IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(C).No. 14605 of 2015 (A)

PETITIONER(S):

T.T. KURIAKOSE, S/O. THOMAS,
AGED 44 YEARS, THARAYIL HOUSE, VELLORE P.O.,
PAMBADY, KOTTAYAM DISTRICT-686 501.

BY ADVS.SRI.RAAJESH S.SUBRAHMANIAN,
SRI.V.R.RAJESH.

RESPONDENT(S):

SUB INSPECTOR OF POLICE,
MANARCADU, KOTTAYAM DISTRICT-686 019.

BY GOVT. PLEADER SMT.C.K. SHERIN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-06-2015, ALONG WITH WP(C).NO.15003 OF 2015 AND CONNECTED CASES, THE COURT ON 26/06/2015 DELIVERED THE FOLLOWING:

rs.

WP(C).No. 14605 of 2015 (A)

APPENDIX

PETITIONER'S EXHIBITS:-

P1 : COPY OF THE REGISTRATION CERTIFICATE OF THE TIPPER LORRY BEARING NO.KL-05/AJ -3339.

P2 : COPY OF THE SEIZURE MAHAZAR DTD. 08.05.2015 PREPARED BY THE RESPONDENT.

P3 : COPY OF THE JUDGMENT DTD. 12.05.2015 IN WP(C).NO.14319/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

"C.R."

K. Vinod Chandran, J.

W.P(C) Nos.

First Batch

Nos.14605 of 2015-A, 15003 of 2015-A,
15110 of 2015-K, 15235 of 2015-D,
15383 of 2015-W, 15606 of 2015-A,
15620 of 2015-B, 15629 of 2015-C,
15630 of 2015-C, 15749 of 2015-P,
15898 of 2015-J, 15901 of 2015-K,
15903 of 2015-K, 15911 of 2015-L,
15945 of 2015-P, 16002 of 2015-A,
16039 of 2015-D, 16040 of 2015-D,
16383 of 2015-W, 16510 of 2015-K,
16653 of 2015-F, 16654 of 2015-F,
16728 of 2015-M.

Second Batch

Nos.13234 of 2015-D, 15448 of 2015-E,
15902 of 2015-K, 15916 of 2015-L,
16273 of 2015-H, 16642 of 2015-E,
16655 of 2015-F, 16697 of 2015-J,
16698 of 2015-J.

Third Batch

Nos.15064 of 2015-G, 15396 of 2015-Y,
15787 of 2015-W, 15808 of 2015-A &
16452 of 2015-F

Dated this the 26th day of June, 2015

JUDGMENT

The above writ petitions were heard together on the question of how the provision for compounding has to be applied as provided in the Mines and Minerals (Development and Regulation) Act, 1957 [for brevity "MMDR Act"]; and Kerala Minor

Mineral Concession Rules, 2015 [for brevity "KMMC Rules of 2015"] and the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015 [for brevity "Transportation Rules"]; the Rules having come into force on 07.02.2015. Earlier the provisions applicable were that of the Minor Mineral Concession Rules, 1967 (Kerala) [for brevity "KMMC Rules of 1967], which provisions came up for consideration before this Court twice, which instances shall be referred to in the course of the judgment.

2. At the outset, it has to be noticed that all the writ petitions have been filed by the registered owners of 'Goods vehicles' and 'JCB Excavators', claiming that their vehicles were intercepted and seized in pursuance of an allegation of commission of offence under the MMDR Act read with the KMMC Rules of 2015 and Transportation Rules of 2015. On going through the various writ petitions, this Court discerns a substantial difference between certain cases. The majority of the cases, as had been claimed by the petitioners, related to interception and seizure of Goods vehicles carrying either ordinary earth, laterite stone, M.Sand, granite stone or gravel. They are termed the first batch of cases. But, however, certain

writ petitions are with respect to interception of vehicles at the spot at which excavations were detected. Such interceptions were not of Goods vehicles alone, but also JCBs. The same are treated differently as the second batch; though the issue is considered at one go. Yet another group of cases disclose allegations of levelling of land, which cannot be confined to an allegation of an offence under the MMDR Act and the Rules of 2015. This third batch of cases could also raise questions under the Kerala Conservation of Paddy Land and Wetland Act, 2008 [for brevity "Paddy Land Act"].

3. The essential issue urged is the claim of the petitioners to seek compounding of the offence. There is no dispute that, but for the difference noticed herein-above, the various types of goods carried in the vehicles and intercepted and seized by the authorities are goods coming under the definition of "minor minerals".

4. The penalty provided under the MMDR Act is under Section 21, which is extracted hereunder:

> **"S.21. Penalties.-** (1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to e raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4) shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may

> also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.
>
> (6) Notwithstanding anything contained in the Code of Criminal procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable".

The cognizance of such offence under Section 22 can only be on a complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

5. Section 23A provides for compounding of offences, in the following manner:

> **"S.23A. Compounding of offences.-** (1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify:
>
> Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.
>
> (2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith".

6. The KMMC Rules of 2015 provide for penalties in Rule 108 and the compounding in Rule 111, which are extracted hereunder:

> **“R.108. Penalties.--** (1) Whoever contravenes any provision of these rules shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to five lakh rupees or with both and in the case of continuing contravention, with an additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.
>
> (2) Whenever any person raises without any lawful authority any mineral from any land, the Government or the competent authority may recover from such person or the occupier of the land the mineral so raised, or where such mineral has already been disposed of, the price thereof, and may also recover from such person rent, royalty or tax, as the case may be, for the mineral extracted by such person or occupier of the land without any lawful authority.
>
> Provided that whenever a person who opted for Consolidated Royalty Payment System extracts minor minerals from the area under mineral concession after the date of expiry of permit or extracts minor minerals from outside the area under mineral concession without any lawful authority, he shall be liable to pay the royalty at the rate prescribed in Schedule I and price limited to twice the royalty amount, of the entire quantity of the minor mineral illegally extracted from the area. In such a case while calculating the amount of royalty and price payable, the amount already paid by the permit holder/lessee for obtaining permission shall be deducted:

Provided further that in the case of Government lands, any rent, tax, or fee or compensation for the mineral extracted, as the case may be, as fixed by the department concerned shall be recovered from such person:

(3) Whenever a lessee who has obtained a registration for a metal crusher unit as per the provisions of these rules, is found operating any additional number of crushers than permitted or found operating any crusher with size or sixes other than the permitted one such action of the lessee shall be considered as illegal and he shall be liable for payment of an amount equal to two times the annual consolidated royalty for the size of the illegally operating crusher as stipulated in Schedule III of these rules, in addition to the amount remitted for obtaining a registration for the metal crusher unit for the financial year".

xxx xxx xxx

"R.111. Compounding of offences.-- (1) Any offence punishable under these rules may, either before or after the institution of the prosecution, be compounded by the person authorised under Rule 110 to make a complaint to the court with respect to that offence , on payment to that person, for credit to the Government of such sum as that person may specify:

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub-rule (1), no proceeding or further proceeding as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender if in custody, shall be released forthwith".

7. The penalty, under Transportation Rules as per Section 29, is as provided under sub-section (2) of Section 21 of the MMDR Act. Rule 32 provides for a similar system of compounding, which need not be repeated.

8. It is also an admitted fact that, when the KMMC Rules of 1967 were in existence, the Rules provided a maximum penalty of fine of Rs.5,000/- and the MMDR Act provided a maximum penalty of Rs.25,000/-. Here, it is to be noticed that the discretion of determining the fees for compounding was vested with the authorities authorised to file complaints before the jurisdictional Magistrate; an absolute power possible of misuse and arbitrary exercise, which, in fact, has led to the litigations in this Court at least in two earlier instances, where two different batch of writ petitions were considered.

9. ***Digil v. Sub Inspector of Police*** **[2013 (1) KLT 600]** dealt with a number of writ petitions, wherein compounding applications were allowed; but the authorities proceeded with the confiscation proceedings. This Court, in the aforesaid decision, found that once the power of compounding is invoked and the alleged offender pays such compounding fees, leading to the acceptance of the same, then there could be no further

proceedings for confiscation of the vehicles.

10. Then again the question of arbitrary exercise of the power to compound, being exercised by the authorities, indiscriminately determining the compounding fees came up before this Court. The situation arose for reason of the authorised authorities in different parts of the State determining the compounding fees in an indiscriminate manner, favouring some with nominal amounts and distressing others with astronomical fees. The owners of the vehicles, who were the alleged offenders claimed before this Court that the stipulation in the compounding provision is only to the effect that the maximum amount imposed shall be the maximum penalty. The then Rules provided only a penalty of Rs.5,000/- and the MMDR Act again a penalty of Rs.25,000/-., with imprisonment as an option. This Court in ***Sivakumar v. State of Kerala and Another*** **[2013 KHC 2757]** found that the special provision in the MMDR Act would govern the issue and not the general provision in the Rules. It was specifically noticed that the maximum fine as per the provision for compounding is restricted to the penalty only in respect to the offences which are liable to be punished by fine only. The penalty provisions as it stood then would clearly

indicate that it contemplates imprisonment and/or fine. It was noticed that, considering the scope of the provision for compounding and the probable amount that could be imposed as compounding fee, in many of the cases vehicles were directed to be released on satisfaction of a sum of Rs.25,000/- before the authority. Significant is the fact that by amendment of the MMDR Act, the penalty provision, Section 20(1), provides now imprisonment **and** penalty. So a successful prosecution necessarily entails imprisonment and the proviso to Section 23 in the MMDR Act, becomes redundant.

11. The issue with respect to the compounding, bringing to a full stop, all proceedings against an offender as also the vehicle, was found to be already declared in ***Digil*** (supra). This Court in ***Sivakumar*** (*supra*) followed the directions in ***Digil*** (*supra*) and found that compounding applications of the petitioners therein were acted upon as per the interim orders passed by this Court. The offences were directed to be compounded and the compounding fees collected releasing the vehicle. In the applications pending before the authorities, it was directed to pass appropriate orders. Those who had not already filed applications for compounding, were also required to file

applications, which were directed to be considered. The relief portion in ***Digil*** (*supra*) was adopted in ***Sivakumar*** (*supra*).

12. On the basis of the afore-cited decisions, the learned counsel appearing for the petitioners would urge that all the writ petitions may be disposed of, directing Rs.25,000/- paid as per the interim orders of this Court to be the compounding fees and close all further proceedings against the petitioners herein and their vehicles. The petitioners also contend that as a matter of practise such orders were being consistently issued. This Court is unable to countenance any such declaration in either of the two decisions. The two learned Judges who considered the issue separately, did not at all lay down that the maximum fine should be the maximum compounding fee. The provision also does not commend such a declaration, as was found specifically in ***Sivakumar*** (*supra*). The discretion is conferred on the authorities and it would not be proper for this Court to usurp such discretion. But this Court definitely could examine the plea of arbitrary exercise of the power of compounding and the vast disparity in determination of the fees payable, as determined by various officers acting in their various jurisdictions within the State. This is only due to the fact of there

being no guidelines in the rules to regulate such exercise of power. The allegations of unbridled discretion on the authorities has to be tested against the intention behind the statute.

13. Then again, the maximum fine of Rs.25,000/- is no more applicable, since the Act and Rules have been amended and the maximum fine as per the amendments brought into the Act and the Rules is now Rupees Five Lakhs. The penalty in the MMDR Act also, now is imprisonment coupled with fine. The proposition that, on acceptance of compounding fees, no further proceedings can be proceeded with, either against the offender or the vehicle, is undisputed and the same stands declared and affirmed in the afore-cited decisions.

14. This Court is persuaded to consider the aforesaid issue only on the plea made by the learned counsel that the vesting of absolute power on the authorised authorities, to determine the compounding fees, leads to widespread disparity in the fees determined in different parts of the State. While in some districts the offence is compounded for Rs.10,000/-, in some others it is much lower or a lot higher. That gives rise to widespread corruption too. Further, in determining such compounding fees, the mineral intercepted which is extracted

illegally, would have some bearing in determining the compounding fees, especially since the royalty for various minerals as provided in the Rules are at different rates. This Court is in full agreement with the submissions made by the learned counsel for the petitioners.

15. In determining the said issue, it is to be noticed that the penalty as indicated in the MMDR Act speaks of imprisonment for a term which may extend to five years and fine which may extend to Rs.5,00,000/-. A second offence, after the conviction of the first, imposes a further penalty in sub-section (2) of Section 21, which is to be provided under the Rules. A vehicle, tool, equipment or any other thing used in extraction or transportation of the mineral is liable for seizure under sub-section (4) of Section 21, by orders of the Court taking cognizance under sub-section (4A). In addition to the above, when the said intercepted mineral is raised/quarried without any lawful authority, then the Government could recover from the offender the price of the mineral, if disposed of, as also the rent, royalty or tax, as the case may be, for the period during which the land was occupied.

16. Stringent provisions of penalty is imposed as per

the Act and the Rules, which the offenders seek to escape from on payment of the maximum fine alone, which, at the earlier point of time was Rs.25,000/- as per the Act. Now, the fine which could be imposed on a conviction is up to Rs.5,00,000/- coupled with imprisonment, for a term extending up to 5 years. The proviso to the provision for compounding restricting the compounding fee to the maximum fine, is not applicable at all to the MMDR Act and even to the Rules, when there is a possibility of imprisonment. It is in this context that the seizure and subsequent release on compounding has to be examined.

17. The newly introduced Rules as also the amendments made to the Act were made in pursuance to the judgment of the Hon'ble Supreme Court in ***Deepak Kumar and Others v. State of Hayana & Others*** **[(2012) 4 SCC 629].** In pursuance of the said decision, the Central Government as also the various State Governments took various steps with respect to quarrying of minerals and has brought in stringent provisions to stop any manner of illegal quarrying. The penalties provided are also equally stringent and has to be imposed in a prosecution filed by the Authorised Officer, the power for cognizance of which is given to the jurisdictional Magistrate Courts. The prosecution

so intended against the alleged offenders is a retaliatory measure against the illegal mining by unscrupulous persons. The legislature brought in strict regulatory provisions and provided for heavy penalties. Confiscation of items used in such illegal mining and transportation, including vehicles, the recovery of royalty or tax and the price, if such minerals are found to be sold, takes within its ambit an element of deterrence as also an element of compensation. This is what is sought to be taken away by remittance of Rs.25,000/-.

18. This Court was also, in all the above writ petitions, persuaded to pass interim orders granting release of the vehicle on payment of Rs.25,000/- only by reason of the earlier orders passed by this Court. However, the release of vehicles are subject to the final orders passed in the above writ petitions and it is specifically made a condition that none of the vehicles so released shall be alienated. The amendment to the Act and Rules puts the entire exercise of compounding in a different perspective.

19. The learned Singe Judge, who disposed of ***Sivakumar*** (*supra*), noticed that the provisions for confiscation and prosecution do not belong to two parallel streams as

provided in the Kerala Protection of River Banks and Regulation of Removal of Sand Act, Customs Act, Abkari Act, Forest Act, etc. Herein, the Court in which the prosecution is enjoined, has the power to order confiscation also. In such circumstances, as has been held in ***Digil*** (*supra*), on the provisions of compounding being given effect to and the alleged offender paying fee as determined by the Authorised Officer, the prosecution as also the confiscation proceedings falls to the ground. On such compounding effected, no prosecution could be carried on, no penalty levied, no confiscation carried out; nor could the tax or royalty payable or the price of the goods, so illegally transported, be recovered. The stringent provisions provided by the Act and the Rules, hence, could be rendered nugatory by a nominal fee being determined by the Authorised Officer. As a corollary, astronomical amounts could also be demanded from an alleged offender, rendering the provision for compounding nugatory and in effect providing no mitigation to the offender. That is not the intention of the Legislature. The power conferred on the authorities, hence, has to be found to be, unbridled, uncanalised, unguided and arbitrary.

20. The concept of compounding has been dealt with

in the following manner in Kenny's “Outlines of Criminal Law”, Nineteenth Edition:

> “It is a misdemeanour at common law to 'compound' a felony and perhaps also to compound a misdemeanour; i.e. to bargain, *for value*, to abstain from prosecuting the offender who has committed a crime. You commit this offence if you promise a thief not to prosecute him if only he will return the goods he stole from you; but you may lawfully take them back if you make no such promise. **You may show mercy, but must not sell mercy.** This offence of compounding is committed by the bare act of agreement; even though the compounder afterwards breaks his agreement and prosecutes the criminal. And inasmuch as the law permits not merely the person injured by a crime, but also all other members of the community, to prosecute, it is criminal for anyone to make such a composition; even though he suffered no injury and indeed has no concern with the crime”.

Herein the law does not provide for all and sundry to prosecute an offender and the offence is not under common law. Compounding provisions under various special enactments is an accepted practise. But the intention of the legislature; in this case being the protection of environment and maintenance of ecological balance, is the relevant factor, which mandates the compounding provision to be applied looking at the penal provision in the Act and the Rules. The element of deterrence and compensation to the State, hence, assumes relevance in determining the compounding fee which has to be governed by what a successful prosecution would eventually entail.

21. It would be useful here to look at the 'compounding' provision in various enactments and how the Hon'ble Supreme Court has dealt with the same. Section 200 of the Motor Vehicles Act, 1988 provides for compounding of offences, by officers or authority, for such amounts as specified by the State Government, by notification. The argument before the Supreme Court in ***P.Ratnakar Rao v. State of A.P.*** **[(1996) 5 SCC 359]** was that the said power was unbridled. It was held so in para 4:-

> "For violation of Sections 113 to 115, Section 194 accords penal sanction and on conviction for violation thereof, the Section sanctions punishment with fine as has been enumerated hereinbefore. Section would give guidance to the State Government as a delegate under the statute to specify the amount for compounding the offences enumerated under sub-section (1) of Section 200".

22. Hence, the penal provision is the guidance inbuilt in the statute. In a slightly different context, Section 200 of MV Act of 1988 again came up for consideration before the Supreme Court in ***Paramjit Bhasin v. Union of India*** **[(2005)12 SCC 642].** There, the issue was whether on compounding an offence of overloading under Section 194, the vehicle could be allowed to carry the excess load after compounding. The notification issued by various States permitting that was under challenge. The Supreme Court relied on ***P.Ratnakar Rao*** (*supra*) that though the power of compounding vests with the State Government, the notification issued cannot authorise continuation of the offence. The State Governments, hence, were asked to bring in remedial measures. In the instant cases too, if the vehicle seized along with the goods is released for a nominal fee, then the offence is continued without realisation of the value of the goods mined or the tax or rent or royalty.

23. Section 279(2) of the Income Tax Act, 1961 conferred exclusive jurisdiction on the Commissioner of Income Tax to compound the offences, which was sought to be controlled by the Central Board of Direct Taxes under Section 119 of the Act. This was held to be permissible in view of the

Explanation added to Section 279(2), extending the powers of the Board under Section 119 to regulate the composition of offences, which was upheld in ***Y.P.Chawla v. M.P.Tiwari*** **[(1992) 2 SCC 672].**

24. Looking at the compounding provision in the KMMC Rules, 2015 and the Transportation Rules, it cannot but be found that no clear guidelines are laid down as to how the fee should be determined, giving unbridled power on the authority to exercise discretion either excessively, prejudicing an alleged offender or subverting the deterrent measure intended by the Legislature and the executive Government by levy of nominal fees. The penal provision in MMDR Act if taken as a guideline, the compounding exercise cannot be so left to the absolute discretion of the authority. The offences under the Act and the Rules could also relate to any type of mineral, the royalty of which and the price for which would drastically vary. The transport of ordinary sand and of granite stone cannot be dealt with in a similar fashion. The vehicles seized even if of the same class, would not be of the same value. The vehicle used for transportation is a goods vehicle and one used for excavation, being a JCB, different considerations would apply.

25. This Court is of the opinion that a comprehensive look into the compounding provision in the Rules would be expedient by the Government, which framed the Rules under the Act. While considering the same, introspection could also be made on providing for levy of compounding fees in consonance with the value of the goods transported, the royalty payable, the value of the vehicle in which such transportation is effected; all of which in a prosecution under the Rules is in addition to the penalty of Rupees Five Lakhs. This is the guideline offered by the substantive provision in the Act. This Court would, hence, direct the Registry to send a copy of this judgment to the Law Secretary and the Principal Secretary to Government, Industries Department, to consider the re-moulding of the compounding provision so as to avoid any allegation of arbitrary exercise of power and also avoiding a possibility of an offence being compounded without any amount of deterrence or compensation to the State for the illegal activity carried on. The Government should also consider, whether in repeated instances of the very same offence by the very same vehicles or the very same accused, could the compounding provisions be made applicable.

26. On the facts coming out from the aforesaid cases, this Court has, at the outset, categorised them into three batch of writ petitions. In all the cases, the release of the vehicles has been ordered as an interim measure on the payment of Rs.25,000/- [Rupees twenty five thousand only] subject to the condition that no alienation shall be effected.

27. In the first batch of cases, all are with respect to detention and seizure of vehicles for illegal transportation of minerals, alleging offences under the MMDR Act and Transportation Rules of2015. In the second batch of writ petitions, the vehicles seized are goods vehicles and JCB at the site from which the excavation was being done. Those too relate to mining of ordinary earth, which comes under the MMDR Act and the KMMC Rules of 2015. Even if Government brings in guidelines in the Rules relating to exercise of discretion of the authority as directed herein, the same could only act prospectively. In such circumstance, the contention of the petitioners that arbitrary exercise of power is made by the authorities, persuades this Court to pass orders taking into account the circumstances under which the seizure had been effected.

28. The petitioners are directed to produce the Registration Certificates of the vehicles seized, before the Senior Geologist, the authority competent to file a complaint before the jurisdictional Magistrate's Court as notified by the State Government, and the said authority shall compound the offence on payment of Rs.50,000/- [Rupees fifty thousand only] together with double the amount of royalty and price of the mineral as determined by the Geologist on an assessment of the maximum quantity that could be transported in the goods vehicle. The amounts so determined, after deducting the amount paid as per the interim order of this Court [Rs.25,000/-] shall be accepted by the authority as the compounding fee under Section 23A of the MMDR Act and Rule 111 of the KMMC Rules of 2015. The seizure and compounding has to be endorsed in the Registration Certificate and communicated to the Motor Vehicles Department. As far as the JCBs seized in the second batch of cases, the compounding fee shall be Rs.75,000/- [Rupees seventy five thousand only], on payment of which the procedure as in the case of goods vehicle, shall be followed. The writ petitions in the 1st and 2nd batch are disposed of accordingly.

29. As to the third batch of writ petitions, in all the cases allegation of filling up of land was raised. If the goods brought by the vehicles does not have a valid pass/permit, then under the MMDR Act the compounding fee as directed above shall be accepted and the cases closed in so far as the offences under the MMDR Act, the KMMC Rules of 2015 and the Transportation Rules of 2015. However, if there is any allegation with respect to the attempt to fill up a particular land, then the authorities would have to consider whether the same would be an offence under the Paddy Land Act, in which event the authorities would be entitled to take proceedings in accordance with law as per the provisions of the said Act. With respect to W.P.(C).No.15808 of 2015, the learned counsel for the petitioner submits that the filling up was of a garden land and the Village Officer has also reported so. In such circumstances, the matter shall be examined by the competent authority and if found in favour of the petitioner, the amounts already paid shall be refunded. Otherwise, the compounding provision shall be applied as indicated hereinabove.

The writ petitions are disposed of accordingly. Parties are left to suffer their respective costs. It is made clear that the Government, in bringing amendment to the Rules, need not at all be regulated by the computation of compounding fees made by this Court hereinabove, even as a guideline, since the absolute discretion vests with the Government.

Sd/-
K. Vinod Chandran,
Judge

vku/

[true copy]