
(2016) 08 KL CK 0032

In the High Court Of Kerala

Case No : WP(C). No. 4484 of 2012 (I) and 4574 of 2012

Prakash Nayak

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 18-08-2016

Acts Referred:

Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 —
Section 23

Mines and Minerals (Development and Regulation) Act, 1957 — Section 21

Citation : (2017) AIR(Kerala) 55 : (2017) 7 FLT 274 : (2016) 4 ILRKerala 207 :
(2016) 4 KerLJ 244 : (2016) 4 KLT 102 : (2017) 1 RCRCivil 568

Hon'ble Judges : Mr. K.T. Sankaran, Mr. P.D. Rajan and Mr. Justice P. Ubaid, JJ.

Bench : Full Bench

Advocate : Sri Babu S. Nair, Smt. Smitha Babu, Advocates, for the Petitioners;
Sri C.R. Syamkumar, Sr. Govt. Pleader, for the Respondents

Final Decision : Disposed Off

Judgement

P. Ubaid, J.—A question of law involving control of inter-state trade, intercourse, and commerce, is the matter before us, referred for resolution by a Division Bench of this Court. The matter is concerning the powers of the police and other authorities in Kerala, under the special laws dealing with minerals and minor minerals, to deal with sand or other minerals brought to Kerala from another State where there is prohibition of export of such materials to neighbouring States. The vehicle No.KA-21-A-5364 belonging to the writ petitioner in W.P.(C)No.4484/2012, and the vehicle No.KA- 21-A-2834 belonging to the writ petitioner in W.P.(C) No.4574/2012 were intercepted by the Sub Inspector of Police, Manjeswar on 06.02.2012, and the two vehicles with full load of sand imported from the State of Karnataka were seized by the police. On finding that sand was being unauthorisedly transported on illegal import from the State of Karnataka, the police initiated prosecution and other actions under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (for short, "the Sand Act"). The writ petitioners seek a writ of mandamus

directing the police to release the vehicles unconditionally, and also a declaration, that the police or other authorities in Kerala having powers under the Sand Act, will have no authority or powers to seize the sand imported from other States, and that prosecution or other action is not possible in respect of such materials brought from other States, under the Sand Act, especially when import of sand from other States is permitted in the State of Kerala by a Government order. When the two writ petitions came up for consideration before a learned Single Judge of this Court, the writ petitioners sought orders on the basis of a Division Bench decision of this Court, dated 16.08.2011, in W.A.No.1206/2011. On the other hand the respondents relied on another Division Bench decision dated 20.07.2010, in W.P.(C)No.16392/2010 to contend otherwise that prohibition or control of export of sand in the State of Karnataka is binding on our State, and the authorities in Kerala will have to honour such laws of the neighbouring State restricting or prohibiting export of sand. Finding that the two decisions could not go hand-in-hand, the learned Single Judge thought that the question of law will have to be resolved either by another Division Bench, or by a Full Bench, if so felt necessary by the Division Bench. Accordingly, the two writ petitions came up before a Division Bench for consideration. Finding a clear conflict of view in the two Division Bench decisions of co-equal Judge strength, the Division Bench considering the writ petitions thought that the question of law must be resolved by a Full Bench. Accordingly, on reference by a Division Bench the two writ petitions involving the important question of law stated above are before us for consideration on merits, and also for resolution of the question of law involved.

2. The legal aspects of the matter are covered by the provisions of the Constitution of India, and also the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, "the MMDR Act"), and the Central and State Rules framed thereunder (MMDR Rules Central/Kerala). Though prosecution and other proceedings may not be possible under the Sand Act in force in Kerala, we will have to explore the possibility of such proceedings, including prosecution and confiscation, under the MMDR Act, and the MMDR Rules (Kerala).

3. The questions of law to be resolved by this Full Bench are,

(i) Whether prohibition and control of export of sand in the State of Karnataka, prohibiting such export to the neighbouring States including Kerala, is binding on the State of Kerala, and whether the police authorities in Kerala are bound to honour such prohibition and restriction.

(ii) Whether the police authorities or other authorities appointed by the Government in Kerala, will have powers under the Sand Act, or the MMDR Act and the Rules framed thereunder, to seize the sand imported from the State of Karnataka in such circumstance of prohibition or restriction, and to proceed for prosecution and other actions including confiscation.

4. Part XIII of the Constitution of India deals with trade, commerce and

intercourse within the territory of India. Article 301 of the Constitution declares the general policy of our democratic polity regarding trade and commerce in India, that, subject to the other provisions of the Part XIII, trade, commerce and intercourse throughout the territory of India shall be free. What is declared and protected under Article 301 is freedom of inter-state, and also inter-state trade, intercourse and commerce, subject to the other provisions of the Constitution restricting and modifying the general provision contained in Article 301 of the Constitution. The said Article declares freedom of inter-state intercourse in trade and commerce, subject to the restrictions and limitations under the Constitution itself, with the object of ensuring that the internal unity, and also the financial stability of India, shall not be affected or broken by internal barriers or restrictions prohibiting or controlling free flow of trade, commerce and intercourse throughout the country. The general policy declared under Article 301 of the Constitution is modified and explained by Article 302, which authorises the Parliament to impose such restrictions on the freedom of trade and commerce between one State and another, or within any part of the territory of India, by law, as may be required in public interest. While permitting such Legislation under Article 302 in public interest, Article 303 of the Constitution prohibits the Parliament and the State Legislatures from making any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule of the Constitution. What is relevant for our consideration in the present context is Article 304 of the Constitution, which reads as follows:

"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 interest:

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."

5. Thus we see that Clause(b) of Article 304 of the Constitution of India authorises State Legislatures to make any law imposing reasonable restrictions on the freedom of trade, commerce or intercourse with or within a State as may be required in public interest. The learned Government Pleader representing the State of Kerala relies on Clause(b) of Article 304 of the Constitution to justify the prohibition and control of export of sand in the State of Karnataka by a

Government circular. A translated copy of the said Government circular in English was made available to us by the learned Government Pleader, with copy to the other side. It is the circular No.6603/2009-10 issued by the Secretary (Mines) Commerce and Industries Department of the Government of Karnataka, by order of the Governor of Karnataka on 28.08.2009. The said circular will show that the Government issued such a circular prohibiting transportation of ordinary sand from the State of Karnataka to other States, in public interest, or considering the huge requirement of ordinary sand for the large scale construction of buildings in some important parts of the State of Karnataka like Bangalore Metropolitan City.

6. On an examination of Article 304 of the Constitution including the proviso to Clause (b), we find that restrictions on the freedom of trade and commerce with or within a particular State in public interest can be made by a State Legislature, only by a law enacted by the Legislature.

7. In view of the provisions contained in Article 304, authorising State Legislatures to impose reasonable restrictions on the freedom of trade in a particular State, only by a special law enacted by the State Legislature, it is contended by the petitioners that a mere circular issued by the Government of Karnataka will not get sanctity as law, as meant under Article 304 of the Constitution. We are not in fact called upon to decide the Constitutional validity of the circular issued by the Government of Karnataka prohibiting export or transportation of sand from the State of Karnataka to the neighbouring States. However, a Division Bench of the Karnataka High Court in *Santhosh Krishna Kalgutkar and Another v. State of Karnataka and Another* AIR 2011 Karnataka 49 upheld the validity of the ban imposed by the Government of Karnataka by way of a circular, prohibiting export and transportation of sand from the State of Karnataka to the neighbouring States. In such a situation we need not look into that aspect and probe into the constitutional validity of the said circular. That is not the issue here. Our concern is whether we are bound to honour the circular issued by the Government of Karnataka banning or prohibiting export and transportation of sand from that State to the other neighbouring States including Kerala.

8. To ignore the circular issued by the Government of Karnataka, and to challenge the police action here, the petitioners contend that import of sand from other States is permitted in the State of Kerala. Thus the attempt is to make a conflict of permitted import in Kerala and prohibited export in the State of Karnataka. As regards resolution of such a situation of conflict, the Division Bench of this Court in *W.P. (C)No.16392/2010* observed that this Court will not lend its assistance in any form to the petitioners to bring sand unauthorisedly from the State of Karnataka, where there is prohibition of export of sand, and the Division Bench held thus in paragraph 5 of the judgment.

"It is true that by Ext.P7, the Government of Kerala has issued an Order purporting to encourage import of sand from other States, apparently in view of the scarcity in the State of Kerala. But, it is an equally undisputed fact that the

State of Karnataka has prohibited export of sand from its soil. Therefore, if as contended by the respondents, the sand is being brought into the State of Kerala from Karnataka, it can only be described as an illegal act. If the licensee including the petitioners as licensees, are using Rule 48(K) Forms for the purpose of sanctifying transport of sand which is illegally brought from the State of Karnataka, this Court will not lend its assistance in any form to the petitioners and certainly, the Police authorities will be justified in taking action as per law in such cases."

But in 2011, another Division Bench, without noticing the earlier Division Bench decision, decided otherwise as regards such conflict, in W.A.No.1206/2011. The said Division Bench accepted the contention that on payment of necessary tax and other dues in Kerala, such import of sand from the State of Karnataka can be legalised, and held thus:

"The appellants have remitted the tax payable in Kerala under the KVAT Act is another contention raised by the appellants. If the claim of the appellants is true, we see no justification for detention of goods in Kerala, no matter, there may be prohibition in Karnataka against transport of sand from Karnataka. The Collector can seize the vehicle with load of sand only if there is a violation of provision of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. The appellants' contention that sand transported was sourced from Karnataka under permit issued by the Authorities in Karnataka and therefore transport is not illegal under the Sand Act is absolutely tenable."

9. The Division Bench referred the issue to the Full Bench, noticing a clear conflict on the subject, between two Division Bench decisions of co-equal Judge strength. However, the Division Bench observed thus in paragraph 6 of the judgment by which the matter was referred to the Full Bench:

"However, we, in co-equal jurisdiction, have to respect the wisdom expressed in the judgment in W.P.(C) No.16392 of 2010 which expresses also the judicial anxiety in the context of movement of the goods on interstate basis, when the movement of goods from one State is prohibited. We are unable to dissuade ourselves from thinking that the said view has substance."

10. The petitioners rely on a decision of the Honourable Supreme Court in *Varghese v. State of Kerala* 2008(1)KLT 576 (SC) to contend that ban or prohibition of export of sand from one State to the other, will not get legal sanctity and constitutional sanction. On an examination of the said decision, we find that the Honourable Supreme Court rendered the said decision in a different context dealing with some conditions imposed by the Government of Kerala for trade of lime shell, under Clause(o) of Sub Section 1A of Section 15 of the MMDR Act. We find that the factual situations here are different. In *Varghese's* case (cited supra) the Honourable Supreme Court held that conditions for licence under the State MMDR Rules framed under Section 15 of the MMDR Act, cannot be justified under Clause(o) of Sub Section 1A of Section 15. Section 15 of the

MMDR Act authorises the State Governments to make Rules in respect of minor minerals and connected matters. Sub Section 1A of Section 15 enumerates the different matters on which such Rules can be made. For imposing certain conditions for a licence to trade in lime shell, the Government of Kerala relied on Clause (o) of Sub Section 1A. The Honourable Supreme Court held that such conditions cannot be justified under Clause (o), and further held that such conditions cannot be imposed in the case of minor minerals already excavated. But here, the situation is different. The question involved here is broader, as to whether a State Legislature can, by Act or by Rules, or by Orders and Circulars having the force of law, impose restrictions on freedom of trade in that particular State. The subject is covered by Article 304 of the Constitution of India, and not by the Rules framed by a State under Section 15 of the MMDR Act. We find that Varghese's case (cited supra) decided by the Honourable Supreme Court will have no application to the factual and legal issues here.

11. Notwithstanding the declaration of policy under Article 301 of the Constitution of India as regards freedom of trade and intercourse throughout the territory, Clause (b) of Article 304 gives constitutional sanction for reasonable restrictions on the freedom of trade, commerce and intercourse within a particular State, by way of Legislation. It is imperative, as an essential requirement and a constitutional mandate, for the protection of our federal system and also the dealings and relationship between different States in India, that ban or prohibition of export of any substance made by a particular State by law as authorised under the Constitution must, in all ways possible, be respected, honoured, and accepted by other States. Prohibition of export in one State cannot be ignored or defied, or challenged by the other States, and import or transportation of such prohibited goods cannot be justified by the other States on the basis of permitted import in those States. It is true that import of sand to Kerala is permitted by the Government of Kerala. But, when such export is prohibited in a neighbouring State, we cannot defy and question the Karnataka law saying that our law permits import. When we permit import of sand to Kerala from neighbouring States, or the other States in the Country, it must definitely be subject to the restrictions and prohibitions made on the subject by the other States. Otherwise, situations of conflict between States, and conflict of interest between States will defile our federal system, and will create unhealthy and undemocratic situations in the dealings and relations between different States in India. When the State of Kerala permits import of sand from other States under any special law or the Rules, such import cannot go against the prohibition of export sanctioned under the supreme law, contained in Article 304 of the Constitution of India. Accordingly, we find that the police authorities and other authorities, and also the people of Kerala are bound by the law made by the State of Karnataka imposing restrictions in the said State as authorised by the Constitution of India, and that we are bound to honour, respect and accept such restrictions on trade and intercourse made by our neighbouring State.

12. Now, let us examine the different provisions of the MMDR Act, and the Rules

framed thereunder, governing the subject, and let us also decide whether the Sand Act in Kerala will have any application in identical situations involving possession and transportation of sand, other than river sand collected or extracted within Kerala. The main argument advanced by the petitioners is that the Sand Act in Kerala will have no application to river sand or other sand brought to Kerala from other States, and that the Sand Act will have application only to the river sand collected or extracted within Kerala.

13. The learned counsel for the petitioners submitted that the Sand Act in Kerala cannot have operation and application beyond the State of Kerala, and so the police authorities and other authorities in Kerala will not have power under the said Act, to seize sand including river sand brought from other states. The learned counsel also submitted that the police authorities can act or seize the article only under the MMDR Rules in Kerala. The learned counsel maintained the stand that such powers cannot be exercised by the police and other authorities even under the MMDR Act, because the law relating to minor minerals is contained only in the MMDR Rules framed in Kerala. On the other hand the learned Government Pleader representing the State of Kerala submitted that it is true that the Sand Act in Kerala cannot have application in the present circumstances where the subject matter is not river sand collected or extracted in Kerala, but powers of prosecution and seizure can be exercised by the police, and other authorities appointed by the Government, under the provisions of the MMDR Act. The learned Government Pleader submitted that it is provided under the Kerala Rules framed recently in 2015, that illicit import and transportation of sand from other States can be dealt with and punished under the MMDR Act. In *Aloshias C. Antony & others v. Chief Secretary, Government of Kerala and others* 2014(1) KHC 329, involving a batch of writ petitions challenging the extent of the powers of the police and the other authorities under the MMDR Act in the absence of specific notification by the Government, a learned Single Judge of this Court held that even in the absence of such notification under Section 21(4) of the MMDR Act the authorities are well within their powers to seize vehicles and minerals, and that the general powers of police under the Code of Criminal Procedure for seizure and other procedures are not in any manner affected by the MMDR Act.

14. The extent of legislative powers of the Union and the States is dealt with under Part XI of the Constitution of India. Clause 1 of Article 245 of the Constitution empowers the parliament to make laws for the whole or any part of the territory of India, subject to the other provisions of the Constitution. This clause also provides that the legislature of a State may make laws for the whole or any part of the State. Article 246 deals with legislative powers of the Centre and the States on the different matters enumerated in the three lists in the VIIth schedule of the Constitution. Clause 3 of Article 246 provides that subject to Clauses (1) and (2) dealing with legislative powers regarding matters in the union list and the concurrent list, 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 (State list) in the VIIth schedule. Thus it is very clear that the legislative powers of a State cannot extend beyond the territorial limits of the State and beyond the scope of the subject matter in the State list or in the concurrent list as the case may be, or beyond the scope of the object of legislation. Even in the case of any matter in the concurrent list the State legislature cannot transgress into the legislative province of the centre, and in such a case of inconsistency or conflict between a Central law and a State law, the Central law will have to prevail, as provided under Article 251 of the Constitution.

15. Regulation of mines and mineral development, is a matter enumerated as entry No.54 in the union list, and the power of the parliament to legislate on this subject is only to the extent to which such a regulation and development under the control of the union, is declared by the parliament under the law. In List II (State list) also regulation of mines and mineral development figures as entry No.23, but subject to the provisions of the List with respect to regulation and development under the control of the union. As regards development and regulation of mines and minerals, the MMDR Act has categorised minerals into two; minor minerals and other minerals. As regards minor minerals alone legislative powers by way of Rule making are given to States under Section 15, and as regards other minerals legislative powers are within the exclusive province of the parliament.

16. The object of the Sand Act in Kerala is very clear from the preamble and the different provisions of the Act. Section 15(1) of the MMDR Act authorises State Governments to make Rules in respect of minor minerals, and the scope of these rules must be for regulating the grant of quarry leases, mining leases or other mineral concessions. This is not the subject dealt with under the Sand Act in Kerala. The object of the Sand Act in Kerala is to protect the biophysical environment system of river banks and river beds in the State of Kerala, and to regulate the extraction and removal of river sand in Kerala, and also the matters connected therewith or incidental thereto. The scheme of the various provisions of the Kerala Sand Act also will show that the subject matter of legislation is in fact river sand collected or extracted from various rivers and river beds in Kerala, and the object is preservation and protection of biophysical environment system of river banks and river beds by such process. Much thought or probe is not required to find that sand, or even river sand, brought in Kerala from other States on licit or illicit export cannot be governed by the Sand Act in Kerala. When we examine the subject and object of legislation, and also the various provisions of the Sand Act in Kerala dealing with extraction, collection, removal and distribution of river sand collected from the rivers, and river banks or river beds in Kerala, we find that the object of the Sand Act is protection of the rivers and river banks of Kerala and also their bio-physical environmental system. So we find that in the present circumstances involving sand exported from the State of Karnataka, the Sand Act in Kerala can have no application, and the police and other authorities in Kerala cannot invoke the powers of seizure or prosecution or

confiscation with respect to such Sand, under the provisions of the Sand Act in Kerala.

17. Now the question is whether prosecution and other proceedings are possible under the MMDR Act and the Rules framed thereunder. Let us see the definition of "mineral". The learned counsel for the petitioners submitted that the MMDR Act can have application only to minerals, and cannot have any application to minor minerals which are separately dealt with under the Rules framed by the Government of Kerala as authorised under Section 15(1) of the MMDR Act. The learned counsel also submitted that under these Rules seizure of articles is not possible, and what is possible at the most is punishment for violation of the provisions of the Rules, and not for violation of the provisions of the MMDR Act. On the other hand the learned Government Pleader submitted that the definition of minerals is a wide definition including minor minerals, and that Section 3 of the MMDR Act defines minor minerals with a definite object. The learned Government Pleader submitted that such a separate definition is given under Clause (e) not because minor minerals are not included in the definition of minerals under Clause (a). Clause (a) of Section 3 of the MMDR Act defines minerals to include all minerals except mineral oils. Clause (e) of Section 3 defines minor minerals, to mean building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral. The argument advanced by the learned counsel for the petitioners is to the effect that when there is a separate definition of minor minerals under Clause (e), the definition of minerals in Clause (a) cannot include minor minerals. On an examination of the different definitions and also the application of different provisions including Section 15 which authorises the State Governments to make rules for regulating the grant of quarry leases, mining leases or mineral concessions in respect of minor minerals, we find that the definition of minerals under Clause (a) of Section 3 of the MMDR Act is a very wide definition covering minor minerals also. The answer to the question raised by the learned counsel for the petitioners is contained in the scheme of the provisions of the Act. One may ask why minor mineral is separately defined under the law, if it is included in the definition of minerals. We find that it is with a specific object the parliament defined minerals generally and minor minerals specifically. The scheme of the provisions of the MMDR Act is that exclusive powers are given to the Centre to deal with minerals other than minor minerals, but under Section 15, State Governments are authorised to make Rules with respect to minor minerals alone. Even as regards minor minerals the scope of the Rules must be for regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals. The matters on which the State Governments can make rules for regulating the grant of such leases or concessions are enumerated in Clauses (a) to (o) of sub Section IA of Section 15. When the application of law is divided as regards the subject matter category wise, it is imperative that the subject matter within the powers of the centre and

the subject matter within the powers of the States must be separately dealt with. This is the only reason why the MMDR Act defines minerals generally and minor minerals specifically. The definition of minerals is an inclusive definition covering all sorts of minerals except mineral oils defined under Clause (b). Clause (e) contains a specific definition of minor minerals, only because such a definition is necessary when legislative powers by way of rule making are given to the States under Section 15 in respect of minor minerals. Thus we find that minor minerals, though defined separately under Clause (e) of Section 3 of the MMDR Act are included under the definition of minerals under Clause (a) of Section 3.

18. Now let us examine whether the MMDR Rules in Kerala are self contained, to deal with all sorts of transactions and situations in respect of minor minerals including sand. Sub section 1A of Section 4 of the MMDR Act provides that no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of the Act, and the Rules made thereunder. Thus the Sub section contains a definite prohibition regarding possession or transport of minerals, otherwise than in accordance with the provisions of the MMDR Act and the Rules framed thereunder. Now let us examine whether violation of this provision is punishable under the MMDR Kerala Rules, or whether the said Rules will empower the police authorities and other authorities in Kerala to seize and deal with minerals possessed or transported in violation of sub Section 1A of Section 4 of the MMDR Act. In exercise of the powers under Section 15 (1) of the MMDR Act, the Government of Kerala framed the Kerala Minor Mineral Concession Rules 1967. These Rules are meant for regulating the extraction of minor minerals in the State of Kerala. These Rules provide for grant of quarrying permits, quarrying leases, and also the regulation of the minor minerals extracted under such leases and licences. Rule 58 deals with penalty for violation of the Rules, and Sub rule 3 thereof deals with seizure of minor minerals collected or transported or possessed in violation of the Rules, and also the seizure of the tools, vehicles etc. used for such violation. Sub Rule 4 of Rule 58 deals with seizure of minor minerals along with vehicle, in the case of illegal transport of minor minerals without any valid permit issued by the competent authority. Sub Rule (1) of Rule 58 provides for punishment of imprisonment for a term which may extend to one year, for contravention of any provision of the Rules. On an examination of Rule 58 dealing with different aspects including seizure of materials and also punishment for contravention of Rules, we find that what is dealt with under Rule 58 is not in fact a situation of violation of Sub Section 1A of Section 4 of the MMDR Act. The Kerala Minor Mineral Concession Rules, 1967 were in force in Kerala when the vehicles of the petitioners with full load of sand were seized by the police. But now what is in force in Kerala is the Kerala Minor Mineral Concession Rules 2015 framed by the Government of Kerala in exercise of the powers under Section 15 (1) of the MMDR Act, and in supersession of the Kerala Minor Mineral Concession Rules 1967. The 2015 Kerala Rules deal with certain situations not dealt with originally by the 1967 Rules. However, violation of Sub Section 1A of Section 4 of the

MMDR Act is not seen covered by these Rules also. The punishment provided under Rule 108 of the 2015 Kerala Rules is only for the contravention of any provision of the Rules, and not for violation of any provision of the MMDR Act. Illicit import of sand from Karnataka and illicit transport of such sand within Kerala is not simply violation of the 2015 Kerala Rules. It is definitely a violation of Sub Section 1A of Section 4 of the MMDR Act. The subject matter dealt with under the Kerala Minor Mineral Concession Rules 2015, or even under the 1967 Rules, is grant and regulation of quarrying leases, mining leases or quarrying permits, and also the regulation of removal of minor minerals extracted or collected under such quarrying leases and licences, within the State of Kerala. These Rules cannot have application to minerals and minor minerals brought in Kerala from other States, or illicitly imported to State of Kerala, in violation of the provisions of any law in force in the other States. Rule 108 of the 2015 Kerala Rules, or even Rule 58 of the 1967 Kerala Minor Mineral Concession Rules, will not deal with a situation of illicit import of minerals or minor minerals from other States, or illicit transport of minerals or minor minerals in the State of Kerala. The penalty provisions, and also the provisions for seizure of articles, contained in the Rules can be applied only in the situations of violation of the Rules, and not violation of the provisions of the MMDR Act. But now there is a change in the legal position, as contained in the Kerala Minerals (Provisions for illegal mining, storage and transportation) Rules 2015. These are the Rules framed by the Government of Kerala in exercise of the powers under Sub Section (1) of Section 23 C of the MMDR Act. Section 23 C of the MMDR Act authorises State Governments to make Rules for preventing illegal mining, transportation and storage of minerals, and for the purposes connected therewith. Thus illicit transportation of minerals including minor minerals will have to be dealt with under the 2015 Kerala Rules framed by the State Government under Section 23 C of the MMDR Act. The Rules framed by the Government of Kerala under Section 23C of the MMDR Act have already come into force in the State of Kerala. Rule 29 of these Rules provides that whoever contravenes the provisions of these Rules shall be punishable with the penalty provided for in sub Section 2 of Section 21 of the MMDR Act. Sub Rule 3 of Rule 3 of these Rules made under Section 23 C of the MMDR Act provides that no person shall transport or cause to be transported any mineral or mineral products by any carrier without having a valid mineral transit pass under these Rules. In this case the petitioners did not have any permit or pass justifying import of sand from Karnataka or justifying transportation of such sand within the State of Kerala. The police seized the sand and the vehicles when the petitioners failed to produce any pass or permit as prescribed under the law. Of course, it is true that the above Rules were made in 2015 as authorised under Section 23C of the MMDR Act, but the vehicles and the sand in this case were seized long back in February 2012. Still the position is covered by the MMDR Act itself.

19. Now, after the coming into force of the provisions of the Rules made by the Government of Kerala under Section 23C of the MMDR Act, identical situations

can be dealt with under these Rules, and the provisions of the MMDR Act dealing with seizure, prosecution or punishment etc. will have to be followed in the process. In the present circumstances we find that there is not much difficulty to deal with identical situations because illegal or illicit transport of any mineral, without any valid pass or licence as prescribed under Sub rule 3 of Rule 3 of the 2015 Rules made under Section 23 C of the MMDR Act will have the consequences of seizure, prosecution and confiscation under the MMDR Act in view of Rule 29 of the said Rules.

20. Illicit import of sand from other states, or illicit transport of such sand within the State of Kerala was not in fact covered by the Kerala Rules of 1967 at the relevant time. But at the same time the alleged act is a clear violation of Sub section 1A of Section 4 of the MMDR Act. When such an act of offence is committed, and if it is punishable under the Principal Act, or if such a situation is not covered by the Rules made by the Government of Kerala, such act of offence will have to be dealt with under the Principal Act. The scope of the Rules framed by the Government under Section 15(1) of the MMDR Act will not go beyond the object of those Rules specified under Section 15(1A). Illicit import of sand from other states and illicit transportation or possession of such sand within the State of Kerala is not in fact the subject matter dealt with under the MMDR Kerala Rules of 1967 or 2015.

21. Once it is found that minerals include minor minerals, and that the subject matter of dispute in these cases is not in fact covered by the Sand Act in Kerala, or the MMDR Rules in Kerala, the prosecution procedure including seizure and arrest as provided under the MMDR Act, will have to be followed. The prohibition contained in Sub section 1A of Section 4 of the MMDR Act applies to all minerals including minor minerals, and when the Rules framed by a State Government do not contain provision to deal with such a situation, or to deal with violation of Section 1A, such violation will have the consequences including prosecution, seizure and confiscation as provided under the MMDR Act. Such procedures are provided under Section 21 of the MMDR Act.

22. Sub section 1 of Section 21 of the MMDR Act provides that whoever contravenes the provisions of sub section 1 or sub Section 1A of Section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to 25,000/- or with both. Sub Section 4 of Section 21 provides that whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf. Sub Section 4A further provides that any mineral or other material seized under sub Section 4, shall be liable to confiscation by an order of the court competent to take cognizance of the offence, and shall be disposed of in accordance with the directions of such court.

23. Now, let us see how situations like the present one involving illicit import or transport, or possession of minerals including minor minerals, not covered by the Kerala Sand Act and the MMDR Kerala Rules, can be dealt with in Kerala under the MMDR Act. Section 21 of the MMDR Act prescribes the procedure for criminal action in such matters, including seizure of articles, prosecution and confiscation of articles. Section 22 of the MMDR Act provides that, "no court shall take cognizance of any offence punishable under the Act or any rule made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government". The Government of Kerala has already issued notification appointing different categories of persons of various departments including police officers of and above the rank of Sub Inspector in the State to launch prosecution under Section 22 of the MMDR Act. The Learned counsel for the petitioners submitted that there was no Government notification as on the date of seizure in this case, appointing police officers under Sub Section (4) of Section 21 of the MMDR Act, with authority to seize articles liable to seizure under the said Sub Section. This is controverted by the other side, and it is contended that the Government has issued such a notification, and under the said notification police officers of and above the rank of Sub Inspectors are authorised to make seizure under Sub Section (4) of Section 21. Even if there is no such notification, the position is covered by the decision of this Court in *Aloshias C. Antony and Others v. Chief Secretary, Government of Kerala and Others* 2014(1) KHC 329, that the general powers of Police under the Code of Criminal Procedure are not in any manner affected by the MMDR Act.

24. In *Construction Materials Movers Association v. State of Kerala* 2008(4) KLT 909, a Division Bench of this Court observed that minerals include minor minerals also. As regards the scope and nature of proceedings in relation to minerals including minor minerals, under the MMDR Act, when the situation is not covered by any other laws or rules, the said Division Bench held thus in paragraph 10 of the judgment:

"S.21 of the Act provides a punishment of imprisonment for two years or fine, which may extend to twenty five thousand rupees or both for violation of sub-ss. (1) and (1A) of Section 4. For unauthorised transport of minerals including minor mineral, the vehicles involved can be seized, which may be confiscated by the competent criminal court. The violations of sub-ss.(1) and (1A) of Section 4 of the Act are cognisable offences, by virtue of Section 21 (6) of the Act. Section 22 says that the criminal court shall take cognizance of any offence punishable under the Act or Rules only on a complaint made in writing by a person authorised in this behalf by the Central or State Government. The State Government have issued a notification under Section 22 of the Act, as per S.R.O.No.827/91 published in Kerala Gazette (Extraordinary) No.796 dated 26.06.1991, authorising all District Collectors and all Police Officers of and above the rank of Sub Inspector, apart from Geologists, in their respective jurisdiction, to act as the competent authority under Section 22. Section 23A of the Act enables such authorised Officers to compound any offence punishable under the

Act on payment of a sum that the said authority may specify."

25. We fully agree with the Division Bench on this legal aspect. Illicit import of sand to Kerala, or illicit possession of such sand, or illicit transport of such sand, or even illicit possession or transport of sand not covered by the Kerala Sand Act is punishable under Section 21 of the MMDR Act, as a violation of Sub Section 1A of Section 4 of the Act.

26. Sub Section (6) of Section 21 of the MMDR Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under Sub Section (1) of Section 21 shall be cognisable. That the offence is made cognisable means that police officers will have power to make arrest and to proceed appropriately under the law. The argument advanced by the petitioners is that police officers will not get any authority for arrest without warrant under Sub Section (6) of Section 21, when there is no notification appointing those officers under Sub Section (4) of Section 21. As regards the powers of police for arrest and seizure even in the absence of notification under Sub Section (4) of Section 21 of the MMDR Act, we fully agree with the findings of the Division Bench in Construction Material Movers' case (cited supra) and of the Single Bench in Alosias C. Antony's case (cited supra).

27. The general powers of the police for arrest and seizure under the Code of Criminal Procedure are not specifically ousted or excluded by any of the provisions of the MMDR Act. On the other hand the offence punishable under Section 21 is made specifically cognisable also. That the offence is made cognisable means that any police officer, competent and empowered to act under the Code of Criminal Procedure, is competent to make arrest and to make seizure of properties, but prosecution can be launched only by the persons authorised by the Government under Section 22 of the MMDR Act. Contraband articles including minerals are liable to confiscation by court orders under Sub Section 4A of Section 21 of the MMDR Act. The latter part of the Sub Section provides that the property shall be disposed of in accordance with the directions of such court. This means that appropriate orders including confiscation orders can be passed by the court having jurisdiction to take cognizance of an offence punishable under Sub Section (1) of Section 21, on a complaint brought by any officer authorised under Section 22 of the MMDR Act. Appropriate orders meant under Sub Section 4A will include even interim orders authorising interim custody under Section 451 of the Code of Criminal Procedure. The object of Sub Section 4A of Section 21 is not that the property seized under Sub Section 4 shall be liable to confiscation in all situations. What we find on an analysis of the various provisions is that confiscation of properties is authorised under Sub Section 4A, by orders of the court having jurisdiction. However the court is competent to pass appropriate orders, for disposal of the properties. In appropriate cases where the facts and situations are of extreme violation, confiscation will have to be ordered by the court. However, in the case of minerals illicitly transported or imported, confiscation must be the rule. But in the case of vehicles and other

articles, appropriate orders including confiscation orders can be passed by the court having jurisdiction, and such properties can be appropriately dealt with.

28. Competence of the police officer who made seizure in this case, to initiate prosecution under Section 22 of the MMDR Act cannot be questioned or doubted, because there is already a Government order authorising police officers of and above the rank of Sub Inspectors to initiate prosecution under Section 22. If an officer is authorised under the law to initiate prosecution, and if his powers as police officer under the Code of Criminal Procedure including Section 102 of the Code of Criminal Procedure are not specifically ousted or excluded under the special law, and when the offence is specifically made cognisable, the powers and authority of such police officer to make seizure under Sub Section (4) of Section 21 cannot be questioned or challenged. We find that such appointment specifically under Sub Section (4) of Section 21 is required only in the case of other categories of officers than police officers. This position is made clear by the learned Single Judge in Alosias C. Antony's case (cited supra). The learned Single Judge observed that power to seize must be corollary to the power to make arrest and to bring prosecution. The learned Single Judge also observed that the argument otherwise, that seizure of articles made by an officer not empowered to arrest but empowered to bring prosecution under Section 22 of the MMDR Act, will not have effect of a legal seizure, is something difficult to digest. We fully agree with the observations and findings of the learned Single Judge in Alosias C. Antony's case (cited supra).

29. As discussed, observed and found in the forgoing paragraphs, we come to the conclusion on the important questions of law that situations like the present one involving minerals or minor minerals not covered by the Sand Act in Kerala or the MMDR Rules in Kerala, or any other special law, can be dealt with under the MMDR Act, and proceedings including seizure, confiscation and prosecution can be initiated under the MMDR Act. We accordingly find that the reliefs as sought by the writ petitioners cannot be granted. We reiterate that as regards the general police powers under the Code of Criminal Procedure for arrest and seizure, there cannot be any doubt or challenge, when such powers are not specifically ousted or excluded by any special or local law. There are provisions in the MMDR Act, authorising the Government to appoint other categories of officers also to make seizure and to initiate prosecution. We find that this is only in addition to the general powers given to the police under the Code of Criminal Procedure. However, as regards cognizance of offences, there is a specific provision under Section 22, and once cognizance otherwise than on complaint as prescribed under the law is barred, such cognizance under the Code of Criminal Procedure may not be possible. Only to that extent, the general powers of police under the Code of Criminal Procedure will stand excluded. In view of the specific provisions in Section 22 of the MMDR Act, prosecution on the basis of a final report under Section 173(2) Cr.P.C. is not possible. As regards the other police powers including arrest and seizure, there is no specific exclusion by the special law, and so, such general powers can be exercised by the police, including the

powers to make arrest, and to seize properties.

30. In the result, the above writ petitions are disposed of as follows:

(a) We declare that factual situations involving illicit import of minerals including sand to Kerala, or illicit possession or transport of such mineral in the State of Kerala, not covered by the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, or any other special law, will have to be dealt with, and appropriate proceedings including arrest, seizure and confiscation are possible, under the Mines and Minerals (Development and Regulation) Act, 1957.

(b) In the given factual situations in these two writ petitions, the Kerala Protection of River Banks and Regulation of Removal of Sand Act is not applicable.

(c) A writ of mandamus, as sought by the writ petitioners, directing the police officers to release their vehicles cannot be granted. Appropriate orders, including confiscation orders, will have to be passed by the court having jurisdiction to take cognizance of the offence punishable under Sub Section (1) of Section 21 of the MMDR Act, on a complaint brought under Section 22 of the Act.

(d) If the police officer who seized the properties has not so far reported the fact of seizure to the court, he will immediately report the fact of seizure to the court having jurisdiction.

(e) The court having jurisdiction shall pass appropriate orders as regards the sand and the vehicles involved in the cases.

(f) If application for interim custody of the vehicles is filed by the writ petitioners, the same shall be dealt with and disposed of by the learned Magistrate without any delay, or at any rate, within three months from the date of application.