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Judgment reserved on 19.07.2023

Judgment delivered on 18.08.2023

Neutral Citation No. - 2023:AHC:166717-DB

Court No. - 40

E-Case :- WRIT - C No. - 10037 of 2020

Petitioner :- Chhatarpur Crasher Association and another
Respondent :- State of U.P. And 3 others
Counsel for Petitioner :- Birendra Singh, Shubham Agarwal, Sr. Advocate (Shashi Nandan)
Counsel for Respondent :- C.S.C., Deepak Kumar Jaiswal, Nand Kishor Mishra, Shilpa Ahuja

With

Case :- WRIT - C No. - 37119 of 2022
Petitioner :- Stone Crusher Owners Welfare Society And Another
Respondent :- State Of U P And 3 Others
Counsel for Petitioner :- Birendra Singh
Counsel for Respondent :- CSC

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Prashant Kumar,J.

[Delivered by Hon'ble Mahesh Chandra Tripathi, J. for the Bench under Chapter VII Rule 1(2) of the Allahabad High Court Rules, 1952]

1. By means of writ petition (C.M.W.P. No.10037 of 2020) the petitioners, who are members of registered society are, in the business of extracting, crushing transporting, and selling the minor minerals in Madhya Pradesh and in other States, are challenging the 48th Amendment in Uttar Pradesh Minor Minerals (Concession) Rules, 1963, Rule 21 (4) and Rule 70 (2) of the Uttar Pradesh Minor Mineral (Concession) Rules, 2020, and Rule 21 (5) and Rule 72 (2) of the Uttar Pradesh Minor Mineral (Concession) Rules, 2021 and the Government Order dated 24.02.2020 and 10.08.2022.

2. While the aforesaid writ petition was pending, the petitioners preferred a Special Leave Petition before the Hon'ble Supreme Court stating that the writ petition was listed but neither the stay application was heard, nor the main petition. On this, Hon'ble Supreme Court directed this Court to decide the proceedings ex-

peditiously. In view of the direction of the Hon'ble Supreme Court, we have taken up the present writ petition.

BACKDROP OF THIS CASE

3. Mines and Minerals (Regulation and Development) Act, 1957 (herein after referred as MMRD Act 1957 for the sake of brevity), has been enacted by the Parliament to provide for development and regulation of mines and minerals. The relevant section which are important for the adjudication of the current issues are being reproduced herein for reference:

4. Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 is as follows:-

> "15. (1) T*he 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.*
>
> *(1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-*
>
> *(a) the person by whom and the manner in which, applications for quarry leases, mining leases or other minerals concessions may be made and the fees to be paid therefor;*
>
> *(b) the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent;*
>
> *(c) the matters which may be considered where applications in respect of the same land are received within the same day;*
>
> *(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;*
>
> *(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;*
>
> *(f) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;*
>
> *(g) the fixing and collection of rent, royalty, fees, dead rent, fines or* ***other charges*** *and the timewithin which and the manner in which these shall be payable;*
>
> *(h) the manner in which the rights of third parties may be protected (whetherby way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;*
>
> *(i) the manner in which the rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reasons of any quarrying or mining operations shall be made in the same area or in any other area selected by the State*

Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;

(j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concession may be transferred;

(k) the construction, maintenance and use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passage for water for mining purposes on any land comprised in a quarry or mining lease or other mineral concession;

(l) the form of registers to be maintained under this Act;

(m) the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;

(n) the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefor, and the powers of the revisional authority; and

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

5. On 18.12.1999, the MMRD Act 1957 [1] was amended S*tatement of Objects and Reasons* of the Amendment of the Act, are as follows:

"*STATEMENT OF OBJECTS AND REASONS*

The Mines and Minerals (Regulation and Development) Act, 1957 provides for the regular and development of minerals other than petroleum and natural gas. Consequent upon the decisions taken in the Conference of the State Ministers/ Secretaries of Mines and Geology held in December, 1996, a Committee under the Chairmanship of the then Secretary, Ministry of Mines was constituted in February, 1997 to, inter alia, make recommendations regarding delegation of powers to the State Governments relating to grant and renewal of prospecting licences and mining leases and other related approvals and to suggest measures to reduce delay in this regard, review of the existing laws and procedures governing the regulation and development of minerals to make them more compatible with the changed policies and measures for prevention of illegal mining. The Committee in its report made wide-ranging recommendations in the area of delegation of powers to the state Governments, procedural simplifications, etc. which will go a long way to mitigate the problems faced by the States and the prospective investors while, at the same time, keeping the interests of the mining industry in particular and the national interest, in general, intact. After careful consideration of the recommendations of the Committee, the Government has decided to amend the Mines and Minerals (Regulation and Development) Act, 1947.

2. Some of the more important amendments to be made are as follows:
(i) …..
(ii) …..
(iii) A new provision is proposed to be inserted in the Act prohibiting transportation or storage or anything causing transportation or storage of any mineral ex-

1 By the Amendment Act 38 of 1999 with effect from 18.12.1999.

cept under the due provisions of the Act, with a view to preventing illegal mining. Further, the Act is proposed to be amended to cover the breach of the provisions of the proposed new provision of the Act to be punishable. It is also proposed to insert a new provision to provide for anything seized under the Act as liable for confiscation under court orders. A new section is proposed to be inserted to empower the State Governments to make rules for preventing illegal mining, transportation and storage of minerals and for purposes connected therewith."

The amended Sections were as follows:-

Section 4 (1A), Section 23-A and 23 (C)

Section 4 (1A) *No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.*

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

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following mattes, namely:–

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

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

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

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

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

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

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

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

6. Again an amendment was made in the Act in 2021 wherein explanation was added in Section 21

Section 21 ***Penalties.—5 [(1) ……..***

Explanation.—On and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021, the expression

"raising,transporting or causing to raise or transport any mineral without any lawful authority" occurring in this section, shall mean raising, transporting or causing to raise or transportany mineral by a person without prospecting licence, mining lease or composite licence or in contravention of the rules made under section 23C.

Amended (Ins. By Act 16 of 2021, S. 20 (w.e.f. 28-3-2021)[2].

7. The State Government, under the powers conferred under Section 15 of the MMRD Act 1957 had framed Uttar Pradesh Minor Minerals (Concession) Rules, 1963.

8. The State of Uttar Pradesh in exercise of power granted under the Section 23 (C) framed a Rule which was "Uttar Pradesh Minerals (Prevention of Illegal Mining, Transport and Storage) Rules 2002".

These Rules were superseded in 2018 by a new Rules which was "Uttar Pradesh Minerals (Prevention of Illegal Mining, Transport and Storage) Rules 2018".

These Rules of 2018 were again amended in 2019 and the said Rules were called "Uttar Pradesh Minerals (Prevention of Illegal Mining, Transport and Storage) Rules 2019"

9. The Uttar Pradesh Minor Minerals (Concession) Rules, 1963 was amended in 2020 by the State Government, and was called "Uttar Pradesh Minor Minerals (Concession) (Forty Eight Amendment) Rules, 2020", By this Rule 21 and Rule 70 were amended, and "Regulating Fees was introduced". The amended Rules reads as follows:-

"Rule 21. Royalty – *(1) The holder of a mining lease granted on or after the commencement of these rules shall pay royalty in respect of any mineral removed by him from the lease area at the rates for the time being specified in the First Schedule to these rules.*

(1-a) Notwithstanding anything to the contrary contained in rule 3, royalty should be payable by concerned brick kiln owner or user of ordinary clay on ordinary earth at the rate, for the time being, specified in First Schedule to these rules:

Provided that the State Government shall take fees to be known as Regulating Fees from brick kiln owners in respect of district categorized, on the basis of pay on at such rates as may be notified from time to time by it.

(2) The State Government may, by notification in the Gazette, amend the First Schedule so as to include: therein or exclude there from or enhance or reduce the rate of royalty in respect of any mineral with effect from such date as may be specified in the notification:

2Amended (Ins. By Act 16 of 2021, S. 20 (w.e.f. 28-3-2021)

Provided that the State Government shall not enhance the rate of royalty in respect of any mineral for more than once during any period of three years and shall not fix the royalty at the rate of more than 20 percent of the pit's mouth value.

(3) Where the royalty is to be charged on the pit's mouth value of the mineral, the State Government may assess such value at the time of the grant of the lease and the rate of royalty will be mentioned in the lease deed. It shall be open to the State Government to re-assess not more than once in a year the pit's mouth value if it considers that an enhancement is necessary.

(4) Regulating Fees may be determined by the State Government from time to time on minerals entering the State from other States."

Further, the amended Rule 70 (2) reads as follows:-

"70. Restriction on transport of the Minerals *– (1) The holder of a mining lease or permit or a person authorised by him in this behalf shall issue a pass in Form MM-11 or Form e-MM-11 prepared through electronic to process to every person carrying, a consignment of minor mineral by a vehicle, animal or any other mode of transport, the State Government may, through the District Officer, make arrangements for the supply of printed MM-1 1 Form books on payment basis.*

(2) No person shall carry, within the State a minor mineral by a vehicle, animal or any other mode of transport, excepting Railway, without carrying a pass in Form MM-11/ Form e-MM-11 issued under sub-rule (1), Valid transit pass issued under rule 7(3) of Uttar Pradesh Mineral (Prevention of illegal Mining, Transportation and storage) Rules, 2018 or similar valid transit pass issued by any other State:

Provided that if the State Government enters into an agreement to collect the Royalty through contractor, receipt of royalty or zero receipt as the case may be shall be issued by such contractor and in such cases carrying out such receipt with Form MM-11/Form e-MM-11 will be mandatory for transportation:

Provided further that the transportation of the mineral will be valid only after the State Government has determined the regulation fees imposed from time to time on the mineral coming from other State.

(3) Every person carrying any minor mineral shall, on demand by any officer authorised under Rule 66 or such officer as may be authorised by the State Government in this behalf, show the said pass to such officer and allow him verify the correctness of the particulars of the pass with references to the quantity of the Minor Mineral.

(4) The State Government may establish a check-post for any area included in any mining lease or permit and when a check post is so established public notice shall be given to this fact by publication in the Gazette and in such other manner as may be considered suitable by the State Government.

(5) No person shall transport a minor mineral for which these rules apply from such area without first presenting the mineral at the check post established for that area for verification of the Weight or measurement of the mineral.

(6) Any person found to have contravened any provision of this rule then the District Magistrate will recover penalty of Rs. 25, 000/- (twenty five thousands) along with the price of such minor mineral including royalty. After deposit of the entire amount mentioned above the vehicle etc including minor mineral will be released."

10. The Uttar Pradesh Minor Minerals (Concession) Rules, 1963 was again amended in 2021 by the State Government, this was called "Uttar Pradesh Minor Minerals (Concession) Rules, 2021". In this Clause (5) was added in Rule 21 which reads as follows:-

> *Rule 21(5)- Regulating Fees may be determined by the State Government from time to tome on minerals entering the State from other States.*
>
> *Rule 72(2)-……...*
>
> *Provided further that the transportation of mineral will be valid only after the State Government has determined the regulation fee imposed from time to time on the mineral coming from other State.*

This rule amended was only for minerals which were brought in the State of U.P. from the other States.

11. In furtherance to the Rules the state government issued a Government Order on 24.02.2022, imposing a Regulatory Fee of Rs. 50/- per cubic meter in respect of transportation of Building Stones, Ballast, Bolder transported from other States into the State of Uttar Pradesh. The reasons and object for issuing this G.O. were as follows :-

> *"1- उपर्युक्त विषय के सम्बन्ध में अवगत कराना है कि खनिजों के अवैध परिवहन पर प्रभावी नियंत्रण शासन का शीर्ष प्राथमिकता है, जिस हेतु प्रदेश में खनिज वाहनों की जांच को प्रभावी बनाये जाने की आवश्यकता है। प्रदेश में अन्य राज्यों से भी काफी संख्या में खनिज लदे वाहन आते है जिनके जांच हेतु सीमावर्ती विभिन्न स्थानों पर आर्टिफिसियल इन्टेलीजेन्स युक्त चेक गेट्स, जिस पर वे ब्रिज, कैमरा आदि की सुविधा होगी, लगाये जाने का निर्णय लिया गया है। उपखनिजों के परिवहन को विनियनित करने के उद्देश्य से ऐसे चेक गेट्स की स्थापना प्रदेश के अन्य प्रमुख मार्गों पर भी किया जाना है।*
>
> *2- अतः अन्य राज्यों से आने वाले उपखनिजो के वाहनों की सुगमतापूर्वक जांच किये जाने आदि के उद्देश्य से स्थापित किये जा रहे चेक गेट्स की अवस्थापना/ अनुरक्षण में होने वाले व्यय के दृष्टिगत राज्य सरकार द्वारा उत्तर प्रदेश उपखनिज (परिहार) नियमावली, 1963 (यथासंशोधित) के नियम- 21(4) तथा नियम- 70(2) के प्राविधान के अन्तर्गत उपखनिज ईमारती पत्थर, गिट्टी, बोल्डर, बालू मौरम के वाहनो पर रू0-50 प्रतिघन मी0 की दर से विनियमन शुल्क अवधारित करते हुये उसे अधिरोपित किये जाने का निर्णय लिया गया है।"*

12. The state government issued another Government Order on 10.08.2022, whereby which the Regulatory Fee of Rs. 50/- per cubic meter in respect of transportation of Building Stones, Ballast, Bolder transported from other States into the State of Uttar Pradesh, was increased to Rs 100/- per cubic meter.

13. A plain reading of the objects of the Government Order, make it very clear that the reasons for imposing the regulatory fees was only to set up a proper infra-

structure for the strict compliance of the conditions laid down by the in Section 23(c) of the MMRDA Act.

PETITIONER ARGUMENT

14. Heard Shri Siddharth Seth in Writ Petition No. 10037 of 2020 on behalf of the petitioners and Shri Shashi Nandan, learned Senior Couns assisted by Shri Birendra Singh on behalf of the petitioner in Writ Petition No. 37119 of 2022.

15. The petitioner who claims himself to be an association of stone-crusher, by means of the writ petition (C.M.W.P. No.10037 of 2020) challenged the vires of the Rules and the G.O. issued for charging Regulatory Fees. The prayers made in the writ petition were as follows :-

> "(i) declare the sub-Rule (4) to Rule 21 of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 as amended by the State Government through Uttar Pradesh Minor Minerals (Concession) (Forty Eight Amendment) Rules, 2020 dated 05.02.2020 as ultra-vires to the Constitution of India.
>
> (ii) declare the proviso of sub-Rule (2) of Rule 70 of Uttar Pradesh Minor Minerals (Concession) Rules, 1963 as amended by the State Government through Uttar Pradesh Minor Minerals (Concession) (Forty Eight Amendment) Rules, 2020 dated 05.02.2020 as ultra-vires the Constitution of India.
>
> (iii) issue a writ, order or direction in the nature of certiorari quashing the Government Order dated 24.02.2020 issued by the Secretary (Bhutatav Evam Khaniz Karm), Government of Uttar Pradesh, Lucknow ;
>
> (iii-a) issue a writ, order or direction in the nature of certiorari quashing the Government Order dated 10.08.2022 ;
>
> (iii-b) this Hon'ble Court may be pleased to declare Rule 21 (5) and Rule 72 (2) U.P. Minor Minerals (Concession) Rules, 2021 and the corresponding Rules under the U.P. Mines and Minerals (Concession) Rules, 2021 which prescribes the imposition/levy of such regulating fee as ultravires the provisions contained in Mines and Minerals (Development and Regulation) Act, 1957 and the relevant provisions emanated under Constitution of India.
>
> (iv) issue any other writ, order or direction in favour of the petitioners, which this Hon'ble Court may deem just and reasonable in the circumstances of the case; and
>
> (v) award the cost of the petition in favour of the petitioners."

16. The counsel for the petitioner submitted that on 05.02.2020 by way of the 48th amendment the State Government notified Uttar Pradesh Minor Minerals (Concession) (Forty Eight Amendment) Rules, 2020 (herein after referred to as 'Rules 2020'), whereby, the State Government has added Rule 21 (4) as well as added a proviso under the Rule 70 (2) of Rules 1963. By Rule 21 (4) of the

Amended Rules 2020, the State Government has reserved the power to impose regulating fees, on minerals which were brought from other States into the State of Uttar Pradesh.

17. Counsel for the petitioners submitted that the Regulating Fees was imposed because of the difference of rate in minor minerals in other State as compared to the State of Uttar Pradesh. This reason for imposing regulating fees violates the very objective for which the Rules have been framed. The State has exceeded its jurisdiction by incorrect interpretation of law and passed such an order. Therefore, the Government Order dated 24.02.2020 and G.O. dated 10.08.2022 deserves to be quashed.

18. He further submitted that the amended rules under challenge and the government orders, dated 24.02.2020 and 10.08.2022 have been issued by the State Government under the purported exercise of powers conferred under Section 15 read with Section 23(C) of the Act, 1957. By way of these amended rules, the State has illegally and arbitrarily levied a Regulation Fees of Rs. 50/- per cubic meter which was later enhanced to Rs. 100/- per cubic metre, by two different Government Orders, which is grossly arbitrary and illegal and is also ultra vires the provisions contained in the Act of 1957. The State has no authority to levy any fees or tax on the minerals which have been legally extracted by them and on which royalty has been paid. Further, These Government Orders are illegal as the reason given by the State Government is beyond the statutory provisions and Rules framed there under

19. The field of minerals is already covered by the parliamentary Act within the parameters laid down under List-1. Hence, the State has no control after a mineral that has been excavated in other States. The State cannot create any impediment on the management of these minerals into the State of U.P.

20. Article 301 of the Constitution of India grants freedom of trade, commerce, and intercourse through out the territory of India, and any impediment created would amount to violation of the said article. Imposition of Regulatory Fee, amounts to restriction of freedom of Trade by virtue of Article 301 of the Constitution of India.

21. The Rules under challenge herein, violate Part XIII of the Constitution of India as the effect thereof is to fetter the freedom of trade, commerce and intercourse under Article 301 of the Constitution. Under this Article, the expression 'freedom' must be read with the expression 'throughout the territory of India'

22. Under Article 302, Parliament may impose restrictions on the freedom of trade, commerce or intercourse between one State and another as may be required in the public interest. However, Article 302 is qualified by Article 303 which prohibits Parliament and the State Legislatures from making any law that gives preference to one State over another or discriminates between one State and another. The power of State Legislature to impose reasonable restrictions on the freedom of trade, commerce or intercourse, as may be required in the public interest, requires such a Bill or amendment to be moved in the State Legislature only after receiving previous sanction from the President. The President, being the head of the State and the guardian of the federation, must be satisfied that such a law is indeed required and, thus, acts as a check on the promotion of provincial interests over national interest.

23. He further submitted that MMRD Act, 1957[3] was amended with the objective of preventing illegal mining, transportation and storage of minerals, except in accordance with the provisions of the MMRD Act, 1957 and Rules framed thereunder with a view to preventing illegal mining, transportation and storage. Prohibition or restriction of inter-State trade of any minerals was neither intended nor provided or envisaged either expressly or by necessary implication.

24. The composite scheme of the Act, 1957 contained in the provisions of Sections 4(1-A), 15, 18, 21 and 23-C of the Act, 1957 clearly indicate that the delegation of power to regulate or make Rules for transportation or storage of minerals, including minor minerals, does not empower and cannot be stretched to empower the State Government to make Rules directly prohibiting or imposing additional charges in movement of minerals, in the name of Regulating Fees.

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3 Amended in 1999 known as Mines and Minerals (Regulation and Development) Amendment Act, 1999 (Act No. 38 of 1999)

25. Section 15 of the Act, 1957, which empowers the State Government to make Rules in respect of mines and minerals, does not extend to the Regulation of already excavated minor minerals under the terms and conditions of a mining lease. The Hon'ble Supreme Court in the case of **State of Tamil Nadu Vs. M.P.P. Kavery Chetty, (1995) 2 SCC 402,**[4] upheld the striking down of Rules made by the State of Tamil Nadu, where the State Government had fixed minimum price on the sale of granite after its excavation. In that case, the Hon'ble Supreme Court had emphatically held that, the State Government had no power under Section 15 of the Act, 1957 to exercise to control over minor minerals after they had been excavated.

26. Counsel for the petitioners further argued that Section 15 of the MMRD Act 1957 gives power to the State Government to make rules to regulate the grant of mining leases and for the 'purposes connected therewith'. This phrase 'purpose connected therewith' will not include charging of fees on transportation of minor minerals from other State. He further submitted that minerals legally excavated from different States, which are brought in the State of Uttar Pradesh and on that the State of U.P. cannot charge a regulating fees. The Rules under which Regulatory Fee is charged and the Government Order dated 24.02.2020 and 10.08.2022 should be quashed as the same are ultra vires.

27. Counsel for the petitioners submitted that the State can only recover fees which are conferred by Section 15 and Section 23-C of the Act of 1957, and Section 23-C makes it very clear that the purpose behind it is to prevent illegal mining, transportation and it does not give any power to impose any fees on the legally excavated minerals, to buttress this argument he relied heavily on the judgment passed by Hon'ble Supreme Court in the matter of **State of Gujarat and Others etc. Vs. Jayeshbhai Kanjibhai Kalathiya etc.**[5] and also placed reliance of a Division Bench judgment passed by the Madhya Pradesh High Court at Indore in the matter of **Ultratech Cement Vs. State of Madhya Pradesh .**[6]

4State of Tamil Nadu Vs. M.P.P. Kavery Chetty, (1995) 2 SCC 402

5State of Gujarat and Others etc. Vs. Jayeshbhai Kanjibhai Kalathiya 2019 (16) SCC 513

6Ultratech Cement Vs. State of Madhya Pradesh (Writ Petition No. 9330 of 2021 decided on 29.04.2022.

28. Even under powers granted under Section 15 of the Act of 1957, the State of U.P. while framing Minor Mineral (Concession) Rules, cannot frame any law in respect of minor mineral excavated in another State. Hence, the state of UP lacks the power to frame any rules for the minerals excavated in other states.

29. Section 15(1) or 15(1-A) of the MMRD Act does not provide for imposing a regulatory fee. The word used is “fixing and collection”. The Rule making power is confined only for fixing and collection and there is no power to impose “Regulatory Fee”.

30. The sub-ordinate legislation made under the provisions of Section 15(1) of the MMRD Act can only be exercised in respect of minerals found and excavated in Uttar Pradesh. It is the burden on the State to prove that, it has legislative power to impose tax or fee in respect of minerals, which is not mined or excavated in U.P.

31. The provisions of Section 23-C will only apply in respect of minerals which have been found and excavated in the State of Uttar Pradesh. Further, the basic word in this Section is “illegal mining” and all the activities enumerated in this Section are confined to the activities around illegal mining and further this Section does not give power to the State to impose fees on the goods which are legally excavated and are just brought in the state of U.P.

32. The purpose of fixing a check-post is to prevent illegal transportation of mineral for that the check-post should be made in the entire State of U.P. and not necessarily on the borders of the State. If illegal mineral is transported within the State of U.P. then there is no mechanism to check such transportation. If the purpose of check-post is to prevent illegal transporting then the check-post have to be on all the roads in the State.

33. If the provisions of rule 21(5) and rule 72(2) of the 2021 Rules are read together which shows that the imposition of fees is only for certain class of minerals which are brought from other States. The minerals excavated in U.P. does not attract Regulatory Fees, whereas minerals brought from other States do attract a Regulatory Fees. This is clearly discriminatory. It seems the purpose of imposing

Regulatory Fees is not to check illegal transportation but to make a source of income.

34. The Regulatory Fees which is being imposed through Rules 2021, is clearly not for preventing illegal mining but it is just a fee on import of minerals, or to prevent free trade from other states. Going by the aforesaid scheme, it becomes apparent that when there are such restrictions on a State Legislature, then the State Government could not have imposed such a prohibition under a statute whose object is to regulate mines and mineral development, and not trade and commerce *per-se*.

35. The enforcement of the Regulatory fees on the minerals brought from other States is a clear discrimination as compared with the minerals mined and excavated in the state of Uttar pradesh, as there is no such Regulating Fee/ restriction on their transportation.

36. The petitioner placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of **State of Tamilnadu vs. M.P.P. Kavery Chetty (supra),**[7] wherein, the court has held as follows:-

22.Rules 8D and 19B empowers the State Government company or corporation as the State Government may direct to control the sale by every permit-holder of quarried granite or other or rock suitable for ornamental or decorative purposes. They also empower the State Government or its officers or a State Government company or corporation, as the case may be, to fix the minimum price for the sale thereof. The object, as is shown by the terms of Government Order No. 214 dated 10th June, 1992, quoted above, is to conserve and protect granite resources.

23. It is difficult to see how granite resource scan be protected by controlling the sale of granite after its excavation and fixing the minimum price thereof.

24. There is no power conferred upon the State Government under the said Act to exercise control over minor minerals after they have been excavated. The power of the State Government, as the subordinate rule making authority, is restricted in the manner set out in Section 15. The power to control the sale and the sale price of minor mineral is not covered by the terms of clause (o) of sub- section (IA) of Section 15. This clause can relate only to the regulation of the grant of quarry and mining leases and other_mineral concessions and it does not confer the power to regulate the sale of already mined minerals.

7State of Tamilnadu vs. M.P.P. Kavery Chetty (supra),

This judgment makes it clear that the State can not exercise control over the minerals after they have been excavated.

37. The counsel for the petitioner then placed reliance on a judgment passed by the Hon'ble Supreme Court in the case of **State of Gujarat and Others v. Jayeshbhai Kanjibhai Kalathiya and Others (supra)**[8] wherein the Court has held has follows:-

"17) To support the above plea, he invited the attention of this Court to the judgment in ***D.K. Trivedi & Sons and Others v. State of Gujarat and Others*** *this Court considered the power of the State Governments to make rules under the said Section 15 enable them to charge dead rent and royalty in respect of leases of minor minerals granted by them and to enhance the rates of dead rent and royalty during the subsistence of such leases – a power exercised by the State to govern conditions subsequent to the grant of the lease. After tracing the legislative history in respect of minor minerals, it was observed that by virtue of the Act the whole of the field was taken over by Parliament and thereafter all powers in respect of minor minerals had been delegated to the State Governments. The Court also observed, inter alia, that the power to regulate minor minerals under Section 15 is extremely wide; that control over minor minerals fell exclusively within the domain of the State Governments; that minor minerals have historically been viewed by the Legislature, both pre and post Independence, as being for the use of local areas and local purposes; and it is left to the State Governments to prescribe such restrictions as they think fit by rules made under Section 15 (1).*

26) Having regard to the fact that it is the Union which can regulate and control the minerals in this country and States exercise power of minor minerals as delegates of the Union, this Court had deemed it fit to issue notice of these proceedings to Union of India as well in order to elicit its stand on this issue. The Union of India has filed its reply, taking a specific stand that there is no such power to frame rule like 44-BB of the 1966 Rules or Rule 71 of the 2010 Rules. Ms. Madhavi Divan, learned Additional Solicitor General, appeared for Union of India and pitched the case to even a higher level. Her argument was that there is no such power even with the Union of India to frame rules of the nature impugned in these proceedings as these would be offensive of Article 301 of the Constitution. Therefore, under no circumstances, such a power can vest with the State Government. She argued that Section 15 which empowers the State Government to make rules in respect of minor minerals does not extend to the regulation of already excavated minor minerals under the terms and conditions of a mining lease. This is made clear by the three Judge Bench in M.P.P. Kavery Chetty wherein this Court upheld the striking down of rules made by the State Government to fix minimum price for the sale of granite after its excavation. The Court emphatically held that the State Government had no power under Section 15 of the MMRD Act to exercise to control over minor minerals after they had been excavated. The power under Section 15 was restricted and did not empower the State to control the sale or sale price of minor minerals once they had been mined. The latter judgment has been followed in another three Judge Bench judgment in K. T. Varghese & Ors. v. State of Kerala & Ors.. In the latter case, one of the impugned conditions of the license was that minerals could be sold only within the State of Kerala, that too for domestic and agricultural purposes. The same was found impermissible. She also submitted that there is no conflict whatsoever between the judgments of this Court in Amritlal Nathubhai Shah and D.K. Trivedi & Sons

8State of Gujarat and Others v. Jayeshbhai Kanjibhai Kalathiya and Others (supra)

on the one hand and M.P.P. Kavery Chetty on the other. Her contention was that in Amritlal Nathubhai Shah, while it was emphatically stated that the State Government is the 'owner of minerals' within its territory and minerals vest in it, this was held in the context of a challenge to the reservation by the State Government of certain areas of exploitation of bauxite in 13 (2008) 3 SCC 735 the public sector. Private parties challenged the notification to that effect and the Central Government to whom they applied for revision held that the minerals vested in the State Government which was its owner and that the State Government had the inherent right to reserve any area for exploitation in the public sector. She did not quarrel with such a proposition. However, her caveat was that this was a matter where there were no leases in favour of private parties but rather the private parties were petitioning the government for the grant of leases.

28) The learned Additional Solicitor General also rebutted the argument of the appellants that power to regulate would encompass power to restrict the movement beyond the State. She argued that while it is well settled that the expression 'regulation' has many shades of meaning and can refer to prohibition (Sudhir Ranjan Nath and Hind Stone), the issue in the present case is whether a prohibition on the transportation of legally mined materials can be imposed under the provisions of the MMRD Act. There is no doubt that a prohibition can be imposed on mining under certain circumstances or on the grant of leases under the aforesaid Act but not on transportation de hors illegal mining.

34) From the subject matter of these appeals as well as arguments noted above, it clearly follows that the main issues that arise for consideration are as under:

> *(a) Whether the impugned rules framed by the State of Gujarat as a delegate of Parliament are beyond the powers granted to it under the MMRD Act ? In other words, whether the impugned rules are ultra vires Sections 15, 15! and 23-C of the MMRD Act?*
>
> *(b) Whether the impugned rules are violative of Part XIII of the Constitution of India?*
>
> *36) It is difficult to accept the aforesaid contention in view of the judgments of this Court in M.P.P. Kavery Chetty and K.T. Varghese. In those judgments, it has been categorically held that power of the State Government under Section 15 of the MMRD Act does not include control over minor minerals after they are excavated. Following observations from the said judgment are extracted herein:*
>
> *"19. The High Court quashed Rules 8-D and 19-B principally on the ground that Section 15 of the said Act gave no power to the State Government to frame rules to regulate internal or foreign trade in granite after it had been quarried. Section 15 also did not empower the State Government to frame rules to enable a State Government company or corporation to fix a minimum price for granite.*
>
> *20. Learned counsel for the appellant State submitted that Rules 8-D and 19-B were valid having regard to the Preamble of the said Act and Section 18 thereof. He submitted that the rule-making power of the State under Section 15 (o) was wide enough to encompass Rules 8-D and 19-B.*
>
> *21. The said Act is enacted to provide for the regulation of mines and the development of minerals under the control of the Union. Section 2 of the said Act de-*

clares that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the said Act. Section 13 empowers the Central Government to make rules for regulating the grant of prospecting licences and mineral leases in respect of minerals and for purposes connected therewith. Sub-section (1) of Section 15 empowers the State Government to make rules for regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and for purposes connected therewith. Sub-section (1-A) of Section 15 states that such rules may provide for the matters set out therein, namely, the person by whom and the manner in which an application for a quarry lease, mining lease and the like may be made; the fees to be paid therefor; the time and the form in which the application is to be made; the matters which are to be considered where applications in respect of the same land are received on the same day; the terms and conditions on which leases may be granted or regulated; the procedure in this behalf; the facilities to be afforded to lease-holders; the fixation and collection of rent and other charges and the time within which they are payable; the protection of the rights of third parties; the protection of flora; the manner in which leases may be transferred; the construction, maintenance and use of roads, power transmission lines, etc. on the land; the form of registers to be maintained; reports and statements to be submitted and to whom; and the revision of any order passed by any authority under the said Rules. Clause (o) of sub-section (1-A) reads "any other matter which is to be or may be prescribed". Section 18 of the said Act states that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of the environment by preventing or controlling any pollution which may be caused by prospecting or mining operations.

22. Rules 8-D and 19-B empower the State Government or its officers or a State Government company or corporation as the State Government may direct to control the sale by every permit-holder of quarried granite or other rock suitable for ornamental or decorative purposes. They also empower the State Government or its officers or a State Government company or corporation, as the case may be, to fix the minimum price for the sale thereof. The object, as is shown by the terms of Government Order No. 214 dated10-6-1992, quoted above, is to conserve and protect granite resources.

23. It is difficult to see how granite resources can be protected by controlling the sale of granite after its excavation and fixing the minimum price thereof.

24. There is no power conferred upon the State Government under the said Act to exercise control over minor minerals after they have been excavated. The power of the State Government, as the subordinate rule-making authority, is restricted in the manner set out in Section 15. The power to control the sale and the sale price of a minor mineral is not covered by the terms of clause (o) of sub- section (1-A) of Section 15. This clause can relate only to the regulation of the grant of quarry and mining leases and other mineral concessions and it does not confer the power to regulate the sale of already mined minerals."

41) Insofar as Section 23-C of the MMRD Act is concerned, it was inserted by the Amendment Act of 1999 with the objective to prevent illegal mining. That is clearly spelled out in the Statement of Objects and Reasons……...:

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 license, 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.

38. The State of Madhya Pradesh had vide notification NO.F-19-3-2017-XII-1 dated 22.10.2021 amended the Madhya Pradesh Mineral Rules, 1996 by substituting sub-rule (6) of Rule 29, whereby a levy in the name of 'Regulation Fee' had been imposed on minor minerals coming from other States into the State of Madhya Pradesh. The above mentioned amendment was under challenge before the High Court of Madhya Pradesh at Indore bench, in Writ Petition No.9330 of 2021 (**M/s Ultratech Cement Limited Vs. State of M.P.).** While deciding this Writ Petition the Madhya Pradesh High Court relying heavily on **Jayesbhai's** case held as follows:-

"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."

39. Counsel for the petitioners further relied on a judgment passed by the Division Bench of Karnataka High Court in **Sri Sai Keshava Enterprises Vs State of Karnataka** [9] passed in Writ Petition No. 8851 of 2021 which was decided on 07.07.202. Wherein the Court held that Section 15 is very clear, the State Government can only make Rules for preventing illegal mining, transportation and storage of minerals. They cannot impose fee on minerals which has already been legally excavated in some other State, and these minerals are just being brought in from that State into the State of U.P.

9Sri Sai Keshava Enterprises Vs State of Karnataka 2021 (2) AIR Kar. (1)

Relevant paragraphs of the said judgment are as follows:-

“19. Thus, sub-section (1) of Section 15 of the said Act of 1957 confers power on the State Government to make rules for regulating the grant of quarrying leases, mining leases or other minerals concession and allied purposes. Clause (g) of sub- section (2) of Section 15 confers rules making power on the State Government for fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which they shall be payable.

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 MMRD Act? In other words, whether the impugned rules are ultra vires Section 15, 15-A and 23-C of the MMRD Act?

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

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-Care 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".

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.

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.”

40. Hence, in view of the law laid down by the Hon'ble Supreme Court in **State of Gujarat Vs. Jayeshbhai** and followed by Madhya Pradesh High Court in **M/s Ultratech Cement** and by **Karnataka High Court** in **Sri Sai Keshava Enterprises**, it is clear that the State Government has no power to make any rules or impose a Regulatory Fees on minerals, which are legally mined in the other States, and brought into the State of Uttar Pradesh. Further, the rules, which puts impediment in the free trade are in violation of Part XIII of the Constitution of India, and hence, the impugned rules and the Government Orders may be declared ultra-vires.

STATE ARGUMENT

41. Mr. M.C. Chaturvedi, learned Additional Advocate General assisted by Mr. Devesh Vikram, Mr. Ambrish Shukla & Ms. Uttara Bahuguna, learned Additional Chief Standing Counsel, Sri Ankur Tandon, learned Standing Counsel and Sri Pradeep Tripathi, learned AGA for the State respondents in Writ Petition No.10037 of 2020 and Mr. Manish Goyal, learned Additional Advocate General assisted by Sri A.K. Goel, learned Additional Chief Standing Counsel for the State respondents in Writ Petition No.37119 of 2022 submitted as follows :-

42. Mr. Chaturvedi submitted that the petitioners' Association in Writ Petition No.10037 of 2020 has no locus to prefer the instant writ petition. He brought to the notice of this Court about the objects for which the society was formed. As per the objects the society was framed to address the problems faced by the members who were in the business of crushing stones. None of the members of the society are in the business of mining or transporting minerals to other States. The members of the association was not even remotely connected with the rules which they have challenged in the writ petition. Hence, the writ petition ought to be dismissed on Locus at the outset. To buttress this argument he pressed reliance on judgments of **Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmad and others** [10] and **Vinoy Kumar Vs. State of U.P. and others** reported in 2001 (4) SCC 734.[11]

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10 Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmad and others 1976(1) SCC 671

11 Vinoy Kumar Vs. State of U.P. and others 2001 (4) SCC 734

43. Learned Additional Advocate General submitted that under Articles 245 and 246(3) of the Constitution of India, the State has the power to make laws in respect to any matters enumerated in List-II of the 7th Schedule of the Constitution. Further, the State can make regulations for mines and mineral as per Entry-23 and also can impose fees in respect of any matters falling in this List as per Entry-66 of List-II of the 7th Schedule of the Constitution of India.

44. He submitted, that the State is charging "Regulatory Fees" under powers enshrined by the Constitution of India in the Seventh Schedule of List-II Entry 23 and the power conferred under Entry 66 of this List-II.

45. He further submitted that The Mines Act, 1952 was enacted with the object of regulation of labour and safety in mines. Section 2 (1) (j) and (v) of the Mines Act, 1952, are as follows:-

> *"(j) "mine" means any excavation where any operation for the purpose of scratching for or obtaining minerals has been or is being carried on includes—*
>
> *…..*
>
> *–(v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine or minerals or other articles or for the removal of refuse therefrom;*

Here the conveyors and ropeway are nothing but a mode of transportation, which falls in the ambit of Section 3 (i) of the MMRD Act.

46. By virtue of Section 2 of MMRD Act, 1957, it had been declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and development of mineral to the extent hereinafter provided. The Section imposes an additional restriction on the ambit of Entry-54 by limiting it to the provisions of MMRD Act, 1957.

47. The provisions of **Section (3)** of the MMRD Act, which are as follows:-

> *"(aa) "minerals includes all minerals except mineral oils;*
>
> *(ae) "mineral concession" means either a reconnaissance permit prospecting licence, mining lease, composite license or a combination of any of these and the expression "concession" shall be construed accordingly;*
>
> *(b) "mineral oils" includes natural gas and petroleum;*
>
> *(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purpose and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;*

(ea) "notified minerals" means any mineral specified in the Fourth Schedule."

Section 4 provides the General Restrictions on undertaking prospecting and mining operations. Relevant sub-sections of Section 4 read as under :

(*1A) No person shall transport or store or cause to the transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.*

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under Section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in First Schedule in any area within the State which is not already held under any mineral concession.

Likewise ***Section 4A*** *provides for termination of prospecting license or mining leases also places the State Government in an important regulatory role with respect to minerals over which Central Government exercises control.*

Section 13 *empowers the Central Government to make Rules for regulating the grant of mineral concession in respect of minerals and for purposes connected therewith.*

Section 14 *of the Act excludes quarry leases, mining leases and other mineral concessions in respect of minor minerals and for purposes connected therewith from the application of Section 5 to 13 of the Act.*

Section 18 *of the Act provides for conservation and systematic development of minerals and for protection of the environment and reads as follows :*

Section 18. Mineral development.*(i) It shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for such purposes the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit.*

48. A combined reading of Section 4(3) and Section 18 shows that even with respect to minerals under the control of the Central Government, the State Government is entitled to undertake reconnaissance, prospecting and mining operations which effectively amounts to regulation vesting with the State Government. The provisions thus reflect the regulatory power of the State Government with respect to specified minerals over which the Central Government exercises control.

49. In the year 1999, the Union considered the development of mines and minerals to be more important than its regulation, whereby serious amendments were

carried out in the Act the nomenclature of the MMRD Act, 1957 came to be changed by Act No.38 of 1999 as Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred as MMDR Act), and by the said amendment Sections 4 (1A), Section 23-A and Section 23-C were inserted.

50. Section 23 (C) of the MMRD Act, 1957 (which was incorporated by an amendment in 1999) empowers the State legislature to frame rules for preventing illegal, mining, transportation and storage of minerals. Exercising this power granted under the Act the State Government has framed separate rules in order to fulfill the obligations enumerated in Section 23-C (2) (a) & (b).

51. In Section 15 of the MMRD Act, the State has been given power to make rules and Regulation in respect of minor minerals. In Section 15 (1-A) (a), & (g) the word "Fees" has been mentioned, which goes to show that the State Government has power to make rules for imposing fees and also has a power to fix and collect rent, royalty, fees, dead rent, fines or **other charges.** It is under this power which have been granted under the Act to the State, The Rules were made, and the notifications were issued, which are under challenge. The State has full authority and power to enact such rules and impose "Regulating Fees". The State under the power conferred under the MMRDA Act, in super-session of 1963 rules has framed a new rules called the Uttar Pradesh Mining and Minerals (Concessions) Rules, 2021 which was a composite rule. Under these rules, the States have full authority to charge various fees under different heads. Rule 21(2), 26 and 27 grants the States power to charge the fees. The power to charge fee under these rules are similar to the power granted under Section 15 of the MMRDA Act. Hence, the rules framed and the Government Order dated 24.02.2020 and 10.08.2022 are in consonance with the provisions of the MMRD Act, 1957.

52. The Mineral Concession Rules, 1960 were framed by the Central Government in exercise of powers conferred under Section 13 of the Mines and Minerals (Development and Regulation) Act, 1957.

> *Rule 27 provides for the conditions to which that every mining lease shall be subjected. Sub-rule (1)(o) of Rule 27 states that*
>
> *(o) In respect of any mineral, which is relation to its use for certain purposes is classified as a major mineral and in relation to its use for other pur-*

poses as a minor mineral, the lessee who holds a lease for extraction of such minerals under these rules whether or not it is specified as a major mineral in the lease deed, shall not use or sell the mineral or deal with it in whatsoever manner or knowingly allow anyone to use or sell the mineral or deal with it in whatsoever manner as a minor mineral.

Provided that if on an application made to it in this behalf by the lessee, the State Government is satisfied that having regard to the inferior quality of such mineral, it cannot be used for any of the purposes by reason of which use it can be called a major mineral or that there is no market for such mineral as a major mineral, "the State Government may by order/permit the lessee to dispose of the mineral in such quantity and in such manner as may be specified therein as a minor mineral."

This reflects that even the Rules framed by the Central Government under Section 13 empower the State Government to make a decision on the nature of minerals (major or minor) and further empower the State Government to regulate the same.

A comprehensive perusal of the Scheme of the Act and the Rules made thereunder, reflects a consistent vesting of regulatory power with the State Government and control with the Central Government.

53. Mr. Manish Goyal, learned Additional Advocate General further submitted that the VIIth Schedule of the Constitution of India, Entry-54 of List I deals with the regulation of mines and mineral development to the extent it is under the Control of Union and declared by the parliament, has to be given strict interpretation. Unlike Entry 23 of List II which is of general nature and as reserved in List 1 and nothing is reserved in List II.

54. Section 3 (aa) of MMRD Act gives definition of minerals which includes all minerals except mineral oil. Minor Mineral is defined in Section 3 (e). There is no definition of Major Minerals under the Act. Section 23-C (1) provides that the State Government may by notification in the official gazette make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

55. The State of Goa had formulated Goa (prevention of illegal miming storage and transportation of minerals) Rules 2013, under the powers granted under section 23-C of the MMDR Act 1957 these rules were considered by the apex

court in the matter of **Goa Foundation Vs Union of India** [12], wherein the court held:-

> *"62. CEC in its report has stated that in the State of Goa, there is no system of periodic verification of the quantity of iron ore produced in the mining leases, the payments of royalty, the permits issued for transportation of mineral by the Mining Department, the transit permits issued by the Forest Department nor any reconciliation of the quantity of the mineral stated to have been produced in the mining lease with the quantity of the mineral for which royalty has been paid and transit permits have been issued, and there is no verification of the transit permits at the check posts and no verification of the quantity of the mineral exported/domestically used vis-a-vis the quantity legally produced. According to CEC, in the absence of such checks/verifications/controls, illegal mining can easily be undertaken and the actual quantity of iron ore produced and transported from the mining leases may not be accounted for by the State of Goa or by the lessees, resulting in leakage of revenue…..*
>
> *63. We entirely agree with the CEC report that in absence of proper checks, verifications and controls, there is bound to be illegal mining, storage and transportation of minerals, but we find that after the CEC report, the Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013 have been framed by the State Government under Section 23-C of the MMRD Act. A reading of these Rules shows that several provisions have been made in these Rules to prevent illegal mining and to regulate the sale, export and transit of ore, storage of mineral and transportation and winning and weighbridges and inspection of minerals in transit. Moreover, these Rules empower any person authorised by the Government to enter, inspect, search and seize articles. These Rules will have to be strictly enforced by the State Government and we hope that by such strict enforcement of these Rules, the mining, storage and transportation of minerals in the State of Goa will get controlled and regulated and the leakages and evasion of revenue will, to a large extent, be prevented."*

56. In 2008 the Government of India formulated National Mineral Policy, 2008 (with effect from March, 2008). Apparently this policy more or less was only on paper, and was not effectively implemented perhaps due to the involvement of very powerful people with the vested interests. The people responsible to curb the menace of illegal mines and transportation turned a Nelson's eye to rampant illegal or unlawful mining which had a catastrophic impact both on the environment and the tribal people living in that area. This issue was brought to the notice of the Hon'ble Supreme Court in the matter of **T.N. Godavarman** about the rampant illegal mining going on in the State of Orissa, wherein the Court appointed a Com-

12Goa Foundation Vs Union of India 2014 (6) SCC 590

mission of Justice M.B. Shah, (retired Judge of Supreme Court). The commission gave its report in the year 2013.

57. The Hon'ble Supreme Court in the matter of **Common Cause Vs. Union of India**[13] considered the report of Justice M.B. Shah and also the National Mineral Policy of 2008 and came to the conclusion that the National Mineral Policy 2008, since was not implemented, and was not effective policy, as it lack any proper mechanism to check illegal mining operation. The Court was of the view that the National Mineral Policy 2008 , because of inaffective enforcement machanism only turned out to be a paper policy, and could not be enforced. Further the Court was of the view that the Mining Policy was a decade old and it needed an over-haul as a chain of events have taken place including the advent of rapacious mining in several parts of the country. The Court held as follows:-

> *"230. We direct the Union of India to have a fresh look at the National Mineral Policy, 2008 which is almost a decade old, particularly with regard to conservation and mineral development. The exercise should be completed by 31.12.2017."*

58. As per the directions of the Hon'ble Supreme Court, the Government of India came out with the new **National Mineral Policy, 2019**, *(which was approved by the Cabinet on 28.02.2019).* The relevant portion of the policy is as follows:-

> ***1. Vision***
>
> *……...Since mining contributes significantly to state revenues, there is a need for an efficient regulatory illegal mining and value leakages…….*
>
> ***2. Regulation of Minerals***
>
> *2.1 Management of mineral resources is the responsibility of both the central and state governments in terms of entry 54 of the Union List (List I) and entry 23 of the State List (List II) of the Seventh Schedule of the Constitution of India.*
>
> *2.2 In order to make the regulatory environment conducive to ease to doing business, the procedures for grant of mineral concessions shall be transparent and seamless with an assured security of tenure along with transferability of concessions playing a key role in mineral sector development.*
>
> *2.3 To ensure enforcement of mining plans, the Indian Bureau of Mines (IBM) and the State Directorates of Mining & Geology will be strengthened with adequate man power, equipment and skill sets upgraded to state-of-the-art levels.*

13Common Cause Vs. Union of India (2017) 9 SCC 499

2.4 There will be an emphasis on strengthening the regulatory mechanism by incorporating E-Governance including satellite and remote sensing applications. Provisions shall be made for end-to-end accounting of mineral/ore in the supply chain with use of IT enabled systems. Efforts shall also be made to devise appropriate mechanism (s) for awareness and information campaigns and also for involvement of local populations to supplement the law enforcement capabilities in preventing illegal mining.

3. Role of State in Mineral Development

3.1 The core functions of state in mining will be facilitation and regulation of exploration and mining activities making provision for development of infrastructure and tax collection…….

59. Under this new **National Mineral Policy, 2019** the States were obliged to bring in efficient and effective regulatory mechanism with high penetration of e-governance systems to prevent illegal mining. For that there has to be an emphasis on strengthening the regulatory mechanism by incorporating E-Governance including satellite and remote sensing applications. Provisions had to be made for end-to-end accounting of mineral/ore in the supply chain with use of IT enabled systems. Efforts shall also be made to devise appropriate mechanisms for awareness and information campaigns and also for involvement of local populations to supplement the law enforcement capabilities in preventing illegal mining. The core functions of state in mining would be facilitation and regulation of exploration and mining activities, making provisions for development of infrastructure and tax collection.

60. As per learned Additional Advocate General the reasons for amendment in the rule was because of an issue which arose when some people similarly situated to the petitioner, had approached this Court, seeking a direction that the State of U.P. should cooperate in bringing in the legally mined minor minerals from the State of Madhya Pradesh into the State of U.P. after depositing any fee imposed by the State of U.P. A Writ Petition No.52892 of 2016 (**M/s Digiana Industries Pvt. Ltd. Vs. Union of India and others)**[14] was filed in this Court, wherein a division bench of this Court held that, there is no such provision to carry out minor mineral outside the State of U.P. or bring minor mineral from other States inside the State of U.P. The Court granted two months' time to the state government to

14(M/s Digiana Industries Pvt. Ltd. Vs. Union of India and others) 2017(1) ADJ 549

frame policy on the minor minerals which were brought in from other States into the State of U.P.

61. In pursuance to the direction of this Court in **M/s Digiana Industries Pvt. Ltd. (supra)**, the State Government took a policy decision to regulate Inter State Transportation of Minor Minerals whereby, by framing U.P. Minor Mineral (Concession) (48th Amendment) Rules, 2020, Sub Rule (4) of Rule 21 and proviso of sub-Rule (2) of Rule 70 was inserted in U.P. Minor Mineral (Concession) Rules, 1963.

62. By its Amendment and by Rules, 2020, the State reserved the power to impose "Regulatory Fees" which may be determined by the State Government from time to time, on transportation of minerals from other States into the State of U.P. Subsequently. In pursuance of these amended Rules Government order dated 24.02.2020 was issued by the state government prescribing Regulation fees on minor minerals coming from other States. The objects and reasons of the Government Order dated 24.02.2020 clearly shows that the Regulating Fee was imposed just to meet the obligations laid down in Section 23-C (2) (a) & (b) of MMDR Act. The Rule and the Government Order are in line with the guidelines laid down by the National Mineral Policy, 2019.

63. Thereafter, U.P. Minor Minerals (Concession) Rules 2021 (hereinafter referred to as the Rules of 2021) were framed. Rule 21(5) and the 2nd Proviso to Rule 72(2) of the Rules of 2021 are pari materia to the Rules of 1963 post the 48th Amendment and employ the same language. The Rules under challenge in the present case and the Government order dated 24.2.2020 and Government Order dated 10.8.2022 were passed in pursuance of the same, and are also in furtherance of the National Mineral Policy, 2019.

64. Mr. Goyal further submitted that, there is no specific provision under the Act that bars the State Government from imposing Regulatory Fees, rather this MMDR Act, 1957 contains enabling provisions for the State to regulate the minor and minerals development. There are enabling provisions to regulate in the hands of the State Government. In fact, the Rules were framed under Section 15 (1) of

the MMDR Act to curb illegal transportation by putting check gates, using artificial intelligence and latest available technology. It was just not providing the physical infrastructure, but also went to the extent of issuing e-entry pass which is generated at the point of loading (i.e. in other State) this quarry transit e-pass is generated to avoid any human interaction and also to avoid any illegal transportation.

65. Mr. Goyal placed a brochure depicting various measures taken to curb the transportation of illegally excavated minerals, which is an obligation on the state as per the provisions of Section 23-C of the Act. As per the brochure the State has spent a huge amount in creating the infrastructure, which are as follows:-

(i) Geofencing of all boundaries of the mining lease with Geo-cordinates plotted on map displaying th virtual geographical parameters of all the mining sites, till date more then 518 leased areas have been Geo-fenced.

(ii) PTZ Camera at Weighbridge were set up for active surveillance of mining activity with IR sensor of the range of 100 meters which work in minimum light and ultra low light. Weighbridges are installed at all mining areas to track actual volume of minerals loaded on vehicles coming from the mining area, till date more then 466 such weighbridges have been installed and are working in the state.

(iii) MINE TAG: A unique RFID tag is issued to authenticate the vehicle engaged in transportation of minerals within the State. The tag contains the details of necessary permissions/instructions issued by the department to the vehicle. The RFID Tag installed on the vehicle will be mapped with the vehicle master database through Android based mobile application. When the vehicle with installed tag passes through the Check Gate, the RFID Reader will access the tag, and send the entire information to the central database. As on 20.9.2022 more than 95000 mine tags were issued and installed in mineral carrying vehicles.

(iv) RFID Handheld Readers with m-Check App were provided to the mining officers in various districts. This is a smart device equipped with features like data acquisition, processing and transmission with wireless communication and Ultra High Scanning (UHF Scanning) features. It is configured with Android 6.0 OS and possesses high reliability and expansibility. It has an inbuilt unique android based mobile application for getting real-time Checkgate alerts and notifications along with the mapping of RFID Tags with the vehicle data. With this the department officials can issue e-Notice through m-Check App.

(v) m-Check Mobile App : An App is created for Online verification of all types of Transit Passes (e-TP) i.e. e-MM-11/ e-Form-C/ ISTP documents by suing MINE tag, Vehicle Number, e-TP No. or QR code. Authentication of other State Transit Pass can also be checked through integration of other states API. Details of pending e-notices are automatically generated and displayed for taking appropriate action. Verification of vehicles using VAHAN API with real time legal

mineral transportation and raising an instant alert/notification for further action to the nearest enforcement team. This App also helps in collection of evidence and sending e-Notices. Once anomalies are found during the on-spot verification, the app collects all evidences like vehicle number, photo, document, driver details, enforced offense, MINE-Tag status etc. Onspot real-time e-Notice can be sent to vehicles having anomalies. Real-time alerts (SMS/ MineMitra App notification) are sent to the vehicle owner immediately. Further it also provides monitoring mechanism at the manual barriers. It tracks the vehicle which passes through the manual barriers and captures the data.

(vi) Mining CheckGates: Mining CheckGates is an AI and IoT based Smart Enforcement System installed at major mining routes to track suspicious vehicles and raise an alarm to the mining department. via Decision Support Software (DSS) at the Command Center. The solution is designed to set a standard legal regime with zero tolerance towards unlawful activities as per the rules and regulations set by the Mining Department, which is equally applicable to each and every stakeholder without bias, prejudice or favouritism of any sort irrespective of the experience, background or size of business. With the help of Artificial Intelligence these unmanned CheckGates work as a e-barrier to curb illegal mining. It checks each mineral carrying vehicle. It also overreaches technology related frauds such as bogus transit pass, photoshopped transit pass, phishing sites etc. It also avoids collusion between local enforcement teams and defaulters.

(vii) It also provides for setting up a Unified Revenue Command Centre where all the transportation of minerals can be monitored at a single place.

Apart from these activities the State is taking various other measures to curb the menace of illegal mining and also transportation of such illegally mined minerals. The amount collected from the Regulatory Fees is spent on creating this infrastructure.

66. Regulating fee cannot be equated to tax as has been argued. The State is not imposing a tax nor it can be argued that the State is controlling the sale proceeds. It is only for the purposes of controlling illegal mining and its transport which are required to be controlled. State is fully competent and has full authority to impose regulatory fees.

67. Learned AAG further submitted that the counsel for the petitioner has placed heavy reliance on the decision of Hon'ble Supreme Court in the matter of **State of Tamil Nadu vs. M.P.P. Kavery Chetty (supra)** wherein the Court held that the Section 15 did not empower the State Government to frame rules to enable State Government, Company or Corporation to fix a minimum price for granite. The State had no power under the Act to exercise control over the minor mineral

after they have been excavated. The power to control the sale and the sale price of minor mineral is not covered by the terms of clause (o) of sub-section (IA) of Section 15. This clause can relate only to the regulation of the grant of quarry and mining leases and other mineral concessions and it does not confer the power to regulate the sale of already mined minerals and was declared ultra vires.

This judgment is distinguishable as the facts are entirely different. Here the State is not fixing any cost upon something which has been transported in the State. There, the Court was dealing with the issue as to whether the State has the power to fix a sale price of minerals which have already been mined. Hence the ation of this judgment will not be applicable in the present case.

68. In **State of Haryana and Anr. v. Chanan Mal,** [15] the constitutional validity of the state enactment framed under the provisions of the MMRD Act, 1957 was under challenge. The Constitution Bench held that subject to the overall supervision of the Central Government, the State Government has a sphere of its own power and can take legally specified action under the Central Act and rules made thereunder. Thus, the whole field of control and regulation under the provisions of the Central Act of 1957 cannot be said to be reserved for the Central Government.

69. The vires of Section 15(1) of the MMRD Act was challenged in **D.K. Trivedi and others vs. State of Gujarat and others** [16] on the ground that it provided excessive delegation of legislative power to the executive. The Hon'ble Supreme Court held that :

> "76. *To summarize our conclusions :*
> *(1) Sub-section (1) of section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, is constitutional and valid and the rule-making power conferred thereunder upon the State Governments does not amount to excessive delegation of legislative power to the executive.*
> *(2) There are sufficient guidelines provided in the 1957 Act for the exercise of the rule-making power of the State Governments under section 15(1) of the 1957 Act. These guidelines are to be found in the object for which such power is conferred, namely, "for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith; the meaning of the word 'regulating'; the scope of the phrase "for purposes connected therewith"; the illustrative matters set out in sub-section (2) of*

15State of Haryana and Anr. v. Chanan Mal (1977) 1 SCC 340

16D.K. Trivedi and others vs. State of Gujarat and others 1986 (Supp) SCC

section 13; and the restrictions and other matters contained in sections 4 to 12 of the 1957 Act.
(3) The power to make rules conferred by section 15(1) includes the power to make rules charging dead rent and royalty.
(4) The power to make rules under section 15(1) includes the power to amend the rules so made, including the power to amend the rules so as to enhance the rates of royalty and dead rent.
(5) A State Government is entitled to amend the rules under section 15(1) enhancing the rates of royalty and dead rent even as regards leases subsisting at the date of such amendment.
(6) Sub-section (3) of section 15 does not confer upon the State Governments the power to make rules charging royalty or to enhance the rate of royalty so charged from time to time.
(7) The sole repository of the power of the State Governments to make rules and amendments thereto, including amendments enhancing the rates of royalty and dead rent, is sub-section (1) of section 15.
(8) A State Government is not required to give an opportunity of a hearing or of making a representation to the lessees who would be affected by any amendments of the rules before making such amendments."

70. Hon'ble Supreme Court in State of **Tamil Nadu vs. M/s Hind Stone and Others**[17] dealing with the Rule making powers of the State qua Section 15 of MMRD Act and whether the restrictions was in violations of Part-XIII of Constitution of India and ultra vires. The Court has held as follows:-

We are satisfied that Rule 8-C was made in bona fide exercise of the rule-making power of the State Government and not in its misuse to advance its own self-interest. We however guard ourselves against being understood that we have accepted the position that making a rule which is perfectly in order is to be considered a misuse of the rule-making power, if it advances the interest of a State, which really means the people of the State.

…. We do not think that "regulation" has that rigidity of meaning as never to take in "prohibition". Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated regulation.

…."The word 'regulation' has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied." In modern statutes concerned as they are with economic and social activities, "regulation" must, of necessity, receive so wide an interpretation...

…. "the restrictions freedom from which is guaranteed by Article 301 would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade" (Atiabari Tea Co. Ltd. v. State of Assam [AIR 1961 SC 232 : (1961) 1 SCR 809]). And, "regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of restrictions contemplated by Article 301". "They are excluded from the purview of the provisions of Part XIII of the Constitution for the simple reason that they do not hamper, trade, commerce or intercourse but rather facilitate them" [Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan [AIR 1962 SC 1406 : (1963)

17Tamil Nadu vs. M/s Hind Stone and Others, (1981) 2 SCC 205

1 SCR 491]]. The Mines and Minerals (Regulation and Development) Act is, without doubt a regulatory measure, Parliament having enacted it for the express purpose of "the regulation of mines and the development of minerals". The Act and the rules properly made thereunder are, therefore, outside the purview of Article 301. Even otherwise Article 302 which enables Parliament, by law, to impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest also furnishes an answer to the claim based on the alleged contravention of Article 301. The Mines and Minerals (Regulation and Development) Act is a law enacted by Parliament and declared by Parliament to be expedient in the public interest. Rule 8-C has been made by the State Government by notification in the Official Gazette, pursuant to the power conferred upon it by Section 15 of the Act. A statutory rule, while ever subordinate to the parent statute, is, otherwise, to be treated as part of the statute and as effective. "Rules made under the statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction or obligation"

71. The counsel for the respondent further submitted that earlier an identical issue came up, before this court in **Ramdhani Singh Vs. Collector Sonebhadra and others**[18] where the State of Uttar Pradesh started charging cess on the minor minerals. The Constitutional validity of the provisions of the Act under which cess on mineral were being charged, was challenged on the ground that the field of mines and mineral was occupied under MMRD Act 1957, hence, it was not open for the State to charge a cess, by another state enactment, on a mineral, which was governed under the MMRD Act 1957. Since this power was exclusively exercisable by the central government, hence, any act or rule framed by the State Government would be ultra vires. This Court upheld the power of the State to charge cess on minerals. Against this order, appeal was preferred before the Hon'ble Supreme Court, which was tagged along with other cases the constitution bench of five judges heard it in the matter of **State of West Bengal vs. Kesoram Industries Ltd. and Ors.** [19]**.** The constitution bench of the apex court came to a conclusion that the power to charge cess by the State Government on miner minerals were valid and intra vires.

72. The ratio laid down by Hon'ble Supreme Court in **D.K. Trivedi (supra)** was also considered by the Constitution bench of five judges of Hon'ble Supreme

18Ramdhani Singh Vs. Collector Sonebhadra and others (AIR 2001 ALL 5)

19*State of West Bengal vs. Kesoram Industries Ltd. and Ors.* (2004 10 SCC 201)

Court in **State of West Bengal vs. Kesoram Industries (supra)** wherein it was held as follows:-

98. ……., A perusal of several provisions of the Act and in particular Section 9A, 15, 15 (1-A)(a) and (g), 15(3), 17(3), 21(5), 25 goes to show that the power of recovery is invariably given to the State Government and obviously the word 'Government' in Section 25 refers to the State Government, which only is empowered to recover the sums due as arrears of land revenue.

112. ……...The State could levy any fee based on quid pro quo. The seven-Judges Bench decision lends support to the view we are taking that in the field occupied by the Centre for regulation and central, power to levy tax and fee is available to the State so long as it doss not interfere with the regulation - the power assumed and occupied by the Union.

114. A reasonable tax or fee levied by State legislation cannot, in our opinion, be construed as trenching upon, Union's power and freedom to regulate and control mines and minerals.

129. The relevant principles culled out from the preceding discussion are summarized as under:-

……..(8) The primary object and the essential purpose of legislation must be distinguished from its ultimate or incidental results or consequences, for determining the character of the levy. A levy essentially in the nature of a tax and within the power of State Legislature cannot be annulled as unconstitutional merely because it may have an affect on the price of the commodity. A State legislation, which makes provisions for levying a cess, whether by way of tax to augment the revenue resources of the State or by way of fee to render services as quid pro quo but without any intention of regulating and controlling the subject of the levy, cannot be said to have encroached upon the field of 'regulation and control' belonging to the Central Government by reason of the incidence of levy being permissible to be passed on to the buyer or consumer, and thereby affecting the price of the commodity or goods. Entry 23 in List II speaks of 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, Entries 52 and 54 of List I are both qualified by the expression "declared by Parliament by law to be expedient in the public interest". A reading in juxtaposition shows that the declaration by Parliament must be for the 'control of industries' in Entry 52 and for regulation of mines or for mineral development' in Entry 54. Such control, regulation or development must be 'expedient in the public interest'. Legislation by the Union in the field covered by Entries 52 and 54 would not like a magic touch or a taboo denude the entire field forming subject matter of declaration to the State Legislatures. Denial to the State would extend only to the extent of the declaration so made by Parliament. In spite of declaration made by reference to Entry 52 or 54, the State would be free to act in the field left out from the declaration. The legislative power to tax by reference to Entries in List II is plenary unless the entry itself makes the field 'subject to' any other entry pr abstracts the field by any limitations imposable and permissible. A tax or fee levied by State with the object of augmenting its finances and in reasonable limits does not ipso facto trench upon regulation, development or control of the subject. It is different if the tax or fee sought to be levied, by State can itself be called regulatory, the primary purpose whereof is to regulate or control and augmentation of revenue or rendering service is only secondary or incidental.

(9) The heads of taxation are clearly enumerated in Entries 83 to 92B in List I and Entries 45 to 63 in List II. List III, the Concurrent List, does not provide for any head. of

taxation. Entry 96 in List I, Entry 66 in List II and Entry 47 in List III deal with fees. The residuary power of legislation in the field of taxation spelled out by Article 248 (2) and Entry 97 In List I can be applied only to such subjects as are not included in Entries 45 to 63 of List II. It follows that taxes on lands and buildings in Entry 49 of List II cannot be levied by the Union. Taxes on mineral rights, a subject in Entry 50 of List II can also not be levied by the union though as stated in Entry by itself the union may impose limitations on the power of the State and such limitations, if any, imposed by the Parliament by law relating to mineral development and to that extent shall circumscribe the States power to legislate. Power to tax mineral rights is with the States; the power to lay down limitations on exercise of such power, in the interest of regulation, development or control, as the case may be, is with the union. This is the result achieved by homogeneous reading of Entry 50 in List II and Entries 52 and 54 in List I. So long as a tax or fee on mineral rights remains in pith and substance a tax for augmenting the revenue resources of the State or a fee for rendering services by the State and it does not impinge upon regulation of mines and mineral development or upon control of industry by the Central Government, it is not unconstitutional.

…..…

142. As we have pointed out earlier, a cess may be tax or fee. So far as the present case Is concerned, this distinction does not need any further enquiry by reference to the facts of the case inasmuch as the impugned cess is constitutionally valid considered whether a tax or a fee. We do not propose to continue dealing therewith any more inasmuch as it would be an exercise in futility. We would only place on record briefly our reasons for upholding the validity of the impugned levy whether a tax or a fee.

143. …...There is nothing wrong in the state legislation levying cess by way of tax so as to generate its funds. Although it is termed as, a 'cess on mineral right', the impact thereof falls on the land delivering the minerals. Thus, the levy of cess also falls within the scope of Entry 49 of List II Inasmuch as the levy on mineral rights does not contravene any of the limitations imposed by the Parliament by law relating to mineral development, it is also covered by Entry 50 of List II. The power to levy any tax or fee lying within the legislative competence of the State Legislature can be delegated to any institution of local government constituted by law within the meaning of Entry 5 in List II. The Entries 5, 23, 49. 50 and 66 of List II provide adequate constitutional coverage to the impugned levy of cess. True it is that the method of quantifying the cess is by reference to the quantum of mineral produced, This would not alter the character of the levy. There are myriad methods of calculating the value of the Sand for the purpose of quantifying the tax reference whereto has already been made by us In the other part of this judgment.

145. The following observations of Constitution Bench in Hingir-Rampur Coal Co. squarely apply to SADA Act and SADA Rules for upholding their constitutional validity -

".....In pith and substance the impugned Act is concerned with the development of the mining areas notified under it. The Central Act, on the other hand, deals more directly With the control of all industries Including of course the industry of coal."

"The functions of the Development Councils constituted under this Act prescribed by Section 6 (4) bring out the real purpose and object of the Act. It is to increase the efficiency of productivity in the scheduled Industry or group of scheduled industries, to improve or develop the service that such industry or group of industries renders or could render to the community, or to enable such industry or group of industries to render such service more economically."

".....the object of the Central Act is to regulate the scheduled industries with a view to improvement and development of the. service that they may render to the society, and thus assist the solution of the larger problem of national economy. It is difficult to hold that the field covered by the declaration made by Section 2 of this Act, considered in the light of its several provisions, is the same as the field covered by the impugned Act. That being so, it cannot be said that as a result of Entry 52 read with Act LXV of 1951 the vires of the impugned Act can be successfully challenged,"

"Our conclusion, therefore, is that the impugned Act is relatable to Entries 234 and 66 in List II of the Seventh Schedule, and its validity is not impaired or affected by Entries 52 and 54 In List I read with Act LXV of 1951 and Act LIII of 1948 respectively,"

146. As stated earlier also, the impugned cess can be justified as fee as well. The term cess is commonly employed to connote a tax with a purpose or a tax allocated to a particular thing. However, it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax; it may be a fee or fee as well. It is not necessary that the services rendered from out of the fee collected should be directly in proportion with the amount of fee collected. It is equally not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. Availability of indirect benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of the fee collected is enough to uphold the validity of the fee charged. The levy of the impugned cess can equally be upheld by reference to Entry 66 read with Entry 5 of Schedule II."

73. As per the decision of the constitution bench the State has power to charge cess on the goods coming from the other State. Entry 54 has to be strictly interpreted and is not generic Entry which is qualified by subsequent phrases. State list is generic and central list which is union list has to be construed strictly. In this case the real object of imposing regulatory fee was to check the rampant illegal mining of minerals and its transportation. Regulatory fee is being spent to address the larger interest of the country and increase the national economy Which is the main ."

74. Counsel for the State submits that **State of Gujarat and Others v. Jayeshbhai Kanjibhai Kalathiya and Others (supra)** is per in-curium as it does not consider the ratio laid down in the judgment of **State of West Bengal vs. Kesoram Industries Ltd. and Others (supra)** and **Automobiles Transport Vs. State of Rajasthan**[20] .

The State of Gujarat had imposed a complete ban on the movement of minerals out of State of Gujarat, hence, in the matter of **State of Gujarat and Others v. Jayeshbhai Kanjibhai Kalathiya and Others (supra)** the Hon'ble Supreme Court held that the complete ban on the free trade of minerals to other States, would be

20Automobiles Transport Vs. State of Rajasthan.

violative of Article 301, 303 and 304 of the Constitution, however, in the present case the State of Uttar Pradesh has not imposed any kind of ban or restriction, which would violate Part XIII of the Constitution of India

75. Heard counsel for the parties. Perused the documents and the judgment cited by them.

FINDINGS:

76. On the objection regarding locus of the petitioner in Writ Petition No.10037 of 2020 raised by the learned Additional Advocate General, we have serious reservations on the locus of the petitioner's association but as the matter have been referred by the Hon'ble Supreme Court, we will proceed to consider the matter on merits.

77. In the present writ petitions the petitioners have challenged the vires of Rule 21(4) and Rule 70(2) of U.P. Minor Minerals (Concession) Rules 2020 and Rule 21(5) and Rule 72(2) of U.P. Minor Minerals (Concession) Rules 2021 and G.O. dated 24.2.2020 and G.O. dated 10.8.2022 on the ground that the same are violative of the provisions of MMRD Act and Part XIII of the Constitution of India.

78. From the subject matter of these writ petitions, as well as the arguments advanced by the parties, the following issues are being crystallized for consideration:-

(I) Whether Rule 21(4) and Rule 70(2) of U.P. Minor Minerals (Concession) Rules 2020 and Rule 21(5) and Rule 72(2) of U.P. Minor Minerals (Concession) Rules 2021 are ultra vires to the provisions of the MMRD Act, 1957?

(II) Whether the Rule framed for charging Regulatory Fees on the minerals coming from other States in to the State of Uttar Pradesh and the G.O. dated 24.2.2020 and G.O. dated 10.8.2022 are in line with the objects of the MMDR Act and Rules framed thereunder, and whether they are in sync with the new mining policy of 2019?

(III) Whether imposition of regulatory fees is in violation of Part XIII of the Constitution of India.

79. Before we proceed to examine the merits of the submissions and counter submissions made on behalf the parties, it will be useful to recapitulate and summarize a few principles relevant for interpreting the provisions of MMRD Act, 1957.

80. The fields of legislation by Union and States in regard to regulation of mines and mineral development, so far it relates to controversy involved in instant writ petition, can be appreciated by considering relevant provisions of the Constitution of India, 1950, Mines Act, 1952 and Mines and Minerals (Development and Regulation) Act, 1957

81. The Mines Act, 1952 was first enacted with the object of regulation of labour and safety in mines. Thereafter, parliament enacted MMRD Act, 1957 wherein it was declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals. Whereas, **Section 13** of the MMRD 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 15** of the MMRD Act gives the same power to the State Government to make rules in respect of minor minerals, and the State Government by way of notification in the official gazette, may make Rules for, regulating the grant of quarry leases and mining leases or other minerals concession in respect to minor minerals and "**for purposes connected therewith"**. The power of Central Government and the State Government are identical in these two Sections i.e. Section 13 and 15 of the MMRD Act, 1957.

82. Section 13, 14 and 15 which forms a group, have to be read together. Section 15 (1) is in pari materia with Section 13 (1), each conferring power to make rules for 'regulating'. In view of the dictionary meaning of the word 'regulate', the power to regulate by rules given by Section 13 (1) and 15 (1) is a power to control, govern, and direct by rules, the grant of prospecting licences and mining leases in respect of minerals other than minor minerals and for purposes con-

nected therewith in the case of Section 13 (1) and the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and for purposes connected therewith in the case of Section 15 (1) and to subject such grant to restrictions and to adapt them to the circumstances of the case and the surroundings with reference to which such power is exercised. The power to regulate conferred by Section 13 (1) and 15 (1) is not only with respect to the grant of licences and leases mentioned in those sub-sections but is also with respect to "purposes connected therewith". This phrase gives government a wider power to frame Rules with regard to all tasks which are incidental to the minor minerals.

83. A plain reading of Section 15 (1), 15 (1) (g) and 15 (1) (o) shows that the State Government is bestowed with the power to make rules, and such rules would provide power, to fix, collect rent, fees and other charges. Further such rules may be made for any other matter, which is to be or may be prescribed.

84. When the parliament in its wisdom, amended MMRD Act, 1957 on 18.12.1999 and proceeded to add Section 4 (1A), 23 (A) & 23 (C). The very object of this amendment was to prohibit transportation and storage of minerals with the sole intention of preventing illegal mining. Section 4 (1A) clearly lays down that no person shall transport or store any mineral contrary to the provisions of the Act and the Rules framed therein. Further, Section 23 (C) (1) mandatorily calls upon the State to frame rules to curb illegal mining, transportation and storage and also lays down as to what all the State are supposed to do for preventing illegal mining, their transport and storage. The State is obliged to take several measures such as setting up check posts for checking minerals under transit and also setting up the other allied infrastructure using the latest technologies to curb transportation of illegal minerals.

85. Section 15 of the MMRD, which is a parent Act provides, that the State Government has power to make Rules in respect of Minor Minerals. The Parliament made an amendment[21] in the 1957 Act and had added Section 4(1-A), Section 23-A and Section 23-C in the Act. The objects of these amendments were to prevent illegal mining and the transportation of such illegally excavated minerals. It clearly empowered the State Government to make rules for preventing illegal

21 By the Amendment Act No.38 of 1999 w.e.f. 18.12.1999

mining of minerals, transportation of minerals and storage of minerals. Section 23-C also gave a guideline as what has to be done to curb the illegal mining and transportation.

86. Section 15 (1) of Mines and Minerals (Development and Regulation) Act, 1957, provides general power to States to frame rules for regulating the grant of query leases and mining leases and other mineral concession in respect of minor minerals and for purposes connected therewith. However, Section 15(1-A), which was inserted in statute book vide Act No.37 of 1986 w.e.f. 10.02.1987, sets out that the State Government may make rules, without prejudice to generality of powers conferred under Section 15(1).

87. The State Government, in exercise of the powers conferred under Section 15 and Section 23(C) of the MMDR Act 1957 had framed Uttar Pradesh Minor Minerals (Concession) Rules, 1963. The State of Uttar Pradesh in exercise of power granted under the Section 23(C) framed a Rule which was "Uttar Pradesh Minerals (Prevention of Illegal Mining, Transport and Storage) Rules 2002". These Rules were superseded in 2018 by a new Rules which was "Uttar Pradesh Minerals (Prevention of Illegal Mining, Transport and Storage) Rules 2018". This Rules of 2018 was again amended in 2019 and the said Rules were called "Uttar Pradesh Minerals (Prevention of Illegal Mining, Transport and Storage) Rules 2019".

88. The definition of "Mines" and "Mineral" provided in statute book is relevant to be considered. At the time of 48th Amendment made in U.P. Minor Mineral (Concession) Rules, 1963[22], the provisions of Mines Act, 1952 were applicable and the provision of Section 2 (1) (j) of the Mines Act provides definition of "Mines" and 2(1)(jj) defines "minerals' . By virtue of Section 3(i) of MMRD Act, 1957[23] the word 'Mine' has the same meaning as defined in Mines Act, 1952. However, "minor minerals" is defined in Section 3 (e) of Mines and Minerals (Development and Regulation) Act, 1957.

22 w.e.f. 25.02.2020

23 As amended by Act No.16 of 2021

89. The Uttar Pradesh Minor Minerals (Concession) Rules, 1963 was amended in 2020 by the State Government, and was called “Uttar Pradesh Minor Minerals (Concession) (Forty Eight Amendment) Rules, 2020”, By this Rule 21 and Rule 70 were amended, and “Regulating Fees was introduced”. The amended Rule 21 (4) paved way for imposition of regulating fee on the minerals coming from other State and entering the State of Uttar Pradesh. The quantum of the fees was to be determined by the State from time to time. Further, the provisions of Rule 70 (2) clearly lays down the transportation of minerals would be valid only after the determined Regulating Fees is paid.

90. The Uttar Pradesh Minor Minerals (Concession) Rules, 2020 was yet again amended in 2021 by the State Government, this was called “Uttar Pradesh Minor Minerals (Concession) Rules, 2021”. In this Clause (5) was added in Rule 21, which gave power to the state to impose “Regulating Fees” which would be determined by the State Government from time to time on minerals entering from other States into the State of Uttar Pradesh, and Rule 70 (2) laid down the transport of minerals would only be valid after the determination of regulatory fee by the State.

91. It was only in exercise of powers granted under Section 23-C of the MMRD Act, the State Government had framed rules. The impugned Government Order dated 24.02.2020 and 10.08.2022 issued by the State Government were under the rules framed by the State Government. The objects of imposing the regulating fees by these government orders, were very clear, this regulating fees was being charged only to meet out the expenses for setting up the infrastructure (which included the use of latest technology) to curb and prevent illegal mining and its transportation and storage. Initially vide Government Order dated 24.02.2022 a regulatory fees of Rs.50 per cubic meter was fixed on building stones, ballast, bolders which were transported from other State into the State of Uttar Pradesh, thereafter, the State Government issued another Government Order dated 10.08.2022 by which the regulatory fees was increased from Rs.50 to 100 per cubic meter.

92. It was submitted by the State, that the regulatory fees so collected was not for the enrichment of the State but was spent for setting up State of the art infrastructure which included check gates, camera, weighbridges using artificial intelligence and other latest technologies and also for generating e-challans using QR code and various other devices just to prevent and check the transportation of illegally mined minerals, at important roads of different parts of the State. U.P. being such a big State, with its boundary running into hundreds of kilometers, to check the transportation of illegal minerals is a herculean task. In order to set up this infrastructure, the State would be burdened with the huge cost and the only way to set off this huge cost, is to charge regulatory fees on the minerals coming from the other State.

93. The power contained under Section 4(1-A) of the MMDR Act, 1957 demonstrates that transportation is an activity, which is within the domain of the State Government and is to be regulated by the State Government. The State Government is required to frame Rules in this regard and has to regulate the transportation of the minerals that have been excavated and also to inspect, check and search the minerals during transit.

Therefore, the State derives power to regulate the minerals that stand already excavated and also to take penal action in case of contravention.

Section 23-C envisages three (3) distinct aspects, which are to be regulated by the State Government :

(a) Ensure mining in accordance with the terms of lease/licence so as to arrest the activity of illegal mining.

(b) Ensure proper transportation of the minerals excavated in accordance with law.

(c) Ensure proper storage of the minerals after its excavation in accordance with law.

All these activities by their very character are regulating the activity of mining and are not connect with mineral development. The said activities are the natural corollary associated with the mining which needs to be regulated particularly in view of the provisions contained in Article 39(b) of the Constitution of India.

A perusal of the Rules and the Section discloses that full regulatory control vests with the State over transportation of minerals more so, upon minor minerals. However, from bare reading of Section 23-C and also from perusal of the Rules framed by the State Government and the forms appended thereto, it is evident that the transportation is being regulated within the State where in the minerals have been excavated within that State.

On the other hand, Section 4(1-A) gives plenary power to the State Government to regulate transportation of mineral. The entire field of transportation stands regulated at the hands of the State Government whether it is intra-State or it is inter-State. This is demonstrated *inter alia*, from perusal of Rule 12 of the 2018 Rules where the jurisdiction of the officers have been provided and limits their jurisdiction for transportation within the State.

Issue No. 1

(I) Whether Rule 21(4) and Rule 70(2) of U.P. Minor Minerals (Concession) Rules 2020 and Rule 21(5) and Rule 72(2) of U.P. Minor Minerals (Concession) Rules 2021 are ultra vires to the provisions of the MMRD Act, 1957?

94. Before adjudicating with the first issue, we would like to consider the history, as to how the vires of the rules have been tested in the past.

95. The Supreme Court, in **State of Orrisa vs. M.A. Tulloch** [24] where the question was whether fee could be imposed by the State Legislature under Entry 66 of List II observed:

> *16... ..The material words of the Entries are : "Fees in respect of any of the matters in this List". It is therefore a pre requisite for the valid imposition of a fee that it is in respect of a "matter in the list". If by reason of the declaration by. Parliament the entire subject matter of "conservation and development of minerals" has been taken over for being dealt with by Parliament, thus depriving the State of power which it therefore possessed, it would follow that the "matter" in the State List is, to the extent of the declaration, substrate from the scope and ambit of Entry 23 of the State List. There, would, therefore, after the Central Act of 1957, be "no matter in the List" to which the fee could be related in order to render it valid....*

24State of Orrisa vs. M.A. Tulloch, AIR 1964 SC 1284

96. The Division Bench of Allahabad High Court in **Sheo Varan Singh Vs. State,** [25] has dealt with Section 15 (1) of MMRD Act, the Court held that :-

> *"Some of the words of Sub-section (1) of Section 15 are important for the purpose of considering the argument of the petitioner's counsel. These words are: "regulating" and "for purposes connected therewith".*
>
> *...The word "regulation" is of wide import and the dictionary meaning of the word "regulation" given in Shorter Oxford Dictionary is "the act of regulation", and the word "regulate" is given the meaning "to control, govern or direct by rule or regulation". This thus gives the power to the State Government to make Rules for the purpose of laying down the conditions necessary for regulating*
>
> *Section 15 (1) is couched in a language which confers wide power on the State Government.*
>
> *19. the Legislature has empowered the State Governments to make rules for all such "purposes connected therewith". The expression "for purposes connected therewith" has been a subject matter of interpretation before a Full Bench of this Court in* ***Dr. Shamshuddin v. Smt. Zaibunnisa***[26]***.*** *The view taken by the Full Bench in this case establishes that this expression enables the rule making power to make provisions which may effectively administer the Act. For the purposes of grant of a lease of minor minerals, laying down of the period and the consideration being the necessary ingredients, the Rule cannot be said to be invalid on that ground."*

97. A Division Bench of this Court in **M/s Digiana Industries Ltd. (supra)** has held that, as per the scheme of things provided at that point of time, the minor minerals of one State cannot be transported to another State. To allow the inter-state transportation of minor minerals the State Government had to take a policy decision. Two months time was granted to the State Government to regulate the transportation of minor minerals. In response to the direction issued in this case, State of Uttar Pradesh had framed U.P. Minor Minerals (Concession) Rules, 2020 wherein a provision of regulating fees was introduced. This Rule of 2020 was again amended in 2021 wherein regulating fees on minerals entering from other State into the Uttar Pradesh was introduced.

98. In **G.K. Krishnan v.State of Tamil Nadu**[27] : it was held that "The word 'regulation' has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied." In modern statutes concerned as they are with

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25Sheo Varan Singh Vs. State, AIR 1980 Allahabad 92

26 Dr. Shamshuddin v. Smt. Zaibunnisa (1979 (UP) RCC 349).

27 G.K. Krishnan v.State of Tamil Nadu (1975) 1 SCC 375 : AIR 1975 SC 583 :

economic and social activities, "regulation" must receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State. An identical view was also taken by the Privy Council in **Commonwealth of Australia v. Bank of New South Wales**[28].

99. The amount of levy of fee is based upon the expenses incurred by the State in rendering the services, the amount may not be arithmetically commensurate with the expenses as held by the apex court in ***D.C.M.* v *Chief Commissioner***[29]. Further, the Hon'ble Supreme Court in the matter **State of U.P. & others vs. Sitapur Packing Wood Suppliers and others** [30] has held that if a fees is regulatory then the State Government need not establish a *quid pro quo.* \

100. Hon'ble supreme court in the matter of State of **Rajasthan Vs. Sajjanlal Panjwat** [31] has held that, a fee may be justified where the object of the levy is to raise the expenses of a service and not to make any profit out of it.

101. Hon'ble supreme court in the matter of **Indian Mica and Nicanite Industries Vs. State of Biahr**[32] , and in the matter of **Corporation of Calcutta Vs. Liberty cinema**[33] has held that the State makes the law for regulation of any trade or business by means of licensing, it is open to it to charge licence fee to defray the cost of administering the regulation. In these cases although the principles of quid pro quo do not apply; but the fee so charged should have broad co-relationship with the cost of administering the regulation. What is essential is that fee should not be excessive or exorbitant.

102. Hon'ble Supreme Court in the matter of **State of Tamil Nadu vs. M/s Hind Stone and Others** [34]**,** dealing with the Rule making powers of the State qua Section

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28Commonwealth of Australia v. Bank of New South Wales [1950 AC 235 : (1949) 2 All ER 755 (PC)].

29D.C.M. v Chief Commissioner (1979) 2 SCC 172

30State of U.P. & others vs. Sitapur Packing Wood Suppliers and others (2002) 4 Supreme Court Cases 566

31Rajasthan Vs. Sajjanlal Panjwat (1974 (1) SCC 500

32Indian Mica and Nicanite Industries Vs. State of Biahr (AIR 1971 SC 1182 ,

33Corporation of Calcutta Vs. Liberty cinema (AIR 1965 SC 1107

34 Tamil Nadu vs. M/s Hind Stone and Others, (1981) 2 SCC 205

15 of MMRD Act held, that Rule when made in bona fide exercise of the rule-making power of the State Government and not in its misuse to advance its own self-interest, such a rule cannot be considered a misuse of the rule-making power, if it advances the interest of the State. The Court further, held that prohibitory exploitation by the private agencies was the correct method to conserve the mineral. The prohibition imposed by the State cannot be said to be ultra vires to the provisions of the MMRD Act. The relevant paras are as follows:

> *`124. Entry 23 of List II of the Seventh Schedule to the Constitution is, "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". Entry 54 of List of the Seventh Schedule is "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". Thus while 'regulation of mines and mineral development' is ordinarily a subject for State legislation. Parliament may, by law, declare the extent to which control of such regulation and development by the Union is expedient in the public interest, and, to that extent, it becomes a subject for Parliamentary legislation. Parliament has accordingly enacted the Mines and Minerals (Regulation and Development) Act, 1957. the Act it is declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent thereafter provided. It is now common ground between the parties that as a result of the declaration made by Parliament, the State legislatures are denuded of the whole of their legislative power with respect to regulation of mines and mineral development and that the entire legislative field has been taken over by Parliament.*

103. The vires of Section 15(1) of the MMRD Act was challenged in **D.K. Trivedi and others vs. State of Gujarat and others** [35] on the ground that it provided excessive delegation of legislative power to the executive, on this the Hon'ble Supreme Court held as follows:

> "76. *To summarize our conclusions :*
> *(1) Sub-section (1) of section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, is constitutional and valid and the rule-making power conferred thereunder upon the State Governments does not amount to excessive delegation of legislative power to the executive.*
> *(2) There are sufficient guidelines provided in the 1957 Act for the exercise of the rule-making power of the State Governments under section 15(1) of the 1957 Act. These guidelines are to be found in the object for which such power is conferred, namely, "for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith; the meaning of the word 'regulating'; the scope of the phrase "for purposes connected therewith"; the illustrative matters set out in sub-section (2) of section 13; and the restrictions and other matters contained in sections 4 to 12 of the 1957 Act.*

35D.K. Trivedi and others vs. State of Gujarat and others 1986 (Supp) SCC 20

(3) The power to make rules conferred by section 15(1) includes the power to make rules charging dead rent and royalty.
(4) The power to make rules under section 15(1) includes the power to amend the rules so made, including the power to amend the rules so as to enhance the rates of royalty and dead rent.
(5) A State Government is entitled to amend the rules under section 15(1) enhancing the rates of royalty and dead rent even as regards leases subsisting at the date of such amendment.
(6) Sub-section (3) of section 15 does not confer upon the State Governments the power to make rules charging royalty or to enhance the rate of royalty so charged from time to time.
(7) The sole repository of the power of the State Governments to make rules and amendments thereto, including amendments enhancing the rates of royalty and dead rent, is sub-section (1) of section 15.
(8) A State Government is not required to give an opportunity of a hearing or of making a representation to the lessees who would be affected by any amendments of the rules before making such amendments."

104. In this case the issue was whether Section 15A of MMRD Act suffers from excessive delegation of legislative power to the executive. The Hon'ble Supreme Court held that, though Section 13 and 14 does not apply on minor minerals but Section 13(1) is pari materia with the language of Section 15(1). Each of these provisions confers the power to make rules for "regulating". The Shorter Oxford English Dictionary, Third Edition, defines the word "regulate" as meaning "to control, govern, or direct by rule or regulations; to subject to guidance or restrictions; to adapt to circumstances or surroundings". Thus, the power to regulate by rules given by sections 15(1) is a power to control, govern and direct by rules and grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and for purposes connected there with. It is pertinent to bear in mind that the power to regulate conferred by sections 13(1) and 15(1) is not only with respect to the grant of licences and leases mentioned in those sub-sections but is also with respect to "purposes connected therewith", that is, purposes connected with such grant. The Court further held that Section 15 (1) of the MMRD Act is constitutional and valid and the rule-making power conferred thereunder upon the State Government does not amount to excessive delegation of legislative power to the executive. There are sufficient guidelines provided in the 1957 Act for the exercise of the rule-making power of the State Government . These guidelines are to be found in the object for which such power is conferred namely, " for regulating the grant of quarry leases, mining leases or other mineral concessions

in respect of minor minerals and for purposes connected therewith, the meaning of the word 'regulating', and the scope of the phrase "for purposes connected therewith" are set out in the provisions of the Act. The power to make rules under Section 15 (1) includes the power to amend the rules so made, including the power to enhance the rates of royalty and dead rent.

105. The landmark judgments on this issue right from Municipal Corporation of the C**ity of Toronto v. Virgo (1896 AC 88)**[36] **and Attorney-General for Ontario v. Attorney-General for**[37] **the Dominions (1896 AC 348) up to State of U.P. v. Hindustan Aluminium Corporation Ltd.**[38] lays down that "regulation" has that rigidity of meaning as never to take in "prohibition". Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated regulation.

106. In **State of Haryana and Anr. v. Chanan Mal,** [39] referring to the provisions of the MMRD Act, 1957 and a State enactment of Haryana, (the constitutional validity whereof was under challenge) the Constitution Bench held that, subject to the overall supervision of the Central Government, the State Government has a sphere of its own power and can take legally specified action under the Central Act and rules made thereunder. Thus, the whole field of control and regulation under the provisions of the Central Act of 1957 cannot be said to be reserved for the Central Government.

107. Thereafter a constitution bench of five judges of Hon'ble Supreme Court in **State of West Bengal Vs. M/s Kesoram Industries (supra)** have held that :-

> *"98. …..A perusal of several provisions of the Act and in particular Sections 9-A, 15, 15(1-A)(a) and (g), 15(3), 17(3), 21(5) and 25 goes to show that the power of recovery is invariably given to the State Government and obviously the word "Government" in Section 25 refers to the State Government, which only is empowered to recover the sums due as arrears of land revenue.*

36City of Toronto v. Virgo (1896 AC 88)

37Attorney-General for Ontario v. Attorney-General for the Dominions (1896 AC 348)

38State of U.P. v. Hindustan Aluminium Corporation Ltd. (1979) 3 SCC 229 : AIR 1979 SC 1459

39State of Haryana and Anr. v. Chanan Mal, (1977) 1 SCC 340

114. A reasonable tax or fee levied by State legislation cannot, in our opinion, be construed as trenching upon the Union's power and freedom to regulate and control mines and minerals.

129 (8) ….A levy essentially in the nature of a tax and with the power of the State Legislature cannot be annulled as unconstitutional merely because it may have an effect on the price of the commodity. A State legislation, which makes provision for levying a cess, whether by way of tax to augment the revenue resources of the State or by way of fee to render services as quid pro quo but without any intention of regulating and controlling the subject of the levy, cannot be said to have encroached upon the field of "regulation and control" belonging to the Central Government….

…….A reading in juxtaposition shows that the declaration by Parliament must be for the "control of industries" in Entry 52 and "for regulation of mines or for mineral development: in Entry 54. Such control, regulation or development must be "expedient in the public interest". Legislation by the Union in the field covered by Entries 52 and 54 would not like a magic touch or a taboo denude the entire field forming the subject-matter of declaration to the State Legislatures. Denial to the State would extend only to the extent of the declaration so made by Parliament……

129(9) …...So long as a tax or fee on mineral rights remains in pith and substance a tax for augmenting the revenue resources of the State or a fee for rendering services by the State and it does not impinge upon regulation of mines and mineral development or upon control of industry by the Central Government, it is not unconstitutional.

142. As we have pointed out earlier, a cess may be tax or fee. So far as the present case is concerned, this distinction does not need any further enquiry by reference to the facts of the case inasmuch as the impugned cess is constitutionally valid whether considered as a tax or a fee…..

143. …..What is under challenge is only the levy of cess. There is nothing wrong in the State legislation levying cess by way of tax so as to generate its funds…..

……...Thus, the levy of cess also falls within the scope of Entry 49 of List II. Inasmuch as the levy on mineral rights does not contravene any of the limitations imposed by Parliament by law relating to mineral development, it is also covered by Entry 50 of List II. The power to levy any tax or fee lying within the legislative competence of the State Legislature can be delegated to any institution of Local Government constituted by law within the meaning of Entry 5 in List II. Entries 5, 23, 49, 50 and 66 of List II provide adequate constitutional coverage to the impugned levy of cess. …...

108. The counsel for the petitioners has placed reliance on a judgment passed by the Hon'ble Supreme Court in the matter of **State of Gujarat and Others v. Jayeshbhai Kanjibhai Kalathiya and Others (supra).** In this case, the State of Gujarat amended the Gujarat Minor Minerals Rules 2010 and inserted Rule 44BB, wherein, by this Rule the movement of sand beyond the State of Gujarat was

completely prohibited. This Rule was purportedly made under Section 23-C of the MMDR Act. The vires of the Rules completely prohibiting the movement of sand beyond the State of Gujarat was challenged before Gujarat High Court. The High Court held that prohibiting Rules is ultra vires of Section 15 and Section23-C of the MMDR Act and also held it to be violative of Article 301 of the Constitution of India, this order of Gujarat High Court was assailed by the State of Gujarat by filing an appeal before the Apex Court, wherein, the Apex Court had held that a prohibition by the State Government on sale of sand beyond the State cannot be said to be in line with the objects of the provisions of the MMDR Act. Section 23-C of the MMDR Act was inserted for the sole intention of preventing illegal mining. The Court further held, it is in this context the words 'transportation' and 'storage' in Section 23-C are to be interpreted in the context of 'illegal mining'. It is clear that it is the transportation and storage of illegal excavated minerals and no rules can be framed which would prohibit movement of minerals (sand) beyond the boundaries of the State, when this mineral is legally mined backed by duly granted license. Therefore, no power flows from this provision to make rule for regulating transportation of the legally excavated minerals.

109. In **Jayeshbhai's** case, the question was whether rule can be made to completely ban movement of mineral outside the State boundary. The Hon'ble Court took note of the decision in Amrit Lal Nathu Bhai Shah, D.K. Trivedi & Sons and Hind Stones in paragraph 39 of the judgment. However, the judgment does not take note of the ratio of Common Cause judgment of the Apex Court, wherein the court had directed for framing the National Mineral Policy and hence, observation in Paragraph 42 may not fall in line with what has been held in Goa Foundation case and Common Cause case read with National Mineral Policy. Further so far as discussion on the power under Articles 301 and 304 are concerned, the judgment does not take note of nine (9) Judges Bench decision in Jindal Stainless that holds field and hence, the ratio decidendi of Jindal Stainless will cover the field vis-a-vis interpretation of Articles 301 and 304 would eclipse the finding of Jayeshbhai judgment.

Moreover, in Paragraph 47, the judicial notice has been taken by the Hon'ble Apex Court that a disccrimination is being made by the State of Gujarat whereby it is placing a ban for export of sand but putting no ban on import of sand. This ban falls foul of Part-XIII of the Constitution of India.

The ratio of this decision would not squarely cover the case in hand inasmuch as in State of U.P. there is no ban for either export or import of minerals from other States. It is a two way traffic in the State. The power to regulate is available. **Jayeshbha**i judgment was delivered in a different set of circumstances and cannot outlay the issue in hand.

110. In **Jayeshbhai's** case it was considered that Section 23-C was inserted with specific object to curb "illegal mining". Therefore, the words "transportation" and "storage" occurring therein would take their colour from the expression "illegal mining" on the principle of noscitur a sociis. That was clear from the Statement of Objects and Reasons as well. The prohibition would have been permissible provided it had any direct nexus with the conservation, exploitation and excavation of mineral. The prohibition on the transport or sale of the already mined minerals outside the State has no direct nexus with the objects and purpose of the MMDR Act. In this case, the conclusion arrived by the Court was on the basis of that prohibitory rules framed by the State Government, which was held beyond the scope and object of Section 15 (1-A) and Section 23 (C) of the Act.

111. The State of Madhya Pradesh had also imposed regulating fees but following the judgment of **Jayesbhai** the Hon'ble Madhya Pradesh High Court in the matter of **Ultratech Cement Limited v. State of Madhya Pradesh (supra),** held that charging of regulation fees on minerals brought from other State to the State of M.P. would be beyond the power of the State Government unless the minerals have been illegally mined. Section 15 and Section 23 (C) does not authorise the State Government to make rules for minor minerals lawfully excavated in other States.

112. Similarly, the State of Karnataka started collecting entry fees on certain minerals, under Rule 42(7) of Karnataka Minor Minerals Concession Rules, 1994[40]

40Rule 42(7) of Karnataka Minor Minerals Concession Rules, 1994

which were brought in from other States into the State of Karnataka. The validity of Rule 42(7) of Karnataka Minor Minerals Concession Rules, 1994 by which entry fees was charged, was challenged before the Karnataka High Court. The Karnataka High Court in the matter of **Sri Sai Keshava Enterprises v. State of Karnataka** [41] relying on the decision of **Jayesh Bhai** passed by the Apex Court, 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 cannot levy fees on entry of lawfully excavated minerals from other States into the State of Karnataka.

113. The counsel for the petitioner had heavily relied on the judgment of **Jayesbhai,** which was followed by M.P. High Court in **Ultratech Cement** and Karnataka High Court in **Sri Sai Keshava Enterprises.** On the other hand, counsel for the respondent had categorically stated that reliance cannot be placed on the ratio of **Jayesbahi** as it was not in sync with the ratio of the earlier judgment laid down by the Hon'ble Supreme Court in the matter of **Hind Stone and D.K. Trivedi**. Both these judgments were though mentioned in **Jayesbhai** but their ratio were neither considered nor distinguished. Moreover, the ratio laid down by the Constitution Bench in **Kesoram's** case were not even considered in **Jayesbhai's** case. Further, the Constitution Bench in the **Kesoram's** case had dealt with issues, which are identical to the present case. In that case, this imposition of cess and vires of the Rules were under challenge. The Division Bench of this Court in **Ram Dhani's** case upheld the vires and when the same was challenged by the State, it was clubbed along and decided in **Kesoram's** case.

In this judgment, the ratio laid down by the Apex Court in **MPP Kaveri Chetty** and **D.K. Trivedi** was not considered. Even the ratio of Constitution Bench of the Hon'ble Supreme Court in the matter of **State of W.B. v. Kesoram Industries and Others** was not even considered.

114. Counsel for the petitioner had relied on a judgment passed by the Hon'ble Supreme Court in State of **Tamil Nadu v. M.P.P. Kavery Chetty (supra)** in this

41Sri Sai Keshava Enterprises v. State of Karnataka reported in 2021 (2) AIR Kar R1.

judgment, State Government fixed price on certain mineral under the guise of regulatory role, the State Government restricted the same by determining the minimum price of minor mineral. On this issue, the Apex Court held that the State Government does not possess any power to regulate the sale of already mined minerals. This was again a situation which was with respect to the minerals mined within the State and the State Government was restricting the mineral. Apart from regulating the price of the mineral, the State had also imposed a condition that the mining will only be undertaken by the State owned company or corporation. Though the mining to be undertaken by the State Corporations/company was upheld but only the fixation of minimum price of mineral was set aside.

The aforesaid judgment, therefore, has no application to the facts of the instant case as fixation of price of minerals was beyond the realm of the objects of the provisions of the Act. Here the sale price is neither regulated nor minimum sale price is being fixed upon any mineral which has been excavated in another State. Only a regulatory fee is being imposed to achieve the object of the provisions of Section 15 (1-A) and Section 23 (C) of the Act, and further it is a step in aid to effectuate the National Mineral Policy.

115. The facts of both **M.P.P. Kaveri Chetty** and **Jayeshbhai's** case were entirely different, as the first one relates to control the price and the sale price of a minor mineral, and in the second case, the State Government had imposed complete ban on the movement of minor mineral, whereas in the present case, Regulatory Fees has been imposed upon the inter-State transportation of the minor minerals. This imposition is set to be as per the objects of the provisions of Section 15(1-A) and 23(1) of the Act and was imposed to provide for setting up a proper infrastructure to curb illegal mining, transportation and its storage.

116. It is clear that the competence of the State Government to frame rules under MMRD Act has been challenged several times and has been tested by Hon'ble Supreme Court in various judgments. First time a division bench of this Court in Sheo Varan Singh's case, which dealt with this issue, has held that Section 15 (1) is couched in a language which confers wide power on the State Government to frame rules to achieve the object of the act. Further, it held that the legislature had

empowered the State Government to make rules for all 'purposes connected herewith'.

117. The rules making power of the State Government was again questioned in **State of Tamil Nadu Vs. M/s Hind Stone and others (supra)**, where the Hon'ble Supreme Court held that MMRD Act itself gives power to frame rules. Rules made under the Statute must be read for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and the Rules impugned herein in framed from the power derived from the Statute.

118. The constitution bench of the Hon'ble Supreme court in **Kersoram Indutries (supra)** once again upheld the power of the State to frame rules, the Court even went to the extent of saying the power to levy any tax or fee lying within the legislative competence of the State Legislature can be delegated to local authorities as well.

119. Moreover, the Rules so framed were under the directions passed in **M/s Digiana Industries Pvt. Ltd. Vs. Union of India and others**[42] and also the Rules, which are impugned herein, are made in conformity with the new mining policy of 2021 issued by the Government of India.

120. The Hon'ble Supreme Court in the matter of C**ommon Cause (supra)** had directed the Government of India to frame a new mining policy, in compliance of the order of the Hon'ble Supreme Court, the Government of India framed 'Mining Policy 2021'. This policy was approved by the cabinet on 28.02.2021 while **Jayesbhai's** judgment was pronounced on the very next morning i.e. 01.03.2021 probably, that was a reason the Court while pronouncing the judgment was not aware of the new mining policy and the same was not considered in the judgment.

121. The MMRD Act was enacted, with the sole object of developing and regulating the minerals. Hence, any rules framed or regulations made for development, excavation, transportation would not tantamount to be in violation of provi-

42 2017(1) ADJ 549

sions of the MMDR Act even if the same is regulating in nature. As in **Kesoram's** case the Constitution Bench has held that a reasonable fee levied by State legislation cannot be construed as trenching upon the Union's power and freedom to regulate and control Mines and Mineral. The whole field of control and regulation under the provisions of MMRD Act, 1957 cannot be said to be reserved for the Central Government.

122. The phrase used in Section 23-C (1) of the MMRD Act is 'illegal mining', transportation and storage. All these three words i.e. illegal mining, transportation and storage have to be read separately and not in conjunction. The Section clearly gives power to the State Government to independently frame rules for all these issues though all these three issues are an integral part of the mining industry, but the plain reading of the Section is that the rules can be framed independently for illegal mining of minerals, separate rules and regulations for transportation of minerals, and altogether different rules and regulations for storage of minerals, this will include both legally and illegally excavated minerals. This further gets corroborated from the amendment in Section 21 of MMRD Act brought in 2021 where an explanation was added in the penalty section (Section 21), which clarified that penalty would be imposed on raising or transportation of any minerals, which are in contravention of the rules made under Section 23 (2), this amendment clarifies that illegal mining, transportation and storage cannot be read in conjunctive.

123. The entries in the list of VIIth Schedule must receive a liberal construction inspired by broad generous spirit and not in a narrow pedantic sense. This is because the allocation of the subject to the lists is not by way of scientific or logical definition but by way of mere "simplex enumeratio" of broad categories. The power to legislate shall also include within its expanse the legislations touching incidental and ancillary matters. In the scheme of lists in the Seventh Schedule there exists clear distinction between general subjects of legislation the subject with specific or wider implications. The amended Section 15(1-A) of the MMDR Act, starts with a non-obstante clause giving wide power to make rules, which were specified to the subjects. In view of the aforesaid, it is clear that Section

15(1-A) of the MMDR Act, empowers the State to make such rules to achieve the objects of the amended provisions of Section 15 of the MMDR Act. Section 15(1-A)(g) of the MMDR Act further empowers the State to make rules for imposing fees. Hence, Regulatory Fees imposed by the State by framing Rule 21(4) and Rule 70(2) of 2020 Rules and also by framing Rule 21(5) and Rule 70(2) of the 2021 Rules was well within the ambit of the powers enshrined under Section 15(1-A) of the MMDR Act.

124. Hence, Rule 21(4) and Rule 70 (2) of 2020 Rules and Rule 21(5) and Rule 70(2) of the 2021 Rules are intra vires in accordance with the provisions of MMDR Act.

Whether the Rule framed for charging Regulatory Fees on the minerals coming from other States in to the State of Uttar Pradesh and the G.O. dated 24.2.2020 and G.O. dated 10.8.2022 are in line with the objects of the MMDR Act and Rules framed thereunder, and whether they are in sync with the new mining policy of 2019.

125. The parliament in its wisdom, has enacted the MMRD Act, 1957 which was amended from time to time and fresh provisions were added. These amendments were carried out, to address the need for proper implementation of the provisions of the Act and also to achieve the objects of the Statute. The amendment, which came into affect from 18.12.1999 where to give State a wider power to frame rules on transportation and storage of minerals. Section 4 (1-A) lays down that the State would frame rules for transport and storage of minerals as per the provisions of the Act. This section does not restrict the rule making power of the State only for illegally mined minerals but also for the legally mined minerals.

126. Section 41-A of the MMDR Act empowers the State to make rules for transportation and storage of minerals. There is no distinction between legally mined and illegally mined minerals whereas in Section 23 (C-1) the phrase used is ‘illegal mining, transportation and storage’. A plain reading of both the sections make it clear the phrase ‘illegal mining, transportation and storage’ have to be read separately and not in conjunction. The Section clearly gives power to the

State Government to independently frame rules for all these subjects though all these three subjects are an integral part of the mining industry, but the plain reading of the Section is that the rules can be framed independently for illegal mining of minerals, separate rules and regulations for transportation of minerals, and altogether different rules and regulations for storage of minerals, this will include both legally and illegally excavated minerals. This further gets corroborated from the amendment in Section 21 of MMRD Act brought in 2021 where an explanation was added in the penalty section (Section 21), which clarified that penalty would be imposed on raising or transportation of any minerals, which are in contravention of the rules made under Section 23 (2), it does not state whether it is legally or illegally excavated minerals.

127. Hence, the argument of the petitioner that the State Government has no power to impose regulatory fees or to issue Government Orders for the minerals, which have been legally extracted in other States, cannot be held valid, as the State Government has independent power to frame rules for transportation of minerals brought in from other States into the State of Uttar Pradesh. Moreover, the objects of the Government Order dated 24.02.2020 and 10.08.2022 is in line with the objects of the Act and further the regulatory fees so collected has been spent towards setting up the infrastructure and using the latest technology, which would definitely rein in the illegal mining of minerals and its transportation. The use of Geofencing, PGZ cameras, mine tags, RFID readers, setting up of weighbridges and Checkgates using artificial intelligence and other latest technologies, by generating e-challans using QR Code and various other devices which would definitely prevent and check the transportation of illegally mined minerals, at important roads of different parts of the State. Being such a big State, with its boundary running into hundreds of kilometers, to check the transportation of illegal minerals is a herculean task. In order to set up this infrastructure, the State undoubtedly has been burdened with the huge cost and the only way to set off this huge cost, is by charging regulatory fees on the minerals coming from the other States. In view of the steps taken in imposing regulatory fees it would not be wrong to say that the regulatory fees so collected by the State was not for the enrichment of the State but was spent to fulfill the obligations of the State as provided in Section 23-

C of the Act. Further, the regulatory fees so imposed was to achieve the objects for which an amendment was brought (on 18.12.1999) in the MMDR Act, wherein under the statute the State Government was bound to frame rules to prevent illegal mining, transportation and storage of minerals. Moreover, the regulatory fees so imposed was in furtherance of the Mining Policy 2021 made by the Government of India.

128. Hence, the Regulatory Fees so imposed was to meet the extra expenses incurred in fulfilling the obligations of the State as provided under the Act and Rules. The G.O.s dated 24.2.2020 and 10.8.2022 are completely in sync with the provisions of the Act and Rules and are also in sync with the Mining Policy of 2019 issued by the Government of India.

(III) Whether imposition of regulatory fees is in violation of Part XIII of the Constitution of India

129. The petitioners while assailing the rules have submitted that the impugned rules violate Part XIII of the Constitution, as the effect thereof is to fetter the freedom of trade, commerce and intercourse under Article 301 of the Constitution.

The relevant Articles of Part XIII of the Constitution of India are as folows:-

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

302. Power of Parliament to impose restrictions on trade, commerce and intercourse.— Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.—(1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make 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.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for

the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

304. Restrictions on trade, commerce and intercourse among States.—Notwithstanding anything in Article 301 or 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;
(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."

130. Under this Article, the expression 'freedom' of trade, commerce and intercourse must be read with the expression 'throughout the territory of India'. Under Article 302, Parliament may impose restrictions on the freedom of trade, commerce or intercourse between one State and another as may be required in the public interest. The expression 'public interest' may include a regional interest as well. However, Article 302 is qualified by Article 303 which prohibits Parliament and the State Legislatures from making any law that gives preference to one State over another or discriminates between one State and another. Situations of scarcity are to be dealt with by Parliament under Article 303 (2). The power of State Legislature to impose reasonable restrictions on the freedom of trade, commerce or intercourse, as may be required in the public interest, requires such a Bill or amendment to be moved in the State Legislature only after receiving previous accent from the President.

131. Article 301 is inspired by Section 92 of the Australian Constitution, however, Article 301 is subject to limitations and conditions in Articles 302, 303 and 304 which are borrowed from the commerce clause under Article 1 of the US Constitution. Therefore, Part XIII is an amalgam of the United States and Australian Constitutions which brings out the difference between regulatory and taxing powers.

Section 92 of the Australian Constitution provides for freedom of trade and commerce. However, it has been held in numerous decisions of the Privy Council and the Australian High Courts that Section 92 leaves open the regulation of trade

and commerce at all events until the regulation is enacted provided it does not impede the true freedom of inter-State commerce. This reasoning is based on the principle that all trade and commerce must be conducted subject to law. Thus, we have the difference between taxing and regulatory laws. This is how the concept of "regulatory charges" came about.

Section 8 of Article 1 of the US Constitution contains what is called the "Commerce Clause", which regulates trade and commerce. Keeping in mind the dual form of government in USA and the concept of "Police Power" vis-a-vis the "Taxing Power", the US Supreme Court has held that the commerce power embodied in the commerce clause implies the power to regulate; that is the power to prescribe the rule by this commerce is to be governed (see *Constitutional Law* by Stone).

> *In Cooley v. Board of Wardens of Port of Philadelphia (1851), the Supreme Court agreed with the state of Pennsylvania that it had the right, under an act of Congress in 1789, to regulate matters concerning pilots on its waterways, including the port of Philadelphia. The Court held that Congress had never intended to deprive the states of all power to regulate commerce.*

132. Article 301 states that subject to the other provisions of Part XIII, trade, commerce and intercourse throughout India shall be free. It is not freedom from all laws but freedom from such laws which restrict or affect activities of trade and commerce amongst the States. Although Article 301 is positively worded, in effect, it is negative as freedom correspondingly creates general limitation on all legislative power to ensure that trade, commerce and intercourse throughout India shall be free. Article 301, therefore, refers to freedom from laws which go beyond regulations which burdens, restricts or prevents the trade movement between States and also within the State. Since "freedom" correspondingly imposes "limitation", we have the doctrine of "direct and immediate effect" of the operation of the impugned law on the freedom of trade and commerce in Article 301 was first enunciated in **Atiabari Tea Co. Ltd. Vs. State of Assam.**[43]

133. Article 301 is, therefore, not only an authorisation to enact laws for the protection and encouragement of trade and commerce amongst the States but by its own force creates an area of trade free from interference by the State and, there-

43Atiabari Tea Co. Ltd. Vs. State of Assam AIR 1961 SC 232

fore, Article 301 *per se* constitutes limitation on the power of the State. Article 301 is, however, subject to the other provisions of Articles 302, 303 and 304. It states that subject to other provisions of Part XIII, trade, commerce and intercourse throughout India shall be free.

134. Article 301 is binding upon the Union Legislature and the State Legislatures, but Parliament can get rid of the limitation imposed by Article 301 by enacting a law under Article 302. Similarly, a law made by the State Legislature in compliance with the conditions imposed by Article 304 shall not be hit by Article 301. Article 301 thus provides for freedom of inter-State as well as intra-State trade and commerce subject to other provisions of Part XIII and correspondingly it imposes a general limitation on the legislative powers.

135. The interpretation of any provision of the Constitution will be true only when Court looks on the Constitution holistically and keeps in view of important and significant factors of the Constitutional Scheme constantly reminding itself of a need for a harmonious construction lest interpretation placed on a given provision has effect of dilute or whittling down the effect and importance of other provision or feature of the Constitution. So interpreted, Article 301 appearing in Part XIII does not work as an impediment on the State power for this case.

136. The restrictions, freedom which is guaranteed by Article 301 would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. Regulatory measures do not come within the purview of restrictions contemplated by Article 301. The Mines and Minerals (Development and Regulation) Act, 1957 is without doubt a regulatory measure, Parliament having enacted it for the express purpose of regulation of mines and development of minerals. The Act and the Rules properly made thereunder are, therefore, outside the purview of Article 301. Even otherwise Article 302 which enables Parliament, by law, to impose such restrictions on freedom of trade, commerce or intercourse between one State and another, as may be required in the public interest also furnishes an answer to the claim based on the alleged contravention of Article 301.

137. Before a seven-Judges Constitution Bench of the Apex Court in **The Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan and Ors.**[44], the question arose if State could make laws imposing regulatory restrictions on free trade, commerce and intercourse guaranteed by Article 301 of constitution and whether a State tax could be treated as impeding freedom under Article 301 of Constitution. The Apex Court held that

> *…….. The States must also have revenue to carry out their administration and there are several items relating to the imposition of taxes in list II. The Constitution-makers must have intended that under those items the States will be entitled to raise revenue for their own purposes. If the widest view is accepted, then there would be for all practical purposes, an end of State autonomy even within the fields allotted to them under the distribution of powers envisaged by our Constitution. An examination of the entries in the lists of the Seventh Schedule to the Constitution would show that there are a large number of entries in the State list (list II) and the Concurrent list (list III) under which a State Legislature has power to make laws. Under some of these entries the State Legislature may impose different kinds of taxes and duties, such as property tax, sales tax, excise duty etc., and legislation in respect of any one of these items may have an indirect effect on trade and commerce. Even laws other than taxation laws, made under different entries in the lists referred to above, may indirectly or remotely affect trade and commerce. If it be held that every law made by the Legislature of a State which has repercussion on tariffs, licensing, marketing regulations, price-control etc., must have the previous sanction of the President, then the Constitution in so far as it gives plenary power to the States and State Legislatures in the fields allocated to them would be meaningless."*
>
> *The freedom guaranteed by Article 301 does not mean freedom from taxation. The power of levying tax is essentially for the very existence of Government, though its exercise may be controlled -by constitutional provisions made in that behalf. Power to tax is not outside constitutional limitations. It is for Parliament to exercise power in the field made available to it by Entry 52 and 54 in List I. It is also for Parliament to state by law the limitations - and the sweep thereof - which it may choose to impose on field available to stats for taxation by reference to Entry 50 !n List IT, It may not be for Courts to venture into enquiry in just an individual case to find and hold what tax would hamper mineral development if Parliament has chosen to observe silence by not legislating or failed to say something explicit.*

44The Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan and Ors.

138. In **Jindal Steels Ltd. vs. State of Haryana, (2017) 12 SCC 1**[45] the Hon'ble Supreme Court held that :-

> "*76. The sum total of what we have said above regarding Articles 301, 302, 303 and 304 may be summarised as under:*
>
> *76.1 Freedom of trade, commerce and intercourse in terms of Article 301 is not absolute but is subject to the provisions of Part XIII.*
>
> *76.2. Article 302 which appears in Part XIII empowers Parliament to impose restrictions on trade, commerce and intercourse in public interest.*
>
> *76.3 The restrictions which Parliament may impose in terms of Article 302 cannot however give any preference to one State over another by virtue of any entry relating to trade and commernce in any of the Lists in the Seventh Schedule.*
>
> *76.4 The restriction that Parliament may impose in terms of Article 302 may extend to giving of preference or permitting discrimination between one State over another only if Parliament by law declares that a situation arising out of scarcity of goods warrants such discrimination or preference.*
>
> *76.5. Article 304 (a) recognises the availability of the power to impose taxes on goods imported from other States, the legislative power to do so being found in Article 245 and 246 of the Constitution.*
>
> *76.6. Such power to levy taxes is however subject to the condition that similar goods manufactured or produced in the State levying the tax ar also subjected to tax and that there is no discrimination on that account between goods so imported and goods so manufactured or produced.*
>
> *76.7. The limitation on the power to levy taxes is entirely covered by clause (a) of Article 304 which exhausts the universe insofar as the State Legislature's power to levy of taxes is concerned.*
>
> *76.8. Resultantly, a discriminatory tax on the import of goods from other States alone will work as an impediment on free trade, commerce and intercourse within the meaning of Article 302.*
>
> *76.9. Reasonable restrictions in public interest referred to in clause (b) of Article 304 do not comprehend levy of taxes as a restriction especially when taxes are presumed to be both reasonable and in public interest.*

139. The imposition of regulatory fees is undoubtedly a reasonable restriction imposed in the public interest. The impugned rules and Government Orders by their very character are regulating the activity of mining. The said activities are the natural corollary associated with the mining which needs to be regulated particularly in view of the provisions contained in Article 39(b) of the Constitution of India.

45Jindal Steels Ltd. vs. State of Haryana, (2017) 12 SCC 1

140. A perusal of the Rules and the Section discloses that full regulatory control vests with the State over transportation of minerals more so, upon minor minerals. Section 4(1-A) gives plenary power to the State Government to regulate transportation of mineral. The entire field of transportation stands regulated at the hands of the State Government whether it is intra-State or it is inter-State.

141. Hence, the Regulatory Fees imposed by Rules 2020 and Rules 2021 to meet out the obligations set out by the State under Section 23(C) of the Statute, cannot be said to be in violation of Part XIII of the Constitution of Indi.

142. In view of the aforesaid, we come to a **conclusion** that :

(a) State has the power to frame rules under Section 15-1 of the MMDR Act. The Rule 21(4) and Rule 70(2) of Rule, 2020 and the Rule 21(5) and Rule 72(2) of UP Mining and Concession Rules, 2021 is intra vires to the provisions of MMDR Act.

(b) The G.O. dated 24.02.2020 and 10.08.2022 issued charging the regulatory fees on the minerals dropped from other State into the State of U.P. is held valid as the same has been issued in accordance with the aforementioned rules and in furtherance of the new Mining Policy, 2021.

(c) The Regulatory Fees imposed does not violate Part XIII of the Constitution of India.

143. Accordingly, the writ petitions filed by the petitioners are hereby dismissed. Parties to bear their own costs.

Order Date :- 18.08.2023
S.P.