



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

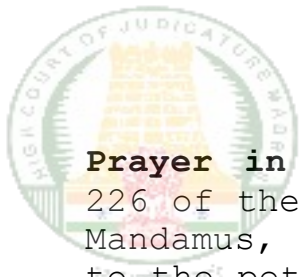
Writ Petition (MD) Nos.10543 to 10548 and 19257 of 2016
and

W.M.P (MD) No.8203 to 8208 and 13904 of 2016

M/s.V.V.Mineral,
Keeraikaranthattu,
Tisayanvilai 627 657
Tirunelveli District
through its
Manager Partner S.Vaikundarajan ... Petitioner
Vs.

1. The Commissioner of Geology and Mining,
Guindy, Chennai 32.
2. The District Collector,
Tuticorin District. ... Respondents in W.P (MD) Nos.10543
to 10548 of 2016
1. The State of Tamil Nadu,
represented by its Secretary,
Industries Department,
St., George Fort,
Chennai 9.
2. The Director of Geology and Mining,
Guindy,
Chennai 32.
3. The District Collector,
Kanyakumari District. ... Respondents in W.P (MD) No.
19257 of 2016

Prayer in W.P (MD) No.10543 of 2016: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st respondent to Grant the Mining Lease to the petitioners application dated 1.11.2004 in Udankudi village Tiruchendur Taluk Tuticorin District pursuant to the Approval given by the Ministry of Mines dated 23.5.2012 Approved Mining Plan No. 10543 of 2016 issued by the Bureau of Mines and in compliance to the Ministry of Mines Circular dated 3.3.2016 within time limit fixed by this Court in accordance with law.



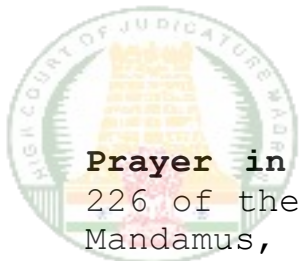
Prayer in W.P(MD)No.10544 of 2016: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st respondent to Grant the Mining Lease to the petitioners application dated 1.11.2004 in Keel Tiruchendur Village Tiruchendur Taluk Tuticorin District pursuant to the Approval given by the Ministry of Mines dated 23.5.2012 Approved Mining Plan by Indian Bureau of Mines and in compliance to the Ministry of Mines Circular dated 3.3.2016 within time limit fixed by this Court in accordance with law.

Prayer in W.P(MD)No.10545 of 2016: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st respondent to Grant the Mining Lease to the petitioners application dated 22.3.2001 in Vaippar-I Vilathikulam Taluk Tuticorin District pursuant to the Approval given by the Ministry of Mines dated 23.5.2012 Approved Mining Plan by Indian Bureau of Mines and in compliance to the Ministry of Mines Circular dated 3.3.2016 within time limit fixed by this Court.

Prayer in W.P(MD)No.10546 of 2016: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st respondent to Grant the Mining Lease to the petitioners application dated 01.11.2004 in Kandasamipuram Village Vilathikulam Taluk Tuticorin District pursuant to the Approval given by the Ministry of Mines dated 23.5.2012 Approved Mining Plan by Indian Bureau of Mines and in compliance to the Ministry of Mines Circular dated 3.3.2016 within time limit fixed by this Court.

Prayer in W.P(MD)No.10547 of 2016: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st respondent to Grant the Mining Lease to the petitioners application dated 28.01.2002 in Vaippar-I Village Vilathikulam Taluk Tuticorin District pursuant to the Approval given by the Ministry of Mines dated 23.5.2012 Approved Mining Plan by Indian Bureau of Mines and in compliance to the Ministry of Mines Circular dated 3.3.2016 within time limit fixed by this Court in accordance with law.

Prayer in W.P(MD)No.10548 of 2016: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st respondent to Grant the Mining Lease to the petitioners application dated 28.01.2002 in Vaippar-I Village Vilathikulam Taluk Tuticorin District pursuant to the Approval given by the Ministry of Mines dated 23.5.2012 Approved Mining Plan by Indian Bureau of Mines and in compliance to the Ministry of Mines Circular dated 3.3.2016 within time limit fixed by this Court in accordance with law.



Prayer in W.P(MD)No.19257 of 2016: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st respondent to grant the Mining Lease to the petitioners application dated 18.06.2001 in Agasteeswara Village and Taluk Kanyakumari District pursuant to the Approval given by the Ministry of Mines dated 23.05.2012 Approved Mining Plan by Indian Bureau of Mines and in compliance to the Ministry of Mines Circular dated 3.3.2016 within time limit fixed by this Court in accordance with law.

For Petitioners : Mr.AR.L.Sundaresan,
in WP(MD)Nos. Senior Counsel
10543 to 10548/16 for Mr.S.Meenkashisundaram

For Petitioner in
WP(MD)No.19257/16 : Mr.Srinath Srinivasan,
for Mr.K.Govindarajan

For Respondents : Mr.R.Muthukumarasamy,
Advocate General
assisted by Mr.M.Govindan,
Special Government Pleader.

COMMON ORDER

Since the issue involved in these writ petitions is common, they are disposed of by this common order.

2.Heard Mr.AR.L.Sundararesan, learned Senior Counsel appearing for the petitioner and Mr.R.Muthukumarasamy, learned Advocate General appearing for the respondents.

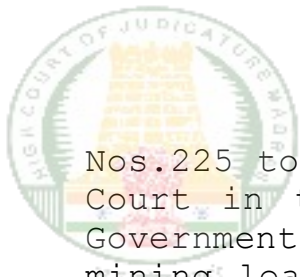
3.The case of the petitioner, in brief, is as follows:-

The petitioner is carrying trade in beach mineral mining for the past 25 years and recognising the petitioner's trade, the Government of Tamil Nadu and Government of India awarded many awards. The petitioner is also having 100% export oriented unit as well as special economic zone units. The petitioner has established number of factories in Tirunelveli, Kanyakumari and Tuticorin Districts wherein all the quarried minerals are used in the factories as raw material and the finished products were exported to overseas countries and the petitioner is also earning much needed foreign exchange to the nation. It is further stated that earlier the petitioner submitted mining lease applications before the District Collector many villages in and around, Tirunelveli and Kanyakumari District for mining Garnet, ilmenite, rutile etc., on various dates as follows:-



Sl. No	Name of the Mineral applied	Village S.F.No. Extent applied	Date of application of mining lease
1	Garnet, Ilmenite, Rutile	24/5A etc., Udankudi 2.67.0 hecets	01.11.2004
2	Garnet, Ilmenite, Rutile	33/3 etc., Tiruchendur T.K & Village 7.03.0 hecets	01.11.2004
3	Garnet, Ilmenite, Rutile	1020/3 etc., Vaippar -1 village, Vilathikulam TK. 4.06.0 hecets	22.03.2001
4	Garnet, Ilmenite, Rutile	271/1 etc., Kandasamy Village, Tiruchendur TK & Village 2.93.0 hecets	01.11.2004
5	Garnet, Ilmenite, Rutile	973/2 etc., Vaippar 1, Village Vilathikulam Village 3.06.5 hecets	28.01.2002
6	Garnet, Ilmenite, Rutile	974/1 etc., Vaippar 1, Village Vilathikulam Village 2.79.5 hecets	28.01.2002

4.It is further stated that after receipt of the applications, the District Collector, called for report from the Tahsildar and Revenue Divisional Officers and also obtained technical report from the Assistant Director of Geology and Mining, recommended the proposal for mining lease to the Commissioner of Geology and Mining who is the competent authority in respect of patta lands. The first respondent Commissioner Geology and Mining, after perusing the recommendation of the District Collector, forwarded the proposal submitted by the petitioner to the Government of India for prior approval under Section 5 (1) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter called as the 'MMDR Act') through the Secretary, Industries Department, Government of Tamil Nadu. Since the mineral for which the petitioner sought for permission is listed under Part B of the First schedule of the MMDR Act, the Government of India, after receipt of the applications, returned the application citing frivolous reasons. Hence, the petitioner has filed writ petitions before this Court in W.P(MD)Nos.6678 to 6685 of 2008. This Court, by an order dated 19.12.2009, directed the Ministry of Mines to consider the proposal for giving approval for grant of mining lease within three months from the date of receipt of the copy of the order. Based on that, the State Government resubmitted the proposal. Even thereafter, no order has been passed by the Central Government. Hence, the petitioner filed contempt petitions in Cont.P(MD)



Nos.225 to 231 for the non compliance of the orders passed by this Court in the above said writ petitions. Thereafter, the Central Government granted approval to the State Government for grant of mining lease under Section 5(1) of the MMDR Act. Thereafter, the Contempt Petitions were closed recording the approval granted by the Central Government. Based on the approval granted by the Ministry of Mines, the Government of India, the first respondent, herein communicated the precise area for grant of mining lease. Accordingly, on 25.10.2013, the petitioner submitted approved mining plan which was received from Indian Bureau of Mines to the second respondent. It is further stated that once mining plan approval is submitted, mining lease shall be granted within twelve months as per the order of the Commissioner and Secretary to Government, dated 03.06.1987.

5.Since no order has been passed by the respondents, the petitioner sent a letter to the respondents on 07.03.2016 to grant mining lease enclosing the circular issued by the Ministry of Mines which mandates that lease should be granted on or before 12th January 2017. Thereafter, a reminder was also sent on 15.04.2016. It is further stated that as per Rule 63-A of the Mineral Concession Rules, 1960, (hereinafter called as 'the MCR Rules') framed under Section 13 of the MMDR Act stipulates the time limit for granting mining lease as one year and it is obligatory on the part of the first respondent to dispose of the application in accordance with Rules 63 and 63-A of the MCR Rules.

6.It is further stated that since the mining lease is not granted by the first respondent, though the approval granted by the Ministry of Mines and mining plan approval issued by Indian Bureau of Mines the petitioner's applications are kept pending from the year 2004 and hence, W.P(MD)Nos.10543 to 10548 of 2016 have been filed.

7.So far as W.P(MD)No.19257 of 2016 is concerned, the petitioner filed an application on 18.06.2001 seeking lease in the Government poramboke land situated in Agastheeswaram village and Taluk, Kanyakumari District and the application was forwarded to the second respondent on 08.12.2004, subsequently on 02.03.2005, the second respondent recommended the proposals to the first respondent. The said proposal has also been forwarded to the Ministry of Mines for grant of approval under Section 5(1) of the MMDR Act. Thereafter, on 23.05.2012, the Ministry of Mines granted approval under Section 5 (1) of the MMDR Act. Thereafter, on 25.06.2012, the second respondent communicated precise area letter for granting mining lease. In view of the letter communicating the precise area to be leased out to the petitioner, the respondent clearly disclosed the intention of the State Government to grant lease to the petitioner. Later on 25.10.2013, the petitioner submitted approved mining plan which was received



from the Indian Bureau of Mines to the second respondent. Since the above applications for grant of mining lease pending for more than 12 years, the petitioner has filed these writ petitions.

8. The first respondent has filed a counter affidavit contending that the petitioner has submitted applications on various dates before the District Collector, Tuticorin for granting mining lease for mining garnet, ilmenite and rutile in the patta lands. The above applications were forwarded to the first respondent by the District Collector on various dates. It is further stated that since the mineral applied for the grant of mining lease falls under First Schedule of Part B of the MMDR Act, the proposal has been forwarded to the Government of India through the State Government to get approval under Section 5 (1) of the MMDR Act and the Ministry of Mines also conveyed Central Government's prior approval under Section 5(1) of the MMDR Act for grant of mining lease for mining garnet, ilmenite and rutile, subject to imposition of conditions under Rule 27 (3) of the Mineral Concession Rules, 1960. Based on the recommendations of the District Collector and the approval obtained under Section 5 (1) of the MMDR Act, from the Government of India, Ministry of Mines, the Commissioner of Geology and Mining has communicated the precise area to the petitioner's mining applications with a direction to submit mining plan within a period of six months approved by the Indian Bureau of Mines. Thereafter, the petitioner submitted copies of mining plan approved by the Indian Bureau of Mines and Atomic Mineral Directorate for Exploration and Research to the Commissioner of Geology and Mining lease in favour of the petitioner. But the first respondent could not consider the petitioner's applications since after receipt of the mining plan submitted by the petitioner based on a complaint regarding illicit mining of beach sand, the State Government constituted a special team headed by Mr. Gagandeep Singh Bedi, the then Secretary to Government, Revenue Department, by a Government Order in G.O. Ms. No. 156, Industries Department, dated 08.08.2013, to inspect six mining lease areas in Thoothukudi District. Subsequently, by another Government Order in G.O. Ms. No. 173, Industries Department, dated 17.09.2013, the same team was directed to inspect mining lease areas in Thirunelveli, Kanyakumari, Trichy and Madurai Districts. The Government have also issued orders to stop mining operations pending completion of the inspections by the special team and stop issuance of transport permit of beach sand minerals like garnet, ilmenite and rutile etc., with respect to the leases granted to the private parties in the respective District till the inspections are completed. But the above Government Orders were challenged before this Court in W.P. No. 19641 of 2014. This Court, by an interim order, dated 29.07.2015 set aside the above Government Orders. Challenging the said order, writ appeals were filed in W.A. Nos. 1168 and 1169 of 2015. A Division Bench of this Court by an order dated 12.08.2015, has stayed the order of the



learned single Judge dated 29.07.2015. It is further stated that in view of the order passed by this Court in W.A.Nos.1168 and 1169 of 2015, mining operation of beach sand in the coastal districts has been completely stopped/banned.

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9.It is further stated that in the mean time, the Mines and Minerals (Development and Regulations) Amendment Ordinance Act, 2015 was promulgated on 12.01.2015. Subsequently, Mines and Minerals (Development and Regulations) Amendment Act, 2015 also came into force with effect from 12.01.2015 after passing of the ordinance in both the Houses of Parliament. As per the said Act, in the First schedule, in Part B, after entry 11, the following entry was be inserted namely:-

"12.Beach sand minerals, that is, economic heavy minerals found in the teri or beach sands, which include ilmenite, rutile, leucoxene, garnet, monazite, zircon and sillimanite."

10.Apart from that in exercise of power under Section 11B of the MMDR Act, the Central Government has framed the Atomic Minerals Concession Rules, 2016 (hereinafter called as 'AMC Rules'). Rule 3 (1) of the AMC Rules stipulates that these Rules shall apply to mineral concessions relating to atomic minerals occurring as such or in association with one or more other minerals, provided the grade of such atomic minerals, is equal to or more than threshold value. However, Rule 3(2) stipulates that mineral concessions relating to atomic minerals where the grade of atomic mineral contained in the ore is less than the threshold value will be governed, *mutatis mutandis*, by the provisions of the Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016 (for short MOC Rules), in force. Since the petitioner is seeking grant of Mining Lease for mining minerals, viz., Garnet, Ilmenit and Rutile which are categorized as atomic minerals which have been included in Part B of the First Schedule of the MMDR Act, the mining lease applications of the petitioner have to be disposed of as per the AMC Rules and as per the directions of the Hon'ble Supreme Court of India in State of Tamil Nadu Vs. M/s.Hind Stone reported in (1981) 2 SCC 205.

11.It is further stated that Rule 2(m) of the AMC Rules defines "threshold value" that the grade of atomic mineral, specified as percentage of weight of the prescribed substances contained in the ore, to be specified and notified by the Department from time to time in Schedule A as the threshold value for the particular atomic mineral occurring as such or in association with one or more minerals.

<https://hcservices.ecourts.gov.in/hcservices/> 12.It is further stated that before granting mining lease, the threshold value has to be fixed as per Rule 3 of the AMC Rules. Since threshold value has not been fixed by the



17. So far as the contention of the petitioner regarding the applicability of the AMC Rules is concerned, it is stated that the AMC Rules stipulates ban for grant of leases where minerals were discovered which are in excess of threshold limit but so far as the areas for which the present applications are concerned, there is no question of new discovery of minerals. It is further stated that a conjoined reading of the AMC Rules and the MMDR Act would show that mining lease should be granted on or before 12.01.2017. It is further stated that the respondents cannot read as blanket ban for grant of all mining leases irrespective of determination of threshold limits and the Rules must be read harmoniously with the Act. It is further stated that AMC Rules cannot over ride the mining applications of the petitioner which were saved under Section 10A(2)(C) of the MMDR Act. It is further stated that so far as the contention of the respondents regarding stopping of beach sand quarry is not applicable to the fresh grant. The petitioner's applications are saved under Section 10(A)(2)(C) of the Act and the existence of AMC Rules is not a bar for considering the petitioner's lease applications.

18. The petitioner has filed additional rejoinder stating that so far as the petitioner's case, the threshold value has already been fixed. It is further stated that even under the pre-existing Mineral Concession Rules, the mineral contents have been determined by the Atomic Minerals Directorate and as per the report submitted by the Atomic Minerals Directorate, the above minerals are well within the threshold value fixed in the schedule to the AMC Rules. The petitioner has also filed a typed set of papers containing the report submitted by the Atomic Minerals Directorate. Hence, in the above circumstances, Rule 3(2) of the AMC Rules will apply and as a result, the provisions of the MOCR would be applicable *mutatis mutandis* to the petitioner's lease applications and the same would be considered. Hence, there is no impediment for the respondents to consider his applications.

19. Learned Senior Counsel appearing for the petitioner would submit that out of seven applications filed by the petitioner, six applications were relating to the private patta lands and the mineral lying therein was not vested with the State Government. Therefore, all the mining applications will not come under the purview of the Section 11B read with Section 13(2)(a) of the Act. But the applications should be considered under the MOC Rules framed under Section 13(2)(f) of the Act which only governs for granting lease in respect of any land in which minerals vest other than the Government. In the above circumstances, the petitioner's applications will have to be considered under the above said Rules.



20. He would further contend that Rule 3(1) of the AMC Rules, is applicable only to a mineral which is more than the threshold value and if the grade value of the mineral is less than threshold value, then mineral concessions for such atomic minerals shall be governed *mutatis mutandis* by MOC Rules. Further, he would contend that the Department of Atomic Energy is the competent authority to compare the grade of atomic minerals of the threshold value under Rule 4 (5) or 6(3) of the AMC Rules. Before getting grade compared by the Directorate of Atomic Energy, the Governmental Agency has to survey a particular area to find out the grade of the atomic mineral available in the area as per the provisions of Rule 4(1) of the AMC Rules. For that purpose, the Government agencies have to request the State government for such survey. Upon receipt of such a request, the State Government shall issue a notification under Section 4 (3), it is only upon issue of such notification, State Government can impose a ban on issuing mineral concession. Thereafter, under Rule 4 (4), the Government Agency shall submit a report to the Directorate of Atomic Energy. After receipt of the said report, under Rule 4 (5), the Directorate of Atomic Energy shall compare the grade with the threshold value. If the grade is equal or more than the threshold value, then AMC Rules will apply, if it is less, then MOCR shall apply. Hence, it is incorrect to state that once AMC Rules came into force, the State Government can no longer grant mining lease except only after determination under Rule 4(5).

21. He would further contend that so far as the grade of mineral is concerned, already Directorate of Atomic Energy conducted a survey in that area and also submitted a report and as per the report, the grade of the minerals are much less than the threshold value. Therefore, the applications of the petitioner for mining lease should be considered under Rule 3 (2) of the AMC Rules not under Rule 3(1). He would further contend that as per the report of the Directorate of Atomic Energy, dated 01.10.2013, the AMC Rules will not apply to the petitioner's mining applications and Rule 5 will apply only after Rule 4(5) determination is done. As on today, no Government company has made any application to the State Government to survey under Rule 4(1) and no survey report has been submitted till date. Therefore, the determination under Rule 4(5) is yet to be reached and reference to Rule 5 is a premature, at this stage.

22. He would further contend that until the determination under Rule 4(5) is made, the respondents had to decide all the pending applications in accordance with Section 10A(2)(C) especially when there is prima facie materials are available that the mineral grade is below the threshold value.



The provisions of Section 10A(2)(C) is having overriding effect over the Rule 3(1) of the AMC Rules. He would further contend that in the absence of any notification under Rule 6 (3) of the Rules, reserving the right to the Government Departments under AMC Rules cannot be made applicable to the petitioner's applications. Once AMC Rules are not applicable to the petitioner's case, the respondents have to consider the petitioner's applications in accordance with Rule 17 of the MOC Rules. He would further contend that the contention of the respondents that the provisions of AMC Rules will apply to the petitioner's mining applications which will only frustrate the legislative intent behind Section 10A(2)(C) of the Act and there are sufficient safeguards available under Rule 7 of AMC, Rules to protect the interests of the respondents.

23. He would further contend that without issuing any notification under Rule 4(3) of AMC, Rules, the respondents cannot refuse to consider the petitioner's mining lease applications in violation of Section 10A(2)(C) of the Act. In support of his submissions, learned Senior Counsel appearing for the petitioner relied upon a decision of the Supreme Court in Threesiamma Jacob Vs. Geologist, Department of Mining and Geology reported in (2013) 9 SCC 725.

24. Per contra, Mr. R. Muthukumarasamy, learned Advocate General appearing for the respondents would submit that the writ petitioner had made applications for grant of mining lease to mine Garnet, Ilmenite and Rutile etc., in the patta lands belonging to the writ petitioner. At the time of application and till 2016, the minerals like Ilmenite and Rutile were in Part B of the First Schedule to the MMDR Act and Garnet was not included in the First Schedule. Since, ilmenite and rutile were found in the schedule, approval was sought for from the Government in terms of Section 5 (1) of the Act and the approval was granted in the year 2012. Thereafter, the respondents indicated the precise area to the petitioner and requested him to obtain a mining plan approval from the Indian Bureau of Mines. But the petitioner's submitted mining plan approval only in the month of October 2013. In the meanwhile, in August 2013, the State Government had issued orders in G.O. Ms. Nos. 156 and 173, for conducting an enquiry into the illegal mining by the lessees including the petitioner in Tuticorin and other Districts and the Government also stopped all the mining operations by taking into consideration of public interest also. He would further contend that the above notifications were challenged before this Court by aggrieved persons including the petitioner. The said writ petitions were allowed by this Court. Subsequently, the Division Bench of this Court stayed the order of the learned single Judge in the writ appeals filed by the respondents. Hence, as on today, the above said Government



Orders are in force and the existing mining leases have been directed to stop the mining operations. In the above circumstances, granting of fresh lease necessarily be awaited for further orders in the writ appeals.

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25. Learned Advocate General would further contend that the Central Government amended the Mines & Minerals (Development and Regulation) Act and Section 10A was introduced whereby all the pending mining applications were declared to be ineligible. However, Section 10 A (2) (C) of the Act, provided an exception that in cases where previous approval as required under Section 5 (1) for grant of lease has been granted by the Central Government, the mining lease could be granted subject to the conditions of the approval within a period of two years.

26. In the said amendment, new provisions namely, Sections 11B and 11C were introduced. Section 11-B enables the Central Government to make Rules for regulating the atomic minerals specified in Part B of the First Schedule and further provided that once such Rules are framed, leases for atomic minerals shall be granted only in terms of the said Rules. Section 11-C was introduced to provide for amendment to the First Schedule and Fourth Schedule by adding or deleting any mineral. Thereafter, on 11.07.2016, Mines Minerals (Development and Regulation) Act was further amended by including garnet in Part B of First Schedule as Entry 12, thereby Garnet also became an Atomic mineral for which approval has got to be granted by the Central Government. On the same day, i.e., 11.07.2016, a new set of Rules was also notified namely, Atomic Minerals Concession Rules 2016 providing for grant of leases in respect of Atomic minerals. A new concept of threshold value was introduced to grade the atomic mineral in terms of Rule 4 of AMC Rules and Rule 3(1) of the AMC Rules, shall apply only to mineral concessions relating to atomic minerals occurring as such or in association with one or more other minerals, provided the grade of such atomic mineral is equal to or more than the threshold value. Rule 3 (2) provides that mineral concessions relating to atomic mineral where the grade of atomic mineral contained in the ore is less than the threshold value will be governed *mutatis mutandis* by the provisions of the Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concessions Rules 2016. Rule 3 (3) provides that the determination of threshold value shall be made by the Directorate in accordance with the provisions of sub-rule (5) of Rule 4 or sub-rule (3) of Rule 6 as the case may be. Rule 5(1) of the AMC Rules, provides that where the grade of the atomic minerals is more than the threshold value, the State Government shall identify the area and submit a report to the Central Government with a request to nominate the Government Company or Corporation owned or controlled by the Government for grant of such mining lease. However, if the Central Government declares



in writing that it is not required for a Government Company or Corporation, the lease of such area will be governed by the provisions in Section 10B, 11 or Section 17A of the Act. Therefore, if the grade of atomic mineral is equal to or more than the threshold value lease can be granted only to a Government Company or by auction in terms of Section 10B, 11 or 17A. No private person can be granted any mining lease in respect of such minerals. Rule 5 (2) provides that if the grade of mineral is less than the threshold value, then the State Government may grant mineral concession over such area in accordance with Sections 10B, 11 or 17A and in accordance with the provisions of other Rules including the Minerals (other than Atomic and Hydro Carbons Energy Minerals) Concessions Rules, 2016. Even if the grade is less than the threshold value, the question of granting of mining lease to a private person would not arise. It will have to be granted in accordance with Sections 10B, 11 and 17A through public auctions. Hence, unless the grade of mineral is determined in the area in question in terms of Rule 4 of the AMC Rules, no lease could be granted before determining the grade of minerals. Even if the grade is less than the threshold value under Rule 3 (2) is of the other Rules, it will apply *mutatis mutandis* subject to necessary changes found in the AMC Rules and even if the grade of the minerals is less than the threshold value, the grant will have to be made in terms of Rule 5 (2).

27. He would further contend that a harmonious construction of provisions of all Rules, it is only the AMC Rules will apply for all the atomic minerals and while the AMC Rules will fully apply where the grade is equal or more than the threshold value, in the case of atomic minerals where the grade is less than the threshold value, Non Atomic Mineral Rules will apply subject to the changes contemplated as per Rule 5(2) of the AMC Rules. In the above circumstances, since the grade is yet to be determined, the question of granting of lease would not arise. Apart from that the petitioner also cannot claim any vested right and the petitioner's applications can be considered only as per the Rules exist as on today. In support of his submissions, learned Advocate General relied on the following decisions:

(i) *In State of Tamil Nadu Vs. M/s. Hind Stone and others* reported in (1981) 2 SCC 205;

(ii) *In M/s. Ashok Service Centre and others Vs. State of Orissa* reported in (1983) 2 SCC 82 and

(iii) *In Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamond and Gem Development Corporation Limited and another* reported in (2013) 5 SCC 470.

<https://hcservices.ecourts.gov.in/hcservices> 28. I have considered the submissions made on either side and perused the materials available on record and also given my anxious consideration to the issues involved in this case.



29. After considering the rival submissions made on either side, the following questions are arisen for consideration:-

"(i) Whether the petitioner has any vested right to have his applications for grant of mining lease dealt with by applying the provisions in a particular way?

(ii) Whether the petitioner's applications can be considered based on the previous report submitted by the Directorate of Atomic Energy and can it substantiate the determination of the grade of mineral under Rule 4(5) of the AMC Rules for the purpose of considering the petitioner's applications under Rule 3(2) of the AMC Rules?

(iii) Whether the petitioner is entitled to consider his applications under the provisions of Section 10A(2)(C) of the MMDR Act?

(iv) Whether the Government Orders in G.O.Ms.Nos.156 and 173, dated 08.08.2013 and 17.09.2013 banning mining lease by the State Government will have any impact in considering the petitioner's applications for granting mining lease?

Issue No.1

30. The petitioner filed applications for mining lease in respect of three minerals namely, garnet, ilmenite and rutile. Since ilmenite and rutile fall under Part-B of the First schedule of MMDR Act, the prior approval sought to be obtained from the Central Government and the said approval was granted by the Central Government only in the year 2012. Thereafter, the Commissioner of Geology and Mining has indicated precise area to the petitioner mining lease application by letter dated 25.06.2012 with a direction to the petitioner to submit mining application within six months and only on 01.10.2013, the petitioner submitted copies of mining plan approved by the Indian Bureau of Mines and Atomic Mineral Directorate for Exploration and Research to the Commissioner of Geology and Mining. When the petitioner submitting the mining application, Government vide Order in G.O.Ms.No.156, Industries Department, dated 08.08.2013 has constituted a special team to conduct inspection in the mining lease area in Tuticorin District on the complaint of illicit mining of beach sand and the Government have also issued orders to stop mining operation pending completion of the inspection by the special team. Subsequently, another order in G.O.Ms.No.173, Industries Department dated 17.09.2013 was issued to inspect the mining areas in Tirunelveli, Kanyakumari, Madurai and Trichy Districts and various quarries were also stopped. There was litigation in respect of banning of mining which is pending in W.A.Nos.1168 and 1169 of 2015 before the Principal Bench of this Court. In the meantime, the Mines and Minerals (Development and Regulations) Amendment Ordinance Act, 2015 was promulgated on 12.01.2015 and the Mines and Minerals (Development and Regulations) Amendment Act, 2015 also came into force with effect from 12.01.2015. In the amended Act, many new provisions were



introduced. The relevant provisions of Amended Act are extracted hereunder:

"10A(2) (C).where the Central Government has communicated previous approval as required under sub-section (1) of Section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act.

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this sub-section except with the previous approval of the Central Government.

11B.Power of Central Government to make rules for regulating atomic minerals specified under Part B of First Schedule:- The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of mining leases or other mineral concessions in respect of minerals specified in Part B of the First Schedule and for purposes connected therewith, and the State Government shall grant a reconnaissance permit, prospecting licence or mining lease in respect of any such mineral in accordance with such rules.

11C.Power of Central Government to amend First Schedule and Fourth Schedule. The Central Government may, by notification in the Official Gazette, amend the First Schedule and the Fourth Schedule so as to add or delete any mineral as may be specified in the notification".

31.Section 11B of the Act enables the Central Government to make rules for regulating atomic minerals specified under Part B of the First schedule. It mandates that once Rules are framed, all lease in respect of minerals specified in Part B shall be governed only in terms of the above said Rules. Section 11C enables the Central Government to amend the first and fourth schedule in the Act so as to add or delete any mineral as may be specified in the notification. Invoking the power available under Section 11C of the MMDR Act, the Central Government amended the First schedule of the Act and included garnet in the first schedule by creating Entry-12. 11.07.2016 itself a new set of Rules was also notified viz., Atomic Minerals Concession Rules 2016, AMC Rules and Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concessions Rules, 2016 (MOC Rules).



32. In view of framing of a new Rules under Section 11B of the MMDR Act, all the pending applications for granting lease in respect of minerals specified in part B of the First schedule should be dealt with only by the AMC Rules. AMC Rules prescribed many conditions for granting mining lease. Rule 2 (m) of the Rules deals with threshold value which reads as follows:

"2(m) "threshold value" means the grade of atomic mineral, specified as percentage of weight of the prescribed substances contained in the ore, to be specified and notified by the Department from time to time in Schedule A as the threshold value for the particular atomic mineral occurring as such or in association with one or more minerals;"

33. Rule 3(1) of the AMC Rules mandates that it will apply only to mineral concessions relating to atomic minerals occurring as such or in association with one or more other minerals, provided the grade value of such atomic minerals is equal to or more than the threshold value. Rule 3(2) of the AMC Rules mandates that mineral concessions relating to atomic minerals where the grade of atomic mineral contained in the ore is less than the threshold value, then it will be governed mutatis mutandis, by the provisions of MOC Rules. For the applicability of these Rules, the assessment of threshold value shall be made by the Directorate of Atomic Energy in accordance with the provisions of AMC Rule 4 (5) or Rule 6 (3).

34. Rule 4(5) of the AMC, Rules reads as follows:

"4(5). Upon receipt of a geological report under sub-rule (4), the Directorate shall compare the grade of atomic minerals in the prospecting area with the threshold value and

(a) if the grade of atomic minerals is less than the threshold value, the Directorate shall provide a written intimation, along with a copy of the geological report, to the State Government, which may grant mineral concessions over such area in accordance with section 10B and section 17A of the Act, as the case may be, and the rules made thereunder;

(b) if the grade of atomic minerals is equal to or above the threshold value, then a mining lease shall be granted by the State Government only in accordance with these rules;

Provided that the Directorate shall also subject the geological reports for prospecting operations generated by the Directorate, to a similar scrutiny as above and hand over the data to the State Governments for action contemplated under clauses (a) and (b)."



35. Rule 5 deals with granting of mining lease at the instance of Department and Rule 5(2) prescribed changes in the grade of minerals which reads as follows:-

"5(2) Where on an examination of a prospecting report prepared in conformity with the parameterse specified in Schedule B by the Directorate, in accordance with the provisions of the sub-rule (5) of rule 4 indicates the grade of atomic minerals to be less than the threshold value, the State Government may grant a mineral concession over such area in accordance with the provisions of Section 10B or section 11 or section 17A of teh Act and the provisions of the Minerals (Evidence of Mineral Contents) Rules, 2015, the Mineral (Auction) Rules, 2015, the Mineral (Mining by Government Company) Rules, 2015 and the Minerals (other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 made under Section 13.

Provided that atomic minerals extracted during the mining operations shall be handled and disposed of in accordance with the directives issued by the Department regarding conservation of atomic minerals and the directives issued by the Board regarding radiological safety".

36. Rule 6 deals with mining by a Government Company or Corporation owned or controlled by the Government which reads as follows:-

"6(3). Notwithstanding anything contained in sub-rules (1) and (2), the Department shall reserve its rights, wherever required to additionally notify region and deposit -specific threshold values in the case of uranium and thorium bearing minerals, and authorise the Ministry of Mines in the Central Government and the State Government concerned, subject to terms and conditions specified by the Department, to grant mining lease for one or more specific mineral present associated with atomic minerals".

37. A combined reading of the Rules, provides various steps to be followed by the authorities before granting mining lease. As per 11B of the MMDR Act, now new Rules have been notified namely, AMC Rules and grant of mining lease in respect of minerals specified in Part B of the first schedule should be considered under the said Rules only and the authorities should necessarily follow the procedure contemplated under the said Rules. Merely because the petitioner's applications are pending on the date of new Rules came into force, the petitioner cannot claim any vested right and the petitioner's applications should necessarily be dealt with under the new rules. It is a settled law that no one has any vested right to claim that the application



should be dealt with in a particular way and the application should be dealt with according to the rules on the date of disposal of the application.

38. The Hon'ble Supreme Court in State of Tamil Nadu Vs. M/s. Hind Stone and others reported in (1981) 2 SCC 205 has held as follows:-

"13. Another submission of the learned counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of G.O. Ms. No. 1312 (2-12-1977) should be dealt with as if Rule 8C had not come into force. It was also contended that even applications for grant of leases made long before the date of G.O. Ms. No. 1312 should be dealt with as if Rule 8C had not come into force. The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. None has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant or renewal of leases made long prior to the date of G.O. Ms. No. 1312 should be dealt with as if Rule 8C did not exist.

39. In the above circumstances, the petitioner's applications should necessarily be considered by applying the new Rules namely, AMC Rules 2016.

Issue No. II

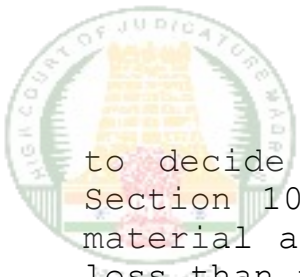
40. So far as the second issue is concerned that even though as per Section 10 A (2) (C) of the MMDR Act, the petitioner's application needs to be considered within two years



from the date of commencement of the Act, in view of the new Rules, namely, AMC Rules, came into force as per Section 11B of the MMDR Act, all the applications in respect of the minerals contained in part B of the first schedule of the MMDR Act should be dealt with only under new Rules after following the procedure contemplated under the AMC Rules. In the above circumstances, the provisions of Section 10 cannot be invoked as the petitioner's applications have to be necessarily dealt with only under the new rules.

Issue No.III

41.Learned Senior Counsel for the petitioner would submit that the determination of grade value of mineral by the Department of Atomic Energy has to be done under Rule 4(5) or 6 (3) of the AMC Rules. Before determining the grade value under Rule 4(5) of the Rules, the Government agency has to make an application with survey particulars of the area under the proviso to Rule 4(1) of the Rules. Thereafter, the Government agency has to make a request to the State Government for a survey only on receipt of such request, the State Government shall issue notification under Rule 4(3) of the Rules then only the State Government can ban issue mineral concession. After issuing notification under Rule 4(3), the Government agency, shall submit a geology report to the Directorate of Atomic Energy under Rule 4(4) as well as the State Government on receipt of such geology report submitted under Rule 4(4), the Directorate of Atomic Energy shall compare the grade of minerals under Rule 4(5) of the AMC Rules. After determining the grade value, if the grade value is equal to or more than the threshold value, then the AMC Rules will apply, then MOC Rules only apply. As on today, no application was filed by any agency under sub Rule 4(1) of the Act and the procedure contemplated under Rule 4 is yet to be completed and no notification has issued under Rule 4(3). In such an event, the banning activities do not arise and consequently, the stage of determination of grade value is yet to be reached. Whereas, already, the Department of Atomic Energy has filed a report which would show that the grade value of mineral in the area for which the petitioner made applications is less than the threshold value and that report could be substituted for determination under Rule 4(5) of the AMC Rules. When the datas would show that the grade value is less than the threshold value, the petitioner case will not fall under Rule 3 (2) and in such circumstances, the MOC Rules will only apply. Rule 5 of the AMC Rules, deals with the granting of mining lease, at the instance of Department will apply only after determination of grade value under Rule 4(5) and as on date, no application was filed with the State Government for Government Company or Corporation owned or controlled by the Government for grant of such mining lease and no determination under Rule 4(5) is yet to be reached, hence, the question of applicability of Rule 5 does not arise. In the above circumstances, the State Government has



to decide all the pending applications only in accordance with Section 10A2(C) of the MMDR Act especially when the prima facie material available to show that the grade value of the mineral is less than the threshold value.

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42. Per contra, learned Advocate General would contend that after the AMC Rules came into force, as per Section 11B of the Act, all the applications including pending applications should be considered only under the AMC Rules.

43. According to the learned Advocate General, first of all, under Rule 4(5) of the AMC Rules, the grade value should be determined, if it is equal or more than threshold value, the State Government shall identify the area and submit a report to the Central Government for grant of such mining lease. If the Central Government declares in writing that it is not required for Government Company or Corporation owned or controlled by the Government for grant of such mining lease, the lease of such area will be governed by the provisions of Sections 10B, 11 and 17A of the MMDR Act. Thus, if the grade value of atomic mineral is equal to or more than the threshold value, lease can be granted to Government company by auction under Sections 10B, 11 and 17A of the MMDR Act and no private person can be granted any lease in respect of such minerals. Under Rule 5(1) if the grade value of mineral less than threshold value, the State Government can grant concession only in accordance with Sections 10B, 11 and 17A and in accordance with the provisions of other Rules including MOC Rules. Even if the grade value is less than the threshold value, the question of granting lease to the private person would not arise and it can be only granted in accordance with Sections 10B, 11, 17A through public auction. In the absence of determination of grade of minerals in terms of Rule 4 of the AMC Rules, now, it cannot be decided whether Rule 3(1) or Rule 3(2) of AMC Rules will apply. In the above circumstances, without determining the grade of mineral no lease could be granted.

44. Learned Advocate General further submitted that even if the grade value is less than threshold value, as per Rule 3(2), AMC Rules, Non Atomic Mineral Rules will apply subject to the changes contemplated as per Rule 5(2) of the AMC Rules. Rule 5(2) is prescribed the changes which are required even in the grade of minerals less than the threshold value and the grant needs to be made in terms of Rule 5(2) of the Rules.

45. A harmonious construction of the provisions of the Rules, it is clear that the AMC Rules will apply for atomic minerals while AMC Rules will fully apply where the grade is equal to or more than the threshold value. In case, the grade value is less than the threshold value, non atomic mineral rule will apply subject to changes contemplated by the AMC Rules.



46. Learned Advocate General would submit that since the grade value is yet to be determined the question of granting lease at present, does not arise. I find much force in the arguments of the learned Advocate General.

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47. After the AMC Rules came into force, the authorities has to undertake new procedure for grading atomic minerals and Rule 4 of AMC Rules, elaborately prescribed the method of grading atomic minerals. Only after determining the grade as contemplated under Rule 4 (5) of the Rules, then the next procedure of applying Rule 3 will arise. Before determining the grade value, the authorities cannot decide whether threshold value is high or less. As rightly contended by the learned Advocate General that even threshold value is less, the MOCR Rules will apply, mutatis mutandis, which means, the MOCR Rules will apply with necessary changes contemplated in the AMC Rules.

48. The Hon'ble Supreme Court has considered the meaning of "mutatis mutandis" in Ashok Service Centre (supra) and has held as follows:-

"....Before considering what provisions of the Principal Act should be read as part of the Act, we have to understand the meaning of the expression 'mutatis mutandis'. Earl Jowitt's 'The Dictionary of English Law (1959)' defines 'mutatis mutandis' as 'with the necessary changes in points of detail'. Black's Law Dictionary (Revised 4th Edn. 1968) defines 'mutatis mutandis' as 'with the necessary changes in point of detail, meaning that matters or things are generally the same, but to be altered when necessary as to names, offices, and the like. Houseman v. Waterhouse, 191 App. Div. 850, 112 N.Y.S 249, 251.' In Bouvier's Law Dictionary (3rd Revision, Vol. II), the expression 'mutatis mutandis' is defined as '(T)he necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. Extension of an 'earlier Act mutatis mutandis to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act. Section 3 (2) of the Act shows that the State Legislature intended not to depart substantially from the Principal Act except with regard in matters in respect of which express provision had been made in the Act. The assumption made by the High Court that the Act was an independent Act having nothing to do with the Principal Act is not correct. The Act only levied some extra sales tax in addition to what had been levied by the Principal Act. The nature of the taxes levied under



the Act and under the Principal Act was the same and the Legislature expressly made the provisions of the Principal Act *mutatis mutandis* applicable to the levy under the Act. The additional sales tax was in the nature of a surcharge over and above what was due and payable by assessee under the Principal Act. The Act, though it had a long title, a short title and other usual features of every statute, could not be, considered as an independent statute. It had to be read together with the Principal Act to be effective. In the circumstances the conclusion reached by the High Court that the two Acts were independent of each other was wrong. We are of the view that it is necessary to read and to construe the two Acts together as if the two Acts are one, and while doing so to give effect to the provision, of the Act which is a later one in preference to the provisions of the Principal Act wherever the Act has manifested an intention to modify the Principal Act.

49. After considering the above said judgment, the Supreme Court in Rajasthan State Industrial Development and Investment Corporation's case (*supra*) has held as follows:

"18. Thus, the phrase "mutatis Mutandis" itself implies that a provision contained in other part of the statute or other statutes would have application as it is with certain changes in points of detail."

50. Hence, it is clear that even in cases where the threshold value is less than the grade value, the AMC Rule will apply subject to the changes contemplated in AMC Rules, especially Rule 5(2) Rules. At any event, whether the grade value is high or less, the authorities should necessarily follow the procedure contemplated under Rule 5(2) of the Rules.

51. As stated above, the petitioner cannot claim grant of mining lease without following the procedure contemplated under the Rules. Regarding the contention of the learned Senior Counsel for the petitioner that since the lands are patta lands and the petitioner is the owner of the minerals, his applications for mining lease could be considered under Section 13(2)(f) of the MMDR Act. The said submission of the petitioner cannot be accepted. The judgment relied upon by the learned Senior Counsel cannot be made applicable to the facts of the present case. In the said case, the Supreme Court has held as follows:-

"57. For the above-mentioned reasons, we are of the opinion that there is nothing in the law which declares that all mineral wealth sub-soil rights vest in the State, on the other hand, the ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In the instant appeals, no



such deprivation is brought to our notice and therefore we hold that the appellants are the proprietors of the minerals obtaining in their lands. We make it clear that we are not making any declaration regarding their liability to pay royalty to the State as that issue stands referred to a larger Bench".

52. In view of the AMC Rules which contemplate separate process for granting lease, the petitioner cannot claim that his applications should be considered under Section 13(2)(f) of the MMDR Act.

53. So far as the next contention of the petitioner that already a report submitted by the Department of Atomic Energy is available with the respondents which prima facie shows that the grade value is less than the threshold value cannot be accepted for the simple reason that after AMC rules came into force that the determination should be done as contemplated under the above said Rules and the whatever report submitted by the Department under the MMC Rules, cannot be considered for the purpose of granting lease under the AMC Rules.

54. The next contention of the learned Advocate General for the respondents that after issuance of the two Government Orders namely, G.O.Ms.Nos.156 and 173, dated 08.08.2016 and 27.09.2016 which are in force, as on today, the claim of the petitioner cannot be considered. The said contention cannot be accepted, since the above referred to Government Orders only ban the quarrying of the existing leases but there is no bar in the Government Order to consider new application. Merely, because the petitioner's quarry in respect of other lease hold area is banned, the Government cannot refuse to consider his application. Hence, the above issue decided against the respondents and the applications of the petitioner can be considered in accordance with the AMC Rules, 2016

55. In the above circumstances, the prayer sought by the petitioner cannot be granted. Hence, all the writ petitions are liable to be dismissed. Accordingly, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(C.S-I)

/TRUE COPY/

Sub Assistant Registrar



To

1. THE DISTRICT COLLECTOR,
KANYAKUMARI DISTRICT AT NAGERCOIL, KANYAKUMARI DISTRICT.
 2. THE SECRETARY, STATE OF TAMIL NADU, INDUSTRIES DEPARTMENT,
ST.GEORGE FORT, CHENNAI-9.
 3. THE DIRECTOR OF GEOLOGY & MINING, GUINDY, CHENNAI-32.
 4. THE DISTRICT COLLECTOR, TUTICORIN DISTRICT, TUTICORIN.
 5. THE COMMISSIONER OF GEOLOGY AND MINING, GUINDY, CHENNAI -32.
- +1cc to M/s.S.Meenakshi Sundaram, Advocate, in SR No.78774.
- +1cc to M/s.K.Govinda Rajan, Advocate, in SR No.78804.
- +1cc to M/S.SPECIAL GOVT.PLEADER SR.No. 79073

Order made in
Writ Petition (MD) Nos.10543
to 10548 and 19257 of 2016
02.12.2016

sms

msm/ck/sar1/02.12.16/p24/9c(IT)