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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1616 OF 2026

PETITIONER :

M/s. Wainganga Mining Works Pvt. Ltd., Having its office at 2nd Floor, Plot No.491/9A, Saket Nagar, Habibganj, Bhopal – M.P., Through Power of Attorney Holder, Shri Anil S/o. Laxman Solanki.

-Versus-

RESPONDENTS :

1. State of Maharashtra, In the Ministry of Revenue & Forest, Mantralaya, Mumbai-32, Through its Additional Chief Secretary.
2. The District Collector, Nagpur, Tahsil & District Nagpur.

Mr.Vishwas Shridhar Kukday, Adv. for the petitioner.
Mr. P. P. Pendke, AGP for the respondents.

**CORAM : ANIL S. KILOR &
RAJNISH R. VYAS, JJ.**

DATE : 28TH AUGUST, 2026

O R A L J U D G M E N T (Per : Rajnish R. Vyas, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.

3. A challenge in this petition is to the Government Corrigendum dated 27/10/2025 on the ground of it being in violation of Articles 14, 19(1)(g) and 301 of the Constitution of India being ultra vires and unconstitutional. Further challenge is to communication dated 03/02/2026, issued by the Desk Officer, Revenue and Forest Department. A prayer is also made to direct respondent No.2 to issue Zero Royalty Pass to the petitioner.

4. It is the case of the petitioner-Company that it is in the business of excavation and transportation of minor minerals and on earlier occasion, was granted lease of sand ghats auctioned by the authorities in the States of Maharashtra and Madhya Pradesh. The petitioner's application for issuance of Zero Royalty Pass was rejected, which according to them, is impermissible. The Zero Royalty Pass is required for transporting minor minerals from one State to another. According to the petitioner, initially, on 08/04/2025, the GR was issued by the State of Maharashtra for regulating the sand auctions and transportation in the State of Maharashtra. Clause – 2 of Part-Ten of the said GR states that only persons/organizations sandghats/sand depots, who are granted approval by the administration of the concerned State, would be entitled for the valid license for the transportation.

5. On 27/10/2025, a corrigendum was issued by the Revenue and Forest Department, State of Maharashtra as regards Clause – 2 of Part-Ten

of the GR dated 08/04/2025. The corrigendum stated that the District Collector after examining application for Zero Royalty Pass, shall forward the complete proposal, i.e. opinion along with documents to the State Government for its approval. Thereafter, if approval is granted, the Collector can take further steps. The petitioner has also taken exception to the communication dated 03/02/2026, issued by the Desk Officer, Revenue and Forest Department, State of Maharashtra, by which his application for issuance of Zero Royalty Pass for transporting 25,000 brass of sand was rejected. It was observed in the impugned communication dated 03/02/2026 that already 2,86,976 brass sand stock is available in Nagpur District and therefore, permitting the sand from other State in Nagpur would not be appropriate in that situation.

6. Mr.Kukday, learned counsel for the petitioner, has contended that merely because the petitioner is intending to transport the sand, from the State of Madhya Pradesh to Nagpur would not be reason enough to refuse the permission. According to him, the corrigendum in question dated 27/10/2025, which stipulates that the District Collector after examining the application for Zero Royalty Pass, shall forward the complete proposal, i.e. opinion and all documents to the State Government for its approval, is also contrary to the law.

7. *Per contra*, Mr. Pendke, learned AGP for the respondents, has denied the contention advanced by the petitioner and has requested for

rejection of the petition. He submitted that the decision was taken by the Authorities considering the fact that the sand stock of 2,86,976 brass is available in Nagpur District. According to him, it would not amount to violation of any fundamental rights.

8. At this stage, the learned AGP has tendered a copy of affidavit dated 24/08/2026 across the bar and has contended that because of excessive regional sand volume within Nagpur District, the local market is completely saturated. He submitted that allowing an additional influx of 25,000 brass from external State would destabilize the local demand-supply balance, because market over stocking hurts local traditional manual excavator. He has given the Stock-Point In Out Report in order to substantiate his contention.

9. We have given our thoughtful consideration to the arguments advanced by the respective counsel.

The question involved in this petition can be decided in the light of observations made by the Hon'ble Apex Court in the case of ***State of Gujarat and others v. Jayeshbhai Kanjibhai Kalathiya and others***, reported in ***(2019) 16 SCC 513***, more particularly, paragraphs-43, 44 and 47, which are reproduced as under:

“43. As far as Issue (b) above is concerned, we are also of the considered opinion 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. Under this Article, the expression "freedom" 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 302(2). The power of the 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. Going by the aforesaid scheme of this Chapter, 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."

44. That apart, we find force in the submission of the learned Additional Solicitor General that Part XIII of the Constitution is a code on checks and balances on the legislative power intended to achieve the objective of economic integration of the country. This was emphasised in *Video Electronics (P) Ltd. v. State of Punjab*²⁴ wherein this Court held: (SCC p. 104. para 20)

24 (1990) 3 SCC 87 : 1990 SCC (Tax) 327

"20.... In our opinion, Part XIII of the Constitution cannot be read in isolation. It is part and parcel of a single

constitutional instrument envisaging a federal scheme and containing general scheme conferring legislative powers in respect of the matters relating to List II of the Seventh Schedule on the States. It also confers plenary powers on States to raise revenue for its purposes and does not require that every legislation of the State must obtain assent of the President. The Constitution of India is an organic document. It must be so construed that it lives and adapts itself to the exigencies of the situation, in a growing and evolving society. economically, politically and socially. The meaning of the expressions used there must, therefore, be so interpreted that it attempts to solve the present problem of distribution of power and rights of the different States in the Union of India, and anticipate the future contingencies that might arise in a developing organism. The Constitution must be able to comprehend the present at the relevant time and anticipate the future which is natural and necessary corollary for a growing and living organism. That must be part of the constitutional adjudication. Hence, the economic development of States to bring these into equality with all other States and thereby develop the economic unity of India is one of the major commitments or goals of the constitutional aspirations of this land. For working of an orderly society economic equality of all the States is as much vital as economic unity."

Freedom of movement of goods, services and the creation of a common market must be understood contextually and as necessary for creating an economic union."

"47. In order to justify any "preference" or "discrimination" under Article 303, a scarcity of goods would have to be made out. It is a matter of record that the Study Group's report on which reliance is placed by the appellant, focuses on the need to restrict the export of sand outside India and not within India. In any case, nothing prevents the appellant from restricting the quantum of sand being excavated.

However, once the appellant State permits sand to be excavated, neither can it legally restrict its movement within the territory of India nor is the same constitutionally permissible. Likewise, there is no restriction on the State importing sand from other States. If it is the case that the demand of any State is not being met, it may purchase sand from other States. In any event, the market will dictate trade in sand inasmuch as it may make no business sense for mining company to transport and sell its sand in a faraway destination after incurring large costs on transportation.”

10. In that case, two writ petitions were filed before the High Court of Gujarat and in second petition, the petitioners were in business of processing ordinary river sand after buying it from leaseholder. The party then supplied that sand to the builders in the State of Maharashtra, which was obviously outside the State of Gujarat. The GR dated 04/05/2010 was also impugned in the said petition by which all the leaseholders, stockists/ traders and exporters were prohibited from exporting ordinary sand excavated from the areas in the State of Gujarat to other States within the country and other country by transporting such sand outside the State or country. The High Court allowed the writ petition and struck down the challenge to Rule 44-BB of the Gujarat Minor Mineral (Amendment) Rules, 2010, which stated that no movement of sand would be allowed beyond the border of the State and in case vehicle is found transporting sand to the neighbouring State, even with authorized royalty pass or delivery challan, it shall be treated as violation of the Act and Rules. As the Division Bench

of Andhra Pradesh High Court and Madras High Court have taken contrary view due to the conflicting opinion of the High Court, leave was granted in the said matter and matter came up before the Hon'ble Apex Court. The Hon'ble Apex Court made the observations in paragraphs 43, 44 and 47 stated *supra*. As the ratio laid down by the Hon'ble Apex Court, when applied to the factual frame work of the case, leads to the conclusion that once the State permits sand to be excavated, neither can it legally restrict its movement within the territory of India nor is the same constitutionally permissible.

11. It is further necessary to note that policy of the respondents-Authorities while dealing with the issue of permitting to transport the sand from other States than the Maharashtra was never based upon consideration of the actual sand stock available in the State of Maharashtra, which is clear from Government Circular dated 05/02/2021.

12. A fact can not be ignored that the petitioner has a fundamental right to carry on his business, subject to reasonable restrictions. The action challenged is purely outcome of executive decision, which would not be enough to curtail the fundamental right conferred.

13. In that view of the matter, the petition is allowed and consequently the impugned Government Corrigendum dated 27/10/2025

as well as the impugned communication dated 03/02/2026 *Annexures-18 and 20* respectively are hereby quashed and set aside. Consequently, respondent No.2 is directed to issue Zero Royalty Pass to the petitioner, if other requirements are satisfied.

12. Rule is made absolute in the above terms. No order as to costs.

(RAJNISH R. VYAS, J)

(ANIL S. KILOR, J)