
(2015) 06 CAL CK 0021
In the Calcutta High Court
Case No : Writ Petition No. 350 of 2013

Saran Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Constitution of India, 1950 — Article 239, 239 (1), 239(1), 240, 240(1)

General Clauses Act, 1897 — Section 3(60)(c)

Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 15, 2, 28

Citation : (2015) 06 CAL CK 0021

Hon'ble Judges : R.K. Bag, J

Bench : Single Bench

Advocate : A.K. Ray and Pradeep Ram, for the Appellant; S.S. Sarkar, M.C. Prusty, Tulsi Lal and V.D. Sivabalan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.K. Bag, J.—The petitioner has challenged the constitutional validity of the Andaman and Nicobar Islands Minor Minerals Rules, 2012. The petitioner has also challenged the legality and validity of the notification dated September 17, 2012 issued under Article 239 of the Constitution of India for exercise of the power and discharge of the functions by the Lieutenant Governor, Andaman and Nicobar Islands under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957.

2. The petitioner is a permanent resident of Aberdeen Bazar, Port Blair, South Andaman District, Andaman and Nicobar Islands. About 17 years ago, the petitioner started quarry business on the basis of the permission granted by the Deputy Commissioner, Port Blair in terms of Regulation 201 of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966 (hereinafter referred to as the Regulation of 1966). The petitioner established a small stone crusher unit for converting the boulder obtained from stone quarries to a particular size as per the requirement of the people for construction purpose. The

said unit of stone crusher of the petitioner was registered as tiny industry with the District Industries Centre, Andaman and Nicobar Administration, Port Blair.

3. The petitioner was running the said stone crusher unit on the basis of renewal of quarry permit by the Deputy Commissioner, South Andaman till June 30, 2012. In the month of April, 2012 the Deputy Commissioner, South Andaman published a notice that the quarry would be auctioned. The quarry permit of the petitioner was not renewed after the month of June, 2012. On October 26, 2012 the petitioner submitted an application before the Deputy Commissioner, South Andaman requesting him to renew the quarry permit of the petitioner. However, on May 24, 2012 the Assistant Secretary (Revenue), Andaman and Nicobar Administration published a notice in the website of the Administration asking for suggestion/objection, if any with regard to the draft Andaman and Nicobar Islands Minor Minerals Rules, 2012 within a period of 30 days from the date of publication of the notice. According to the petitioner, many people sent objection/suggestion to the Assistant Secretary (Revenue), pointing out why the Administration cannot frame Rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. The Andaman and Nicobar Quarry Materials and Contractors and Workers Association and Others preferred writ application bearing No. W.P. 24412(W) of 2013 before the High Court at Calcutta, which was disposed of on November 12, 2012 by the High Court with direction to the Deputy Commissioner, South Andaman to hear the petitioner and to pass a reasoned order in the matter of renewal of quarry permit in respect of the persons engaged in the said business for last two/three decades. The Deputy Commissioner, South Andaman District passed reasoned order on November 19, 2012 by rejecting the contention of the writ petitioner. In the meantime the Andaman and Nicobar Administration published Andaman and Nicobar Islands Minor Minerals Rules, 2012 (in short the M.M. Rules, 2012) by way of Gazette Notification dated September 20, 2012.

4. It is contended by the petitioner that the field of quarry operation in Andaman and Nicobar Islands is governed by Regulation 201 of the Regulation of 1966 and the M.M. Rules, 2012 cannot be brought into force, so long the provision of Regulation 201 of the Regulation of 1966 is in the statute book. It is further contended that the force of the Regulation of 1966 is that of a statute enacted by the legislature and in case of conflict between the provision of the said Regulation of 1966 and the provision of the M.M. Rules, 2012, the former will prevail over the latter. The specific contention of the petitioner is that the Minor Minerals (Development and Regulation) Act, 1957 was never made applicable to Andaman and Nicobar Islands by virtue of any notification and as such the M.M. Rules, 2012 framed under Section 15 of the said Act of 1957 cannot be allowed to subsist, when there is a special law governing the field namely Regulation 201 of the Regulation of 1966. There is no power vested in the Andaman and Nicobar Administration to frame rules regarding any matter falling within the ambit of Regulation 201 of the said Regulation of 1966. It is also specifically contended that the Lieutenant Governor of Andaman and Nicobar Administration has no

authority to frame rules under Section 15 of the Minor and Minerals (Development and Regulation) Act, 1957, because the rules can be framed only by the Central Government in respect of the Union Territory of Andaman and Nicobar Islands.

5. Mr. A.K. Ray, Learned Counsel appearing for the petitioner contends that the President of India has issued the Regulation of 1966 for peace, progress and good government of the Union Territory of Andaman and Nicobar Islands under Article 240(1) of the Constitution of India. This Regulation of 1966 will have the force and effect of an act of Parliament by virtue of Article 240(2) of the Constitution of India. Regulation 201 of the said Regulation of 1966 clearly provides that the Government may assign its right over any minerals, mines or quarries to any person and the Chief Commissioner may assign such right with previous approval of the Government. The Deputy Commissioner may also assign such right to any person as laid down in Regulation 201(3) of the Regulation of 1966. According to Mr. Ray, the M.M. Rules, 2012 notified by the Lieutenant Governor, Andaman and Nicobar Islands on September 20, 2012 in exercise of the power conferred under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 with the approval of the Government of India is a general law. The provision of Regulation 201 of the Regulation of 1966 is a special law by virtue of Article 240(2) of the Constitution of India. Mr. Ray submits that the provision of Regulation 201 of the Regulation of 1966 will prevail over the provision contained in the M.M. Rules, 2012, as the special law will always prevail over the general law in case of conflict between the two. Mr. Ray has strenuously argued that the provisions of M.M. Rules, 2012 cannot be made applicable without repealing the provision of Regulation 201 of the Regulation of 1966 which has the force and effect of a statute enacted by the Parliament.

6. By referring to the provisions of Article 245 and Article 246 of the Constitution of India and entries made in Item No. 54 of List-1 of Schedule-7 and the entries made in Item No. 23 of List-2 of Schedule-7 to the Constitution of India, Mr. Ray contends that Parliament has the authority to enact any law, so that the Union of India can take under its control the regulation of mines and the development of minerals and the state legislature has no jurisdiction to enact any law in this regard. The Central Government has already framed the Mineral Concession Rules, 1960 in exercise of the power conferred by Section 13 of the Mines and Minerals (Regulation and Development) Act, 1957. Mr. Ray has specifically pointed out that only the Parliament can make law with regard to the Union Territory under Article 246(4) of the Constitution of India. Accordingly, the Lieutenant Governor of Andaman and Nicobar Islands has no authority and jurisdiction to frame the M.M. Rules, 2012 in exercise of the powers conferred under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 with the approval of the Government of India. By referring to the provision of Section 3(60)(c) of the General Clauses Act, 1897 Mr. Ray has urged this court to consider that "the State Government" in relation to "Union Territory" will mean

"the Central Government."

7. Mr. Ray has urged this court to consider that the M.M. Rules, 2012 were not placed before the Parliament for approval as laid down in Section 28 of the Mines and Minerals (Development and Regulation) Act, 1957, and as such, the said Rules cannot be made applicable to the Union Territory of Andaman and Nicobar Islands. Mr. Ray has cited the case of Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., AIR 1976 SC 1031 : (1976) 1 SCC 466 : (1976) 1 SCR 552 , Vasu Dev Singh and Others Vs. Union of India (UOI) and Others, (2006) 144 PLR 802 : (2006) 11 SCALE 108 : (2006) 12 SCC 753 : (2006) 9 SCR 565 Supp and Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka and Others, (2010) 10 JT 157 : (2010) 13 SCC 1 : (2010) 11 SCR 240 : (2010) 8 UJ 4182 in support of his above contention. The sum and substance of the contention of Mr. Ray is that the provisions of the M.M. Rules, 2012 are ultra vires Article 240(2) of the Constitution of India and must be struck down as violative of Section 28 of the Mines and Minerals (Development and Regulation) Act, 1957.

8. It appears from the affidavit-in-opposition filed on behalf of the respondents No. 1 to 4 that the Andaman and Nicobar Administration issued quarry permit under Regulation 201 of the Regulation of 1966 till 2003 by receiving only royalty @ Rs. 5 per 100 cubic feet of quarry stone transported from the quarry site. In the year 1999 a Committee under the Chairmanship of the Chief Secretary, Andaman and Nicobar Administration was constituted to frame policy to regulate the quarry right in Andaman and Nicobar Islands, as the Regulation of 1966 was silent on the mode and manner of issuing quarry permit for minor minerals. The Committee recommended for change of the existing system of nominating for grant of quarry rights by an auction based system and issued notification in the year 2003. Those notifications were challenged by Quarry Owners Association and Others by filing W.P. No. 142 of 2003 and W.P. No. 12951 (W) of 2003. The said notifications were struck down by the High Court at Calcutta in the said writ petitions as those notifications were issued without the approval of the Central Government. Subsequently, the State Quarry Owners Association and Others filed a writ petition being W.P. No. 159 of 2003 alleging inaction of Andaman and Nicobar Administration in renewing the quarry permit. By order dated 29.09.2003, Learned Single Judge of the High Court at Calcutta observed that Andaman and Nicobar Administration has no right to grant quarry permit and as such the question of renewal of the quarry permit by Andaman and Nicobar Administration does not arise. The Andaman and Nicobar Administration can issue quarry permit under Regulation 201(2)(a) of the said Regulation of 1966 only with the approval of the Central Government and by following the safety measures to be taken under the Environment Protection Act, 1956.

9. It further appears from the affidavit-in-opposition filed by the respondents that the Andaman and Nicobar Administration moved the Central Government for approval of the decision of Andaman and Nicobar Administration to grant quarry

permit under Regulation 201 of the Regulation of 1966. On December 17, 2003 the Ministry of Home Affairs, Government of India conveyed to the Andaman and Nicobar Administration to constitute a new committee to go into the question of fees structures, period of assignment of rights and other connected matters to bring about a fair and transparent regime for regulating quarrying activities in the Union Territory, and during intervening period to grant permit to the private operators to resume quarry operation at the site already allotted to them earlier, subject to the condition that each quarry operator may be charged a lump sum fee of Rs. 1,00,000/- per year including reclamation cess of Rs. 10,000/- in addition to the royalty at the old rate of Rs. 1.77 per cubic metre. Subsequently, the draft Minor Minerals Rules of 2007 were framed by the Andaman and Nicobar Administration, and the said Rules were reviewed and redrafted as the M.M. Rules, 2012. In the meantime, the Supreme Court passed the order on 27th February, 2012 in I.A. Nos. 12-13 of 2011 in SLP (c) No. 19628-19629 of 2009 with SLP (c) No. 729-731 of 2011, 21833 of 2009, 12498-499 of 2010 directing the Central Government, State Governments and Union Territories to take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MOEF in its report of March, 2010 and model guidelines framed by Ministry of Mines, Government of India. Accordingly, the draft M.M. Rules, 2012 were prepared and sent to the Ministry of Home Affairs, Government of India for approval on May 23, 2012. On September 17, 2012 the Ministry of Home Affairs, Government of India forwarded the draft M.M. Rules, 2012 to Andaman and Nicobar Administration conveying approval of the Government of India for publication by appropriate notification. By the said notification dated September 17, 2012 the Government of India delegated the power of the President of India to the Lieutenant Governor of Andaman and Nicobar Islands for publication of the M.M. Rules, 2012 under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957.

10. It also appears from the affidavit-in-opposition filed by the respondents that the M.M. Rules, 2012 were notified on September 20, 2012 by the Lieutenant Governor by virtue of delegation of power conferred on Lieutenant Governor by notification dated September 17, 2012. The Andaman and Nicobar Administration stopped renewing the quarry permit after June 30, 2012. The Andaman and Nicobar Administration auctioned 38 quarries by following the procedure of the M.M. Rules, 2012 and quarry lease was granted in favour of the successful bidders.

11. Mr. S.S. Sarkar, Learned Counsel appearing on behalf of the respondent No. 1 contends that there is no specific provision under Regulation 201 of the Regulation of 1966 for granting quarry permit and as such there was need for framing the M.M. Rules, 2012. Mr. Sarkar submits that the M.M. Rules, 2012 were framed under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 as per direction of the Supreme Court of India on 27.02.2012 in I.A. No. 12-13 of 2011 in SLP (c) No. 19628-19629 of 2009 with

SLP Nos. 21833 of 2009, 12498-499 of 2010, SLP (c) cc 16157 of 2011 and cc 18235 of 2011. Mr. Sarkar has pointed out that the Central Government has approved the M.M. Rules, 2012 and the Central Government delegated the power to the Lieutenant Governor, Andaman and Nicobar Administration for publication of the said Rules. According to Mr. Sarkar, there is no conflict between the provisions of Regulation of 201 of the Regulation of 1966 and the provision of the M.M. Rules, 2012 and as such the question of giving overriding effect of special law over general law does not arise.

12. Mr. S.K. Mondal, Learned Counsel appearing on behalf of the respondents No. 2 to 4 submits that the provisions of Regulation 201 of the Regulation of 1966 do not contain any guideline with regard to grant of quarry permit or the mode and manner of granting lease of minor minerals and as such the Andaman and Nicobar Administration stopped renewal of the existing quarry permits after June 30, 2012 as per direction of the High Court at Calcutta in W.P. No. 159 of 2003. The Learned Single Judge of the High Court at Calcutta specifically observed at the time of disposal of W.P. No. 159 of 2003 on 29.09.2003 that the Lieutenant Governor of Andaman and Nicobar Islands has no right under the law to grant quarry permit unless such right is assigned to the Lieutenant Governor by the Central Government. The present writ petitioner was a party to W.P. No. 159 of 2003 and the order passed by Learned Single Judge in the said writ petition has attained finality as the order of Learned Single Judge has not been challenged before the higher forum. By referring to the provision of Section 3(60)(c) of the General Clauses Act, 1897, Mr. Mondal has clarified that the State Government appearing in Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 will refer to the Central Government in respect of the Union Territory of Andaman and Nicobar islands. The M.M. Rules, 2012 have already been approved by the Central Government and the Central Government has issued notification on September 17, 2012 for delegating the power of the President of India to the Lieutenant Governor of Andaman and Nicobar Islands for the publication of the said Rules of 2012. Mr. Mondal has also urged this court to consider that the representation of the petitioner for renewal of the quarry permit was turned down by the Deputy Commissioner, South Andaman District by passing a reasoned order on 19.11.2012 in compliance with the direction given by the High Court at Calcutta in W.P. No. 24412 (W) of 2012. The last submission of Mr. Mondal is that the M.M. Rules, 2012 will not become invalid for not placing the same before the Parliament as laid down in Section 28 of the Mines and Minerals (Development and Regulation) Act, 1957 as the provisions of Section 28 of the Act of 1957 are directory in nature. Mr. Mondal has relied on the decision of *Atlas Cycle Industries Ltd. and Others Vs. The State of Haryana*, AIR 1979 SC 1149(1) : (1979) CriLJ 927(1) : (1979) 2 SCC 196 : (1979) SCC(Cri) 422 : (1979) 1 SCR 1070 in support of his above contention.

13. Having heard the rival contentions made by Learned Counsel representing both parties, I find that the Regulation of 1966 was made by the President of India under Article 240 of the Constitution of India. It goes without saying that

this Regulation of 1966 will have the force and effect of an act of Parliament by virtue of Article 240(2) of the Constitution of India. On perusal of Regulation 201 of the said Regulation of 1966 I do not find any provision with regard to quarry lease or quarry permit or quarry operation or mode and manner of transit of minor minerals. The only provision in Regulation 201 of the said Regulation of 1966 is with regard to assigning of right of the Government of India to any person over mines, minerals or quarries. The grant of quarry permit under Regulation 201 of the said Regulation of 1966 by the Deputy Commissioner without the approval of the Central Government was found to be without jurisdiction by Learned Single Judge of the High Court at Calcutta on 29.09.2003 in W.P. No. 159 of 2003. By order dated 29.09.2003 passed in W.P. No. 159 of 2003 Learned Single Judge of the High Court at Calcutta observed that the Administration of the Andaman and Nicobar Islands including the Lieutenant Governor had no right to issue permit to any person for carrying on mining operation and quarrying of stones without the approval of the Central Government. This order of Learned Single Judge of the High Court at Calcutta has attained finality because nothing is on record to indicate that the said order passed by Learned Single Judge was set aside by any higher forum. This order of the Learned Single Judge is binding on the petitioner as the petitioner was a party to W.P. No. 159 of 2003.

14. The Andaman and Nicobar Administration moved the Central Government for approval of new policy framed by a committee headed by the Chief Secretary for approval on 30th October, 2003 (Annexure - R-4 to the affidavit-in-opposition). It appears from the letter dated 17th December, 2003 addressed to the Chief Secretary, Andaman and Nicobar Administration by the Director of Ministry of Home Affairs, Government of India (Annexure - R-4 to affidavit-in-opposition) that the Central Government asked Andaman and Nicobar Administration to constitute a new committee to look onto the question of structure, period of assignment of quarry rights and other connected matters and submit its report by 31st March, 2004 and pending finalization of the report by the Central Government, the Andaman and Nicobar Administration was allowed to permit the private operators to resume quarrying operations at the sites allotted to them earlier on condition of payment of lumpsum fee of Rs. 1,00,000/- per year including reclamation cess of Rs. 10,000/- in addition to the royalty at the old rate of Rs. 1.77 per cubic metre and on further condition of obtaining no objection certificate under Rule 5 of the Rules framed under the Environment Protection Act, 1956. The interim system introduced by this letter dated 17th December, 2003 of the Ministry of Home Affairs, Government of India continued till 30th June, 2012. In the meantime, the draft M.M. Rules, 2012 were finalised and approved by the Central Government. On perusal of the provisions of the M.M. Rules, 2012, I find that the said Rules contain detailed provisions with regard to mode and manner of granting quarry lease, terms and conditions of quarry operations, manner of Protection of environment, transit of minor minerals and other provisions connected with minor minerals in Andaman and

Nicobar Islands. Since there is no provision under Regulation 201 of the Regulation of 1966 with regard to quarry permit, quarry lease and other connected matters with regard to minor minerals and quarry operations, and since the M.M. Rules, 2012 have made elaborate and specific provision with regard to mode and manner of quarry permit and all connected matters with regard to minor minerals, I do not find any conflict between the provision of Regulation 201 of the Regulation of 1966 and the provision of the M.M. Rules, 2012. In the absence of any conflict between the provision of Regulation 201 of the Regulation of 1966 and the provision of the M.M. Rules, 2012, the question of giving overriding effect of Regulation 201 of the Regulation of 1966 over the M.M. Rules, 2012 does not arise as contended on behalf of the petitioner. The M.M. Rules, 2012 have supplemented the provision of Regulation 201 of the Regulation of 1966 and as such the M.M. Rules, 2012 cannot be struck down as repugnant to Regulation 201 of the Regulation of 1966 or ultra vires Article 240(2) of the Constitution of India as contended by Learned Counsel for the petitioner.

15. The Mines and Minerals (Development and Regulation) Act, 1957 came into force on 01.06.1958 by way of Gazette Notification No. G. S. R. 432 dated 29.05.1958. The said Act of 1957 extends to the whole of India including Andaman and Nicobar Islands. In this regard Mr. Ray has contended that the Rules in connection with minor minerals can be framed only by the Central Government and the State Government or the Lieutenant Governor of Andaman and Nicobar Administration has no authority and jurisdiction to frame the M.M. Rules, 2012. On perusal of the entries made in Item No. 23 of List-2 and the entries made in Item No. 54 of List-1 of the Seventh Schedule to the Constitution of India, I find that the power of legislation in connection with mines and minerals development given under State list can be exercised by the State legislature, subject to exercise of the power in this regard by the Parliament. Section 2 of the Mines and Minerals (Development and Regulation) Act, 1957 lays down that the Union of India has taken under its control the regulation of mines and the development of minerals in the public interest. In *Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka and Others*, (2010) 10 JT 157 : (2010) 13 SCC 1 : (2010) 11 SCR 240 : (2010) 8 UJ 4182 the Supreme Court held that the State Government was not justified in granting minor lease based on criteria de hors the Act of 1957. It is held by the Supreme Court in paragraph 37 as follows:

"37. The Constitution Bench in *Baijnath Kedio Case* after considering *Hingir Rampur Coal Co Ltd. V. State of Orissa* and *M.A. Tulloch* held that in view of the two above mentioned rulings of this court and by enacting Section 15 of Act 67 of 1957, the Union of India has taken all the power to itself and authorised the State Government to make rules for the regulation of leases. By the declaration and the enactment of Section 15, the whole of the field relating to minor minerals came within the jurisdiction of Parliament and no scope was left for the enactment of the second proviso to Section 10 in the Land Reforms Act. The

enactment of the proviso was, therefore, without jurisdiction."

In the instant case, no legislation is made by the state legislature. The M.M. Rules, 2012 have been framed with the approval of the Central Government in exercise of the power under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 and as such the above decision is not relevant for determining the issues involved in this case.

16. In *Vasu Dev Singh and Others Vs. Union of India (UOI) and Others*, (2006) 144 PLR 802 : (2006) 11 SCALE 108 : (2006) 12 SCC 753 : (2006) 9 SCR 565 Supp the Supreme Court has laid down in paragraph 142 as follows:

"The Constitution of India, having regard to the provisions of Articles 245 and 246 of the Constitution of India clearly demarcates the fields of legislation and, thus, it would not be correct to contend that only because the Central Government has changed its economic policy, the same must be reflected in all the legislative fields occupied by the State legislature."

This decision also does not have any relevance in the present case, because the M.M. Rules, 2012 have been framed by the Lieutenant Governor with the approval of the Central Government by virtue of the power delegated by the President of India under Article 239(1) of the Constitution of India.

17. The next submission of Mr. Ray is that the M.M. Rules, 2012, were not placed before the Parliament as laid down in Section 28 of the Mines and Minerals (Development and Regulation) Act, 1957, and as such the same cannot be acted upon as valid Rules. In *Atlas Cycle Industries Ltd. and Others Vs. The State of Haryana*, AIR 1979 SC 1149(1) : (1979) CriLJ 927(1) : (1979) 2 SCC 196 : (1979) SCC(Cri) 422 : (1979) 1 SCR 1070 the Supreme Court has observed in Paragraph 22 as follows:

"The question whether the direction to lay the rules before Parliament is mandatory or merely directory and whether laying is a condition precedent to their operation or may be neglected without prejudice to the effect of the rules are answered by saying that each case must depend on its own circumstances or the wording of the statute under which the rules are made."

On perusal of the provisions of Section 28 of the Mines and Minerals (Development and Regulation) Act, 1957, I find that the Rules made by the Central Government under this Act are to be laid before each House of Parliament after framing of the Rules and there is no mandate that the Rules framed by the Central Government will not be effective unless and until the Rules are laid before each House of Parliament. Accordingly, I am of the view that laying of the Rules before each House of Parliament as per mandate of Section 28 of the Mines and Minerals (Development and Regulation) Act, 1957 is directory in nature and not mandatory. Thus, in the absence of laying of the M.M. Rules, 2012 before each House of Parliament, the said Rules will not be invalid for violation of Section 28 of the Mines and Minerals (Development and

Regulation) Act, 1957 as contended on behalf of the petitioner.

18. The specific contention of Mr. Ray is that the Lieutenant Governor, Andaman and Nicobar Islands has acted without jurisdiction by publication of the M.M. Rules, 2012. In *Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd.*, AIR 1976 SC 1031 : (1976) 1 SCC 466 : (1976) 1 SCR 552 the Supreme Court has laid down in paragraph 25 as follows:

"We are, therefore, of opinion that the correct view is that notwithstanding the subordinate legislation being laid on the table of the House of Parliament or the State legislature and being subject to such modification, annulment or amendment as they may make, the subordinate legislation cannot be said to be valid unless it is within the scope of the rule making power provided in the statute."

It is made clear by this decision that the executive authority to whom the power is delegated to frame subordinate legislation must act within the rule making power delegated under the statute. In the instant case, the Supreme Court gave direction to the Andaman and Nicobar Administration on 27.02.2012 in I.A. No. 12-13 of 2011 in SLP (c) No. 19628-19629 of 2009 and SLP (c) No. 729-731 of 2011, 21833 of 2009, 12498-499 of 2010, SLP (c) cc 16157 of 2011 and cc 18235 of 2011 that the State Governments and Union Territories also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MOEF in its Report of March, 2010 and model guidelines framed by the Ministry of Mines, Government of India. The M.M. Rules, 2012 were notified by the Lieutenant Governor, Andaman and Nicobar Islands on September 20, 2012 in exercise of the powers conferred under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 read with Government of India, Ministry of Home Affairs Notification No. U-11030/5/2012 - UTL dated 17.09.2012. Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 has delegated the rule making power to the State Governments in relation to minor minerals. The State Government is not defined anywhere in the Mines and Minerals (Development and Regulation) Act, 1957. However, Section 3(60)(c) of the General Clauses Act, 1897 lays down that the State Government shall mean in a State, the Governor and in a Union Territory, the Central Government. By taking recourse to the provision of Section 3(60)(c) of the General Clauses Act, 1897, I can safely hold that the Parliament has delegated the rule making power under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 to the Central Government in relation to the Union Territory. The draft M.M. Rules, 2012 were sent to the Ministry of Home Affairs by the Andaman and Nicobar Administration vide letter No. 4-2/19-R/quarry(PF) dated 23rd May, 2012 as mentioned in paragraph 3 (t) of the affidavit-in-opposition filed by the respondent Nos. 1 to 4. It appears from the letter No. U-11030/5/2012-UTL dated 17.09.2012 referred to in paragraph 3 (u) of the affidavit-in-opposition filed by the respondent Nos. 1 to 4 that the

Government of India approved the M.M. Rules, 2012 on 17.09.2012 and the President of India delegated the power under Article 239 (1) of the Constitution of India to the Lieutenant Governor of Andaman and Nicobar Islands for exercise of powers and functions under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 within the territory of Andaman and Nicobar Islands. Accordingly, I am of the view that the M.M. Rules, 2012 were approved by the Central Government and the power of the President of India was delegated to the lieutenant Governor of Andaman and Nicobar Islands under Article 239 (1) of the Constitution of India for publication of the said Rules. Since the Lieutenant governor of Andaman and Nicobar Islands can run the Administration by virtue of power delegated by the President of India under Article 239 (1) of the Constitution of India, I do not find any illegality or irregularity in the Notification dated 17th September, 2012 by which the President directed the Lieutenant Governor of Andaman and Nicobar Islands under Article 239 (1) of the Constitution of India for exercise of power and discharge of functions of the Government under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 within the said Union Territory.

19. In view of my above findings, I cannot persuade myself to hold that the M.M. Rules, 2012 are ultra vires the provisions of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 or ultra vires the provisions of Article 240 of the Constitution of India or ultra vires the provision of Regulation 201 of the Regulation of 1966. The provisions of the M.M. Rules, 2012 are found to be legally valid and the same would apply to the entire territory of Andaman and Nicobar Islands with effect from September 20, 2012. Accordingly, the writ petition is dismissed. There will be no order as to costs. The urgent photostat certified copy of the judgment and order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.

This judgment is delivered from the main Bench of the High Court at Calcutta through Video Conferencing and as such the judgment and order will be uploaded in the server of the main Bench of the High Court at Calcutta.