

GAHC010145642024



2024:GAU-AS:12868-DB

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Writ Appeal No. 304/2024

Rakesh Kumar Singh,
S/o Lt. Saheb Singh,
R/o Namrup, District- Dibrugarh,
Assam, PIN-786623.

- Appellant

-Versus-

1. The State of Assam, Represented
by the Secretary to the Govt. of
Assam, Forest Department, Dispur,
Guwahati.

2. The Commissioner & Secretary to
the Government of Assam, Forest
Department, Dispur, Guwahati,
Assam.

3. The Principal Chief Conservator of
Forest, Assam, Aranya Bhawan,
Panjabari, Guwahati, Assam.

4. The Divisional Forest Officer,
Dibrugarh, Assam.

5. The Range Forest Officer, Jeypore
Range, Jeypore, District-Dibrugarh,
Assam.

- Respondents

**-BEFORE-
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

For petitioner(s)/appellant(s): Mr. G.N. Sahewalla, Sr. Advocate
Mr. S. Murarka, Advocate

For respondent(s) : Mr. P. N. Goswami, Add. AG, Assam
Mr. I. Kalita, SC, Forest Deptt.

Date of Hearing : 10.12.2024.

Date of judgment : 18.12.2024

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

1. This writ appeal has been preferred by the appellant being aggrieved with the judgment and order dated 21.06.2024, passed by the learned Single Judge in WP(C) No. 6544/2022, whereby the learned Single Judge has dismissed the writ petition filed on behalf of the appellant.

2. The appellant approached the writ court essentially challenging the order dated 26.08.2022, passed by the Divisional Forest Officer (DFO), Dibrugarh, whereby it has ordered for closure of M/s Arkay Stone Mills, a Stone Crusher unit of which the appellant is the proprietor.

The appellant also challenged the validity of the notification dated 29.01.2003, issued by the Hon'ble Governor of Assam, whereby guidelines for installation of Stone Crusher units have been provided. The DFO, Dibrugarh passed the impugned order dated 26.08.2022 by referring to the above-referred notification dated 29.01.2003.

3. The precise case, as raised by the appellant before the learned Single Judge was that the State Government has no authority or jurisdiction to issue the notification dated 29.01.2003 providing guidelines for installation of Stone Crusher units as no such power exists with the State Government either under the provisions of the Indian Forest Act, 1927, or the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter to be referred to as "MMDR Act"), or the Assam Minor Mineral Concession Rules, 2013 (hereinafter to be referred as "Rules of 2013"), or under the Assam Forest Regulation 1891 (hereinafter to be referred to as "Regulation of 1891").

4. The respondents contested the claim of the appellant before the writ court while contending that the State Government, by virtue of Section 15 and 23-C of the MMDR Act, is empowered to issue guidelines for regulating installation and running of Stone Crusher units in the State of Assam.

5. The learned Single Judge, after taking into consideration the various provisions of the Indian Forest Act, 1927, the MMDR Act, the Rules of 2013 as well as the Regulation of 1891 has dismissed the writ petition while concluding that the item "stone" comes within the definition of "forest produce" and, therefore, no relief can be granted to the appellant.

6. From a bare reading of the impugned judgment it is clear that the learned Single Judge, while deciding WP(C)

6544/2022, has not even considered the issues raised by the appellant in the writ petition regarding the authority of the State Government of issuing guidelines regulating the installation and running of Stone Crusher units as well as the subsequent action on the part of the officers of the Forest Department of closing down the Stone Crusher unit owned and run by the appellant on the ground that the guidelines issued by the Government of Assam, vide notification dated 29.01.2003, had been violated by the appellant.

It appears that the learned Single Judge, while deciding WP(C) No. 6544/2022, has only taken into consideration the issue raised by the appellant in another connected writ petition, being WP(C) 1357/2015, questioning the authority of the officers of the Forest Department to take action under the Rules of 2013.

In the above-noted facts and circumstances of the case, it is open for us to remand the matter to the learned Single Judge for deciding WP(C) 6544/2022 for fresh adjudication. However, looking to the fact that the short question raised by the appellant regarding the authority of the State of Assam of issuing guidelines regulating the installation of Stone Crusher units, being a question of law, we propose to decide the issue raised by the appellant before the writ court, in this appeal.

7. As observed earlier, the appellant had preferred the writ petition questioning the power of the State Government of issuing guidelines, vide notification dated

29.01.2003, regulating installation and running of Stone Crusher units in the State of Assam as well as the subsequent action of the respondent authorities directing closure of the appellant's Stone Crusher unit on the ground that the same was violation of the said guidelines.

8. The appellant claims that the State Government neither has the authority nor is empowered to issue such guidelines either under the provisions of the MMDR Act, or under the Rules of 2013, or under the Indian Forest Act, 1927, or under the Regulations of 1891. It is also contended by the learned counsel for the appellant that earlier also the State Government, vide Office Memorandum dated 22.09.2005, had issued certain guidelines under the provisions of the Assam Minor Minerals Concession Rules, 1994 (now repealed with the enactment of the Rules of 2013) for the purpose of regulating the establishment and running of Stone Crusher units in the State of Assam. However, the said Office Memorandum was challenged before this Court in the case of ***Paramananda Choudhury v. State of Assam and Ors***, reported in ***2014 (3) GLT 160***, and a Single Bench of this Court, vide judgment and order dated 05.11.2013 has set aside the said Office Memorandum while holding that the State has no power to issue such guidelines.

9. The appellant had also claimed before the writ court that the attempt on the part of the State Government to regulate the installation and running of Stone Crusher

units, without there being any power to do so, is violative of the provisions of the Constitution of India.

10. On the other hand, it is claimed by the respondents that by virtue of Section 15 and 23-C of the MMDR Act the State is fully empowered to issue such guidelines. Learned counsel appearing for the State respondents has argued that as per Section 15 of the MMDR Act, the State Government is empowered to make rules in respect of minor minerals for regulating grant of quarry leases, mining leases and other concessions in respect of the minor minerals and for the purposes connected therewith. It is further contended that as per Section 23-C of the MMDR Act, the State is empowered to make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith. It is argued that the above-referred provisions of the MMDR Act entrust the State Government with the power and though the terms "for purposes connected therewith" has not been defined, but it expressly gives a sweeping rule-making power to the State Government, which clearly extends to framing of guidelines for regulating the installation and running of Stone Crusher units.

11. Learned counsel appearing for the State respondents has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Sakiri Vasu v. State of U.P.***, reported in ***(2008) 2 SCC 409***, and has argued that though no specific rule has yet been framed by the State

Government in respect of Stone Crusher units, however, as per Article 162 of the Constitution of India, the State has the executive power to make rules in the matters with respect to which the legislature of a State has the power to make rules.

In support of his arguments, learned counsel for the respondents has also placed reliance on the decision of the Hon'ble Supreme Court, rendered in ***Accountant General, State of Madhya Pradesh vs. S.K. Dubey & Anr.***, reported in (2012) 4 SCC 578.

12. Heard Mr. G. N. Sahewalla, learned senior counsel appearing for the appellant and Mr. P. N. Goswami, learned Additional Advocate General, Assam, assisted by Mr. I. Kalita, learned Standing Counsel, Forest Department, appearing for the respondents.

13. It would be gainful to take into consideration the provisions of Section 15 and Section 23-C of the MMDR Act and the same are reproduced hereunder:

“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.*

(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 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 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*

rope ways, 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 therefore, and the powers of the revisional authority; and*
- (o) any other matter which is to be, or may be, prescribed.]*

(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 these 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] 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.”*

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.*

(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:—

- (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)."

14. Section 15(1) of the MMDR Act empowers the State Government to make Rules regulating grant of mining leases, quarry leases and other concessions in respect of minor minerals and for the purposes connected therewith. Section 23-C of the MMDR Act specifies that without prejudice to the generality of these powers, the State can make rules for preventing illegal mining, transportation and storage of minerals.

If we closely examine the above provisions of the MMDR Act, it is difficult to say that the State is empowered to issue guidelines for regulating the business of Stone Crusher units, which are generally using minor minerals after its excavation from the mines.

The Hon'ble Supreme Court had the occasion to examine Section 15 and 23-C of the MMDR Act in the case of ***State of Gujarat & Ors. -Vs- Jayeshbhai Kanjibhai Kalathiya***, reported in ***(2019) 16 SCC 513***. After thorough examination of the provisions of Section 15 and 23-C of the MMDR Act, the Hon'ble Supreme Court has held as under:

"35. The appellants have submitted that Section 15 gives such a power. Sub-section (1) of Section 15 empowers the State Government to make rules for 'regulating' the grant of quarry leases, mining leases or other concessions in respect of minor minerals and for the purposes connected

therewith. This power of regulation pertains to granting of leases. It is the submission of Mr. Kapur that the expression 'regulating' is of widest amplitude and would, therefore, confer power to make the rules of the nature made herein. He has referred to various judgments of this Court wherein the expression 'regulating' has been explained. He has also submitted that in any case under Section 15(1-A) such a power is there and this provision has to be read independent of Section 15(1).

36. *It is difficult to accept the aforesaid contention in view of the judgments of this Court in State of T.N. Vs. M.P.P. Kavery Chetty [(1995) 2 SCC 402] and K.T. Varghese Vs. State of Kerala [(2008) 3 SCC 735]. In those judgments, it has been categorically held that power of the State Government under Section 15 of the MMDR Act does not include control over minor minerals after they are excavated. The following observations from the said judgment are extracted herein: (M.P.P. Kavery Chetty case, SCC pp.411-13, paras 19-24)*

'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 declares 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 dated 10-6-1992, 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.'

37. *Likewise, the condition of license granted by the State of Kerala to the effect that it could be sold only within the State, that too for domestic and agricultural purposes, was struck down in the following words: (K.T. Varghese case, SCC pp. 736-37. para 3)*

'3. The appellants' complaint is that certain conditions in the form of restrictions have been incorporated while issuing the licences. One of such conditions which the appellants attack is that the minerals permitted to be stocked were to be purchased only from authorised quarrying permit-holders on that behalf. Another condition is that they are permitted to sell the minerals only within the State of Kerala, that too for domestic and agricultural purposes. The appellants' complaint is that as far as cooperative societies are concerned, they are not saddled with any such restrictions imposed in the case of the appellants. Thus, according to the appellants, there is a clear discrimination between the cooperative societies and the individuals in the matter of restrictions imposed in the licences granted to them. Apart from that there is no legal sanction for such restrictions.'

38. *The argument of Mr. Kapur that M.P.P. Kavery Chetty did not consider the earlier judgment in D.K. Trivedi & Sons Vs. State of Gujarat [1986 Supp. SCC 20] is misplaced. In this behalf, we entirely agree with the learned Additional Solicitor General that judgment in D.K. Trivedi & Sons and other judgments cited by Mr. Kapur are clearly distinguishable as the context and the subject-matters in those cases were entirely different. It is not necessary to point out the differences in two sets of cases, as we entirely agree with the argument of Ms. Divan in drawing the distinction between the two and pointing out that there is no conflict whatsoever. She is right that the two sets of cases can be read harmoniously.*

39. *In the cases of Amritlal Nathubhai Shah Vs. Union of India [(1976) 4 SCC 108], D.K. Trivedi & Sons and State of T.N. Vs. Hind Stone [(1981) 2 SCC 205], the measures in question had a direct nexus with the grant or the refusal to grant a lease. In the instant appeals, which concern the sale of already excavated minerals that belong to the lessee, a prohibition by the State Government on sale thereof outside the State is not permissible under the*

MMDR Act. In Hind Stone, this Court succinctly stated the scope and ambit of the MMDR Act, highlighting that the Act is aimed at the 'conservation and the prudent and discriminating exploitation of minerals'. The following passage from the said judgment shows that as a method of regulation, prohibition is clearly permissible, provided, however, that it has a direct nexus with the conservation, exploitation and excavation of minerals: (Hind Stone case, SCC p.217, para 10)

'10. ... The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of the leases in certain cases is part of the regulation contemplated by Section 15 of the Act.'

40. On the other hand, the prohibition on the transport or sale of the already mined minerals outside the State has no direct nexus with the object and purpose of the MMDR Act which is concerned with conservation and prudent exploitation of minerals.

41. Insofar as Section 23-C of the MMDR Act is concerned, it was inserted by the 1999 Amendment Act with the objective to prevent illegal mining. That is clearly spelled out in the Statement of Objects and Reasons. We may reproduce a portion thereof again:

'(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 except 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.

(emphasis supplied)'

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."

15. As observed earlier, after examination of the provisions of Section 15 and 23-C of the MMDR Act, it is difficult to conclude that the State is empowered to issue guidelines for regulating the business of Stone Crusher units.

In the light of the principle of law laid down by the Hon'ble Supreme Court in the above-referred decision, we have no hesitation in holding that the State Government has no power to issue guidelines in exercise of powers conferred to it under Section 15 and 25-C of the MMDR Act, for regulating the installation or running of Stone Crusher units.

16. No doubt, in a given case, where the State government is empowered to frame Rules or Regulations, but has not framed, then under the Executive Power vested in it as per Article 162 of the Constitution of India, the Legislature has the power to make Rules or guidelines, but when the State is not having any such power, it cannot even exercise the executive power by invoking the power under Article 162 of the Constitution of India. In such circumstances, the judgments of the Hon'ble Supreme

Court, on which the learned counsel for the respondents has placed reliance, are of no help to the respondents.

17. It is also to be noticed that a Single Bench of this Court, in the case of ***Paramananda Choudhury*** (supra), has already set aside the Office Memorandum issued by the State Government under the provisions of the Assam Minor Minerals Concession Rules, 1994 (which has been repealed with the enactment of the Rules of 2013), while concluding that State has no authority to regulate stone crusher units, and the said judgment has attained finality. However, the State Government has again committed the same mistake of applying the guidelines issued through Notification dated 29.01.2003, which, in our view, is illegal.

18. Learned counsel for the respondents has placed on record a copy of The Assam Stone Crusher Establishment and Regulation Rules, 2013 (hereinafter to be referred as "Assam Stone Crusher Rules, 2013") framed by the State Government in exercise of powers conferred under Section 54 of the Air (Prevention & Control of Pollution) Act, 1981.

It is noticed that Rule 1 (ii) of the Assam Stone Crusher Rules, 2013 specifies that the said Rules shall come into force with effect from the date of their publication in the Gazette. However, learned counsel appearing for the State respondents has failed to demonstrate that the Assam Stone Crusher Rules, 2013 has been published in the Gazette. In such circumstances, we are of the view that until and unless the Rules are

published in the Gazette, the same cannot be applied to any case. However, if the said Rules are published in the Gazette, the respondents are free to act in accordance with the said Rules.

19. In view of the above discussion, the impugned notification dated 29.01.2003 is set aside and the order dated 26.08.2022, passed by the Divisional Forest Officer, Dibrugarh, ordering closure of the appellant's Stone Crusher unit, namely, M/s Arkay Stone Mills with immediate effect, is also set aside.

Resultantly, the impugned judgment and order dated 21.06.2024, passed by the learned Single Judge in WP(C) No. 6544/2022 is also set aside and the writ petition filed by the appellant before the writ court is allowed.

The writ appeal stands disposed of accordingly.

JUDGE

CHIEF JUSTICE

Comparing Assistant