that it deals with only transportation of processed building stone materials from other States with a valid permit. It provides for levy of amount of Rs.70/- per metric ton from the person who transports processed building stone material as mentioned in the impugned sub-rule from other States to State of Karnataka with a valid permit. Thus, the impugned sub-rule provides for levy of a charge at the rate of Rs.70/- per metric ton of processed minerals transported from other States which is legally excavated. Thus, the levy made under the impugned sub-rule is on transport of lawfully excavated building stone from other States to State of Karnataka.

28. Clause (a) sub-section (2) of Section 23-C provides for framing of Rules for establishment of check-posts for checking of minerals under transit. As far as the regulation of transport of minerals is concerned, the rule making power is under clause (c) of sub-section (2) of Section 23-C. Clause (c) is about regulation of minerals being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit. Thus, clause (c) authorizes framing of rules for transportation of lawfully excavated minerals from the lands within the State. Obviously, clause (a) refers to establishment of check-posts for the purposes of checking the instances of illegal excavation and/or illegal transportation of minerals within the State. The State Government does not get the authority under Section 23-C of the said Act of 1957 to make rules for the regulation of transport of legally excavated minerals from other States. The impugned sub-rule expressly authorizes the State Government to collect a sort of an entry fee at the rate of Rs.70/- per metric ton from a person who transports legally excavated minerals from the other States.

29. In its statement of objections, firstly, the State Government has relied upon the provisions of Section 15 for supporting the impugned sub-rule. Clause (g) of

sub-section (2) of Section 15 confers a rule making power for making Rules for fixing and collection of rent, royalty, fees, dead rent, fines or other charges. Obviously, clause (g) refers to collection of royalty, fees, dead rent, fines or other charges on the minor minerals excavated within the State. This provision does not confer on the State Government a rule making power to make rules for collection of royalty, fees, dead rent, fines or other charges on the minor minerals lawfully excavated within other States. Clause (o) of sub-section (1) of Section 15 authorises rule making in respect of a matter which is to be prescribed or may be prescribed. Clause (f) of Section 2 of the said Act of 1957 define the word "prescribed", as prescribed by rules. Therefore, clause (o) can be invoked for rule making when there is a rule prescribing the subject matter on which rules can be framed. Even sub-section (1) of Section 15 confers an authority to make rules for regulating grant of quarrying leases, mining leases and other mineral concessions in respect of minor minerals and the purposes connected therewith. This power can be exercised for dealing with mining or quarrying inside the State of Karnataka. This provision does not authorize the State Government to make rules concerning minor minerals lawfully excavated in the other States. It is pertinent to note here that provision of Section 23-C does not apply only to minor minerals, but it applies to all categories of minerals. Therefore, the provisions of both Section 15 and Section 23-C do not authorize the State Government to make rules for regulating the minerals lawfully excavated in other States.

30. In paragraph five of the statement of objections, the State Government has derived support from Section 23-C for justifying introduction of the impugned sub-rule. The averments made in paragraphs 6 to 9 of the statement of objections are relevant which read thus:

"6. In Karnataka, the entire system of issue of mineral dispatch permits to lease holders within the State is technology based and certain adequate safeguards are put in place to ensure that illegal transportation of quarried material is minimized to the maximum extent. However, it was noticed that there was large -scale movement of mineral from outside the State and that there is no proper mechanism to supervise the activity/movement, resulting in serious difficulties in identifying illegally quarried mineral from outside the State. The permits issued in other States are, generally, paper-based and the entries pertaining to the movement of the goods are left to be filled up by the permit holder. It has been the experience of the State that the same permits/transmit passes would be used repeatedly. Once the vehicle enters into the State, there is no method to track the movement of material or if the minor mineral is already delivered to the consignee. Since there is no unified mechanism and each State follows its own method in respect of issuance of permits, it has proved to be extremely difficult to distinguish between legally transported material and illegally transported material as based on the same permits, multiple trips were being carried out. From the transit passes produced by the petitioners themselves as Annexures to the writ petition, it is demonstrable that identification and supervision of the

movement of vehicles from outside the State without the necessary protocols is a very difficult task, which hinders the State's efforts in prevention of illegal transport of minor mineral and giving scope for illegal quarrying within the State.

7. In this regard, it is submitted that, in order to check the illegal transportation of Minerals from outside the State of Karnataka into the State, and also to verify the permits and ensure that there is no illegal transport of minor mineral within the State based on permits/transit passes issued outside the State, the State is in the process of dedicated check posts and weigh-bridges at various locations in the State. Presently, the Government has established one check-post in Attibele near the Tamil Nadu-Karnataka border, and is in the process of setting up more check- posts and weigh bridges.

8. It is submitted that the purpose of establishing these check posts is primarily to ensure that only legally extracted mineral is permitted to be brought into the State and to ensure that the permit, once issued, should not be prone to multiple uses. In other words, these check-posts ensure that all the mineral that is being transported into the State has been legally extracted and that no illegally extracted mineral is permitted to brought into and sold in the State.

9. It is submitted that in order to maintain these check-posts, the State is required to incur significant expenditure, including maintenance of personnel and infrastructure. It is estimated for the total cost for deployment of Squad Teams and maintenance of check-posts in the State, an annual expense of Rs.15,72,00,000/- is required to be incurred by the State. It can, therefore, be seen that the State incurs substantial expenses for the maintenance of check-posts in order to ensure that no illegally extracted mineral is transported in the State. In this background, it is submitted that the amount of Rs.70/- per metric ton i.e., being levied under Rule 42 (7) is a reasonable regulatory fee that is collected in order to defray the expenses incurred for maintenance of check-posts and to check the transportation of illegally extracted mineral into the State. Therefore, the fee that is levied under the impugned rule is in the nature of a regulatory fee that is collected from the transporter of the specified mineral into the State. A copy of a chart showing the estimate of expenses that would be incurred by the State Government in order to establish check posts and effectively check the illegal transportation of minerals is produced as Annexure R-1."

(underlines supplied)

31. It is thereafter contended by the State Government that various decisions of the Apex Court including the decision in the case of Vam Organic Chemicals (supra) lay down that there is no requirement of showing quid-pro-quo or a measure of exactitude when the State collects any amount by way of regulatory fees. Only if such a rule making power exists, the question of going into the nature of levy arises. We have found that there is no such rule making power conferred on the State Government. The real question is whether transportation

of lawfully excavated minerals in other States can be regulated by exercising the rule making powers either under Section 23-C or Section 15. The answer to this question must be in negative, as held by us earlier.

32. Reliance was placed on the sub-rule (1) of Rule 46 of the said Rules 1994. Sub-Rule (1) of Rule 46 provides for an officer empowered by the State Government by notification in this behalf making entry and carrying out inspection. Rule 43 or 46 has nothing to do with the lawfully excavated minerals which are brought from other States into the State of Karnataka. It is contended in paragraph 9 of the statement of objections filed by the State Government that the fee levied under the impugned sub-rule is in the nature of a regulatory fee. The State Government has no rule making power to make rules providing for recovery of regulatory fee on minerals lawfully excavated in the other States. Therefore, we need not go into the question of the nature of fees.

ARGUMENT OF EXECUTIVE POWER:

33. Another argument was canvassed by relying upon a decision of this Court in the case of V.S. Lad and Sons (*supra*) to the effect that the State Government has an executive power to deal with the subjects envisaged under Section 23-C. However, Section 23-C will not apply at all to regulating the entry of minerals lawfully excavated in other States. The substantial part of the arguments canvassed on behalf of the State Government is on the issue of quid-pro-quo regarding co-relation between the fees collected and the services being rendered. The said argument is relevant provided that there is a power conferred on the State to make the rules to regulate the entry of minor minerals lawfully excavated from other States by levying fee. Such power is not vesting in the State Government.

ARGUMENT BASED ON ENTRY 66, LIST-II OF SCHEDULE VII OF THE CONSTITUTION:

34. An argument was also canvassed based on entry 66 in list-II of seventh schedule of the Constitution. Entry 66 is about fees in respect of any of the matters in list-II. List-II is about the Legislative Powers of the State Governments. Therefore, the State Legislature is empowered to make a plenary legislation by invoking Entry-66 of List-II. However, the subject of regulating mining operations outside the State is not included in entry-66, List-II. Entry-66 is about prescribing fees in respect of any of the matters in list-II. Entry-23 in List-II is about 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. The field is occupied by the said Act of 1957 enacted by the Union Government which does not provide for levy of fees as provided in the impugned sub-rule. Moreover, the State Government has not enacted any law in terms of entry-66 of the said list. Assuming that such a power to levy fee is vested in the State Legislature by virtue of Entry-66 of List-II, a rule making power can be exercised provided that a law is enacted by the State Legislature authorizing

such a levy by making rules. No such law has been enacted.

35. As the State Government has no legislative competence to make rules for levy of transportation fee or charge on minerals lawfully excavated in other States, it is not necessary for us to go into the question of quid pro quo regarding existence of co-relation between the fees collected and the services being rendered.

36. Now, coming to other argument canvassed by the petitioners regarding breach of Article 301 and 304 of the Constitution, it is not necessary for us to go into the said argument, inasmuch as, we have held that neither under Section 15 nor under Section 23-C of the said Act of 1957, there is a power vesting in the State Government to make rules for regulating the entry of lawfully excavated minerals from the other State and to levy the fees on entry of lawfully excavated minerals from other States into the State of Karnataka. Therefore, these petitions must succeed. Accordingly, we pass the following:"

Relief...

17. In view of the above discussion the writ petition is allowed as under:

(a) Rule 29 (6) of the Madhya Pradesh Minor Mineral Rules, 1996 inserted by way of an amendment notified in the Extra Ordinary Gazette dated 22.01.2021 bearing Ref No. F-19-3-2017-XII-1 (Annexure-P/1) so far it relates to charging regulatory fees ultra vires the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) hence struck down as declared unconstitutional.

(b) Any fees collected from the petitioner be refunded forthwith. There shall be no order as to the costs.