IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JANUARY, 2021

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE S. VISHWAJITH SHETTY

WRIT PETITION NO.8851 OF 2020 (GM-MM-S)
C/W
WRIT PETITION NO.9103 OF 2020 (GM-MM-S)

IN W.P. NO. 8851 OF 2020

SRI SAI KESHAVA ENTERPRISES

AND

THE STATE OF KARNATAKA

IN W.P. NO. 9103 OF 2020

KARNATAKA TIPPER LORRY OWNERS ASSOCIATION

AND

THE STATE OF KARNATAKA

ORDER

The main issue involved in these writ petitions is:

> "Whether the State Legislature has legislative competence to enact sub Rule (7) of Rule 42 of the Karnataka Minor Mineral Concession Rules, 1994, authorizing collection of entry fee from a person who transports certain category of minor minerals from other States with valid transit permit to the State of Karnataka?"

2. The challenge in these petitions under Article 226 of the Constitution of India is to the constitutional validity of sub-rule (7) of Rule 42 of the Karnataka Minor Mineral Concession Rules, 1994 (for short, 'the said Rules of 1994'). Sub-rule (7) of Rule 42 which was incorporated by the Karnataka Minor Mineral Concession (Amendment) Rules 2020 (for short, 'the Amendment Rules of 2020') reads thus:

> **"42 (7): Transportation of processed building stones from other States:** An amount of rupees seventy per metric ton shall be collected from the person who transports the processed building stone materials like aggregates or jelly, size stone, boulders, M-sand and other varieties from other States with valid permit."

3. The petitioners are carrying on the business of stone crushing and manufacture of M-sand in Krishnagiri District of the State of Tamil Nadu. The petitioners claim that they have obtained requisite permits and approvals from the Government of Tamil Nadu for operating manufacturing plants and have been carrying on such operations for last more than ten years. It is their case that they have obtained quarrying lease from the

Government of Tamil Nadu after participating in bidding process. The petitioners, after obtaining transit permits, are transporting the finished goods to other States including the State of Karnataka.

4. The challenge to sub-rule (7) of Rule 42 is firstly on the ground that the provisions of Section 15 of the Karnataka Mines and Minerals (Development and Regulation) Act, 1957 (for short, 'the said Act of 1957') do not empower the State Government to frame the Rules for imposing levy of fees for movement of licensed goods from other States. The second contention is that sub-rule (7) of Rule 42 (for short "the impugned Rule") is violative of Article 301 of the Constitution of India. It is urged that it imposes illegal restraints on the inter-state trade. It is also contended that the exercise of power by the State Government for framing such a Rule is not in accordance with Article 265 of the Constitution of India.

SUBMISSIONS OF THE PETITIONERS:

5. Shri. Arvind Kuloor Kamath**,** the learned Senior Counsel appearing for the petitioners submitted that the field of transportation of minerals and the regulation of mining is already occupied by the said Act of 1957 which is a law made by the Parliament. He pointed out that under the said Act of 1957, a power has been conferred on the States to frame Rules only in accordance with Sections 15 and 23-C thereof. It is pointed out

that the State Government has already established various check-posts in the State right from the year 1994 for controlling unauthorized transportation and unauthorized quarrying. The copies of the notifications for establishing such check-posts have been placed on record. It is submitted that the impugned sub-rule (7) of Rule 42 does not prescribe the object and nature of the levy, and simply states that a sum of rupees seventy per metric ton is payable by non- State transporters. It is not described as a fee. The learned counsel also invited our attention to the stand taken by the State Government in its statement of objections. He submitted that the impugned Rule is not covered by the legislative power of the State either under Section 15 or under Section 23-C of the said Act of 1957.

6. The learned Senior Counsel appearing for the petitioners submitted that the power of the State Government to make a law for the levy of fees in accordance with Entry-66 of List-II in the seventh Schedule of the Constitution of India can be exercised only to make a plenary law and not for exercising power of delegated legislation. He pointed out that neither Section 15 nor Section 23-C of the said Act of 1957 permit the State Government to levy the fees for recovering the expenses relating to setting up of infrastructure for checking illegal transportation.

7. He submitted that going by the averments made in the statement of objections filed by the State Government, the impugned fees is collected for recovering the expenses incurred for setting up infrastructure of check-posts. Therefore, it is only a compensatory fee and not a regulatory fee. Hence, the contention of the State Government that the levy of such fee is a regulatory cannot be accepted and the test of *quid pro quo* would apply and the burden is on the State Government to establish that the service has been rendered to the petitioners.

8. He further submitted that there is no correlation between the class of persons to whom the object of the said Rule applies and the class of persons who have to pay the fee. He submitted that the alleged object of recovery of fee is to check illegal transportation of minerals both from within and outside the State. Therefore, the fees cannot be charged only from those who are transporting the minerals from outside the State. He would, therefore, submit that Article 14 of the Constitution is violated. He also submitted that the impugned levy of fee is violative of Article 301 of the Constitution of India. In support of his submissions, the learned counsel relied upon the following decisions:

i) ***State of Gujarat and others –vs- Jayeshbhai Kanjibhai Kalathiya and others***[1]

ii) ***Vam Organic Chemicals Ltd and another –vs- State of U.P. and others***[2]

iii) ***Sri Sri Sri K.C. Gajapati Narayan Deo and others –vs- State of Orissa***[3]

iv) ***Ashok Kumar Alias Golu –vs- Union of India and others***[4]

v) ***Welfare Association, A.R.P., Maharashtra and another –vs- Ranjit P. Gohil and others***[5]

SUBMISSIONS OF THE ADVOCATE GENERAL:

9. Shri. Prabhuling K. Navadgi, the learned Advocate General opposed the petitions by making detailed submissions. He invited the attention of the Court to the stand taken in the statement of objections. The learned Advocate General submitted that the said Act of 1957 has been enacted under entry 54, List-I of seventh Schedule. In the said Act of 1957,

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[1] (2019) 16 SCC 513
[2] (1997) 2 SCC 715
[3] AIR 1953 SC 375
[4] (1991) 3 SCC 498
[5] (2003) 9 SCC 358

the subject of minor minerals is reserved for the State Governments. Inviting our attention to Section 4 (1A) incorporated in the said Act of 1957 by the Act 38 of 1999 with effect from 18th December 1999, he urged that no person is entitled to transport, store or cause to be transported or stored any minerals otherwise than in accordance with the provisions of the said Act of 1957 and the Rules made thereunder. He pointed out that under clause (g) of sub-section (1A) of Section

15, the State Government is empowered to frame the Rules for fixation and collection of rent, royalty, fees, dead rent, fines or other charges. He pointed out that there is a general rule making power vested in the State Government as contemplated by sub-section (1A) of Section 15 as well as clause (o) of sub-section (1A) of Section 15. He urged that Section 23-C of the said Act of 1957 confer powers on the State Government to make Rules for preventing illegal mining, transportation and storage of minerals. He submitted that regulation of mines and minerals is a field of legislation available to the State Government. He submitted that in view of enactment of Section 15, the whole of the field relating to minor minerals came within the jurisdiction of the central legislature and no scope was left for the State Governments to make plenary legislation. He submitted that the powers under Section 15 conferred on the State Governments to make Rules relating to minor minerals is very wide.

10. The learned Advocate General also relied upon a decision in the case of ***Vam Organic Chemicals*** (supra). He also relied upon a decision of the Apex Court in the case of ***Sandur Manganese and Iron Ores Ltd –vs- State of Karnataka and others[6].***

11. He invited our attention to Section 23-C of the said Act of 1957 and submitted that the scope of Section 23-C is not limited only to prevent illegal mining, but it also includes

prevention of illegal transportation as well as illegal storage of the minerals. He submitted that Section 23-C empower the State Governments to make Rules for establishing check-posts for checking minerals under transit. Section 23-C also enables the State Government to frame the Rules for checking and searching of minerals during transit and to deal with the matters which are required to be dealt with for the purpose of prevention of illegal mining as well as transportation and storage of minerals. He urged that in view of Section 23-C, the jurisdiction is conferred only on the State Government to deal with the subject of prevention of illegal mining. He

[6] (2010) 13 SCC 1

submitted that illegal mining is not confined to the State of Karnataka and therefore, it is necessary to prevent illegally excavated minerals from being brought into the State of Karnataka. It is the concern of the State of Karnataka to prevent illegally excavated minerals entering into the territory of the State of Karnataka. He pointed out that the additional documents produced on record will show that there are several instances of transit passes issued by the other State Governments being tampered and there are also instances of transport of minerals from other States without obtaining valid permits. He pointed out that the fee specified under the impugned sub-rule (7) of Rule 42 is for the service rendered

and it is pointed in the statement of objections as to how amount of Rs.70/- per metric ton levied as per the impugned sub-rule (7) of Rule 42 is being used. He submitted that Annexure R1 to the statement of objections shows co-relation between the fees collected and the services being rendered. He submitted that there is every justification for setting up of the check-posts for preventing the entry of illegally mined minerals into the territory of the State of Karnataka and therefore, the levy of fees is justified.

12. Relying upon a decision of the Apex Court in the case of ***State of H.P and others –vs- Shivalik Agro Poly products and others***[7]***,*** he submitted that nature and distinction between tax and fee has reached vanishing point. He would, therefore, urge that there is a broad co-relation established between the fee collected and the service being rendered for the purpose of primary object of preventing illegal mining and the element of *quid pro quo* in the strict sense is not a *sine qua non* for levy of a fee. He submitted that fixation of fee and collection of fines under clause (g) of sub-section (1) of Section 15 of the said Act of 1957 would be in furtherance of clause (g) of sub-section (1) of Section 23-C of the said Act of 1957.

13. Referring to the arguments of the petitioners based on the infringement of Article 301 and 304 of the Constitution, he urged that the decision of the Apex Court in the case of ***State***

of Gujarat (supra) will have no application, as it was a case of total prohibition on the entry of the goods into a State. He submitted that the levy of Rs.70/- per metric ton does not create the trade barrier in the State.

14. He submitted that those who are quarrying minor minerals outside the State of Karnataka are required to pay

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[7] (2004) 8 SCC 556

entry fee at the time of entering the territory of the State of Karnataka. In the like manner, those who are doing quarrying operations in the State of Karnataka are require to pay royalty and dead rent to the State.

15. Relying upon a decision of this Court rendered in the case of ***V.S. Lad and Sons vs. The State of Karnataka and others***[8], he submitted that the scope of Section 23-C is laid down in the said decision. He would, therefore, submit that the provision of sub-rule (7) of Rule 42 is constitutionally valid and no interference is called for.

REPLY OF THE PETITIONERS TO THE SUBMISSIONS OF THE STATE GOVERNMENT:

16. The learned Senior Counsel briefly replied to the submissions of the learned Advocate General. He reiterated that the rule making power under Section 15 of the said Act of 1957 cannot be extended for regulating transportation of legally excavated minerals in other States. Based on the decision of

the Apex Court in the case of ***State of Gujarat and others – vs- Jayeshbhai Kanjibhai Kalathiya*** *(supra),* he submitted that the State Government has no power to make a law to regulate the lawfully excavated minerals. He urged that the

[8] ILR 2011 KAR 1333 (WP.No.24103/2010, decided on 19.11.2010)

power to levy any financial imposition has to be express and cannot be implied by drawing an inference. He submitted that the impugned levy is a financial imposition which itself operates as barrier for inter-state trade resulting in violation of Article 301 of the Constitution.

CONSIDERATION OF SUBMISSIONS: RULE MAKING POWER UNDER SECTION 15 AND 23-C OF THESAID ACT OF 1957:

17. We have given careful consideration to the submissions made across the Bar. We have already quoted the impugned sub-rule in paragraph 2 above. We may note here that as per the preamble to the said Rules of 1994, the same have been made in exercise of the powers conferred on the State under Section 15 of the said Act of 1957. The said Act of 1957 applies to all minerals except mineral oils. Minor minerals are defined in clause (e) of Section 3 of the said Act of 1957. Sections 5 to 13 (both inclusive) of the said Act of 1957 are not applicable to the minor minerals. Sub-section (1) of Section 4 of the said Act of 1957 lays down that no person should undertake any reconnaissance, prospecting or mining

operations in any area, except in accordance with the terms and conditions of a reconnaissance permit or a prospective licence or, as the case may be, a mining lease granted under the provisions of the said Act of 1957 and the rules made thereunder. Under sub-section 1A of Section 4, it is provided that no person shall store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of the said Act of 1957 and the rules made thereunder. Under sub-section (1) of Section 4A, the Central Government is empowered to prematurely terminate such prospecting licence or mining lease. Sub-Section (2) of Section 4A confers a power on the State Government to make premature termination of prospecting licence or mining lease in respect of minor minerals.

18. Section 15 of the said Act of 1957 which confers powers on the State Government of rule making in respect of the minor minerals reads thus:

> "**15. Power of State Governments to make rules in respect of minor minerals**.—(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.
>
> (1-A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
>
> (a) the person by whom and the manner in which, applications for quarry leases, mining

leases or other mineral concessions may be made and the fees to be paid therefor;

(b) the time within which, and the form in which, 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 time within which and the manner in which these shall be payable;

(h) the manner in which rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;

(i) the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area selected by the Stale 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) <u>any other matter which is to be, or may be prescribed</u>.

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

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in

the rules framed by the State Government in respect of minor minerals:

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

(4) Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely—

(a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining under sub-section (2) of Section 9-B;

(b) the composition and functions of the District Mineral Foundation under sub-section (3) of Section 9-B; and

(c) the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under Section 15-A.

(underlines supplied)

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.

20. Sub-section (1) of Section 23-C which was incorporated in the said Act of 1957 by the Act No. 38 of 1999 with effect from 18th December, 1999 reads thus:

> **"23-C. Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals**.—(1) The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.
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> (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
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> (a) establishment of check-posts for checking of minerals under transit;
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> (b) establishment of weighbridges 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".

(underlines supplied)

21. The Apex Court had an occasion to deal with the provisions of Section 23-C of the said Act of 1957 in the case of ***Gujarat and others –vs- Jayeshbhai Kanjibhai Kalathiya*** (supra). The appeals before the Apex Court arose out of a decision of the Gujarat High Court wherein the challenge was to Rule 44-BB as inserted by the Gujarat Minor Mineral (Amendment) Rules 2010 and Rule 71 of the Gujarat Minor Mineral Rules, 1966. Rules 44-BB and 71 which are quoted in paragraphs 2 and 3 of the said decision read thus:

> "**44-BB: No movement of sand shall be allowed beyond the border of the State**. In case any vehicle is found transporting sand to the neighbouring State, even with authorised royalty pass or delivery challan, it shall be treated as violation of the Act and the Rules made thereunder and the penal provisions as specified therein shall be applicable.
>
> **71. *Prohibition to transport sand beyond border***.—No movement of sand shall be allowed beyond the border of the State. In case, any vehicle is found transporting sand to the neighbouring State even with authorised royalty pass or delivery challan, it shall be treated as violation of the Act and the rules made thereunder

and the penal provisions, except compounding, as specified therein shall be applicable."

The Gujarat High Court struck down the aforesaid rules as *ultra vires* on the ground that the rule making power of the State Government does not empower and cannot be stretched to empower the State Government to make rules directly prohibiting the movements of minerals so as to impinge upon the freedom guaranteed by Article 301 of the Constitution.

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

"10. A perusal of Sections 15 and 23-C in relation to the aforesaid discussion would clearly suggest

that the power of the State Government to make rules is restricted to:

making rules for grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for the purposes connected therewith; and

making rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

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

23. While dealing with the submissions, the Apex Court formulated two questions which are quoted in paragraphs 34.1 and 34.2 which read thus:

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

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

24. The Apex Court also considered its earlier Judgment in the case of ***State of Tamil Nadu –vs- M.P.P. Kavery Chetty***[9]. In paragraph 42 while dealing with the said judgment, the Apex Court held thus:

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

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.

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[9] (1995) 2 SCC 402

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

26. Clause (a) sub-section (2) of Section 23-C provides for framing of Rules for establishment of check-posts for checking of minerals under transit. As far as the regulation of transport of minerals is concerned, the rule making power is under clause (c) of sub-section (2) of Section 23-C. Clause (c) is about regulation of minerals being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit. Thus, clause (c) authorizes framing of rules for transportation of lawfully excavated

minerals from the lands within the State. Obviously, clause (a) refers to establishment of check-posts for the purposes of checking the instances of illegal excavation and/or illegal transportation of minerals within the State. The State Government does not get the authority under Section 23-C of the said Act of 1957 to make rules for the regulation of transport of legally excavated minerals from other States. The impugned sub-rule expressly authorizes the State Government to collect a sort of an entry fee at the rate of Rs.70/- per metric ton from a person who transports legally excavated minerals from the other States.

27. In its statement of objections, firstly, the State Government has relied upon the provisions of Section 15 for supporting the impugned sub-rule. Clause (g) of sub-section (2) of Section 15 confers a rule making power for making Rules for fixing and collection of rent, royalty, fees, dead rent, fines or other charges. Obviously, clause (g) refers to collection of royalty, fees, dead rent, fines or other charges on the minor minerals excavated within the State. This provision does not confer on the State Government a rule making power to make rules for collection of royalty, fees, dead rent, fines or other charges on the minor minerals lawfully excavated within other

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

28. In paragraph five of the statement of objections, the State Government has derived support from Section 23-C for

justifying introduction of the impugned sub-rule. The averments made in paragraphs 6 to 9 of the statement of objections are relevant which read thus:

> "6. In Karnataka, the entire system of issue of mineral dispatch permits to lease holders within the State is technology based and certain adequate safeguards are put in place to ensure that illegal transportation of quarried material is minimized to the maximum extent. However, it was noticed that there was large-scale movement of mineral from outside the State and that there is no proper mechanism to supervise the activity/movement, resulting in serious difficulties in identifying illegally quarried mineral from outside the State. The permits issued in other States are, generally, paper-based and the entries pertaining to the movement of the goods are left to be filled up by the permit holder. It has been the experience of the State that the same permits/transmit passes would be used repeatedly. Once the vehicle enters into the State, there is no method to track the movement of material or if the minor mineral is already delivered to the consignee. Since there is no unified mechanism and each State follows its own method in respect of issuance of permits, it has proved to be extremely difficult to distinguish between legally transported material and illegally transported material as based on the same permits, multiple trips were being carried out. From the transit passes produced by the petitioners themselves as Annexures to the writ petition, it is demonstrable that identification and supervision of the movement of vehicles from outside the State without the necessary protocols is a very difficult task, which hinders the State's efforts in prevention of illegal transport of minor mineral and giving scope for illegal quarrying within the State.

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

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

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

> fee that is collected from the transporter of the specified mineral into the State. A copy of a chart showing the estimate of expenses that would be incurred by the State Government in order to establish check posts and effectively check the illegal transportation of minerals is produced as **Annexure R-1.**"
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> (underlines supplied)

29. It is thereafter contended by the State Government that various decisions of the Apex Court including the decision in the case of ***Vam Organic Chemicals*** (supra) lay down that there is no requirement of showing *quid-pro-quo* or a measure of exactitude when the State collects any amount by way of regulatory fees. Only if such a rule making power exists, the question of going into the nature of levy arises. We have found that there is no such rule making power conferred on the State Government. The real question is whether transportation of lawfully excavated minerals in other States can be regulated by exercising the rule making powers either under Section 23-C or Section 15. The answer to this question must be in negative, as held by us earlier.

30. Reliance was placed on the sub-rule (1) of Rule 46 of the said Rules 1994. Sub-Rule (1) of Rule 46 provides for an officer empowered by the State Government by notification in this behalf making entry and carrying out inspection. Rule 43

or 46 has nothing to do with the lawfully excavated minerals which are brought from other States into the State of Karnataka. It is contended in paragraph 9 of the statement of objections filed by the State Government that the fee levied under the impugned sub-rule is in the nature of a regulatory fee. The State Government has no rule making power to make rules providing for recovery of regulatory fee on minerals lawfully excavated in the other States. Therefore, we need not go into the question of the nature of fees.

ARGUMENT OF EXECUTIVE POWER:

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

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

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

by the State Legislature authorizing such a levy by making rules. No such law has been enacted.

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

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

ORDER

i) The writ petitions are allowed in terms of the prayer (a) of writ petition No.8851 of 2020 which reads thus:

(a) Struck down Rule 42 (7) of the Karnataka Minor Mineral Concession Rules, 1994 inserted by way of an amendment notified in the Special Gazette dated 30.06.2020 bearing Ref No. C1 115 MMN 2019 (Annexure-A) as unconstitutional and *ultra vires* the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) by way of writ in the nature of certiorari or any other appropriate writ, order or direction";

ii) There shall be no order as to the costs.