

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR  
AND  
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.1256, 2742, 2846, 2847, 2986 to 2988, 3445 to 3448  
4062 to 4065, 4602, 4603, 5421, 5458, 5459, 6803 to 6806,  
9048 to 9051, 13475, 13567, 13568, 13928, 13949, 14209, 14210,  
26806 and 26823 of 2018 and connected Miscellaneous Petitions

NAMAKKAL DISTRICT STONE CRUSHER,  
OWNERS ASSOCIATION,  
REG. NO.67/2004,  
REP., BY ITS SECRETARY,  
P.MANI

... PETITIONER IN WP.NO.1256 OF 2018

SALEM DISTRICT CRUSHER JALLI  
URPATHIYALARKAL NALASANGAM  
REP BY SECRETARY P.A.RAJA  
5/9-1 JAGIR AMMAPALAYAM  
BLOCK NO.5 VENNAKODI MUNIYAPPAN  
KOVIL BACKSIDE  
SALEM-5

... PETITIONER in WP No.2742 of 2018

S.KUMARASAMY  
C.KANNIAPPAN  
S.SUNDARAMAHALINGAM  
S.ARUNACHALAM

... PETITIONER in WP No.2846 of 2018  
... PETITIONER in WP No.2847 of 2018  
... PETITIONER in WP No.2986 of 2018  
... PETITIONER in WP Nos.2987 & 2988 of 2018

L.YUVARAJ  
S/O.SRI.M.LAKSHMANAN  
MANAGING PARTNER OF SRI VELA BLUE METALS  
NO.76D/1 KATCHERI STREET  
VELUR ROAD, THIRUCHENGODE TALUK  
NAMAKKAL DISTRICT

... PETITIONER in WP Nos.3445  
AND 3446 of 2018

M/S.SIVAJAYAM GRANITES  
REP BY ITS MANAGING PARTNER  
A.NATESAN NO.1259 SOLAI COLONY  
SIVAKASI- 626 189

... PETITIONER in WP No.3447 of 2018

ARMSTRONG FERNANDO

... PETITIONER in WP No.3448 of 2018

E.C.SENNIAPPAN  
PROPRIETOR OF M/S.ANNAMAR GRANITE  
NO. 413/296 SATHY ROAD  
ERODE 638 003

... PETITIONER in WP Nos.4062  
and 4063 of 2018

R.JAYARAJ  
P.SENTHIL KUMAR

... PETITIONER in WP No.4064 of 2018  
... PETITIONER in WP No.4065 of 2018

THE KARUR DISTRICT QUARRY AND  
CRUSHER OWNERS ASSOCIATION  
REG. NO. 80/2012  
REP. BY ITS SECRETARY  
P.MUTHUKUMAR  
NO.635-A LUCKY COMPLEX  
COVAI ROAD, KARUR 639 002

... PETITIONER in WP No.4602 of 2018

M/S. MAGAM INC  
REP. BY ITS PARTNER K.BALAJI  
B-254 50TH STREET ASHOK NAGAR  
CHENNAI 83

... PETITIONER in WP No.4603 of 2018

THE KANCHIPURAM DISTRICT STONE  
QUARRY LEASE HOLDERS WELFARE ASSON.  
(REGN. NO.239/2003 CHENNAI SOUTH)  
REP BY ITS PRESIDENT

O.NO.4 N.NO.20 ALAGESAN ST  
TAMBARAM WEST, CHENNAI-45.

... PETITIONER in WP No.5421 of 2018

C.JAGADEESAN

... PETITIONER in WP No.5458 of 2018

J.JEYALAKSHMI  
O.ULAGANATHAN

... PETITIONER in WP No.5459 of 2018  
... PETITIONER in WP No.6803 of 2018

P.YOGANANDA REDDY

... PETITIONER in WP Nos.6804  
and 6805 of 2018

M/S.THRIVENI EARTH MOVERS PVT.LTD.  
REP. BY ITS DIRECTOR B.KARTHIKEYAN  
NO. 22/110 GREEN WAYS ROAD  
FAIR LANDS, SALEM 636 016

... PETITIONER in WP No.6806 of 2018

S.BALAJI

... PETITIONER in WP No.9048 of 2018

P.S.JAYARAMAN

... PETITIONER in WP No.9049 of 2018

J.SUJATHA

... PETITIONER in WP No.9050 of 2018

R.THILAGAVATHI

... PETITIONER in WP No.9051 of 2018

S.L.GOVINDARAJ

... PETITIONER in WP No.13475 of 2018

M/S.STANCO TRADERS  
REP. BY PARTNER YENNARKAY  
R.RAJARATNAM  
1/3 THIRUTHANGAL ROAD  
SIVAKASI-626 123  
VIRUDHUNAGAR DISTRICT.

... PETITIONER in WP No.13567 of 2018

M/S.STANDARD GRANITES  
REP. BY PARTNER YENNARKAY R.RAJARATNAM  
5-2-15C SATTUR ROAD, THIRUTHANGAL ROAD  
SIVAKASI-626 123.  
VIRUDHUNAGAR DISTRICT.

... PETITIONER in WP No.13568 of 2018

N.SIVAKUMAR

... PETITIONER in WP No.13928 of 2018

B.C.KARUNAKARAN

... PETITIONER in WP No.13949 of 2018

M/S.SIVAJAYAM GRANITES  
REP.BY ITS MANAGING PARTNER  
A.NATESAN  
NO.1259 SOLAI COLONY  
SIVAKASI - 626189

.... PETITIONER in WP Nos.14209  
and 14210 of 2018

T.MATHIMARAN  
K.R.MANI

... PETITIONER in WP No.26806 of 2018

... PETITIONER in WP No.26823 of 2018

Vs.

THE STATE OF TAMIL NADU,  
REP. BY ITS SECRETARY TO GOVERNMENT,  
INDUSTRIES DEPARTMENT,  
FORT ST.GEORGE,  
CHENNAI-9.

..1<sup>st</sup> RESPONDENT IN W.P.Nos.1256, 2742,  
2846, 2847, 3445 to 3448, 4062 to 4065,  
4602, 4603, 6803 to 6806, 9048 to 9051,  
13475, 14209, 14210 of 2018

THE COMMISSIONER OF GEOLOGY AND MINING,  
THIRU.VI.KA.INDUSTRIAL ESTATE,  
GUINDY, CHENNAI 600 032.

..2<sup>nd</sup> RESPONDENT IN  
W.P.Nos.1256, 2742, 2846, 2847, 2986 to  
2988, 3445 to 3448, 4062 to 4065, 4602,  
4603, 5458, 5459, 6803 to 6806, 9048 to  
9051, 13475, 13567, 13568, 13928, 13949,  
14209, 14210, 26806 and 26823 of 2018

THE ADDITIONAL CHIEF SECRETARY,  
INDUSTRIES DEPARTMENT,  
FORT ST.GEORGE,  
CHENNAI -9.

..1<sup>st</sup> RESPONDENT IN  
WP.No.13567, 13568, 26806  
AND 26823 OF 2018

THE PRINCIPAL SECRETARY  
INDUSTRIES (MMD-I) DEPARTMENT,  
FORT ST.GEORGE, CHENNAI -9.

..1<sup>st</sup> RESPONDENT IN  
WP.No.5421 of 2018

THE DISTRICT COLLECTOR,  
KANCHEEPURAM DISTRICT,  
KANCHEEPURAM.

..2<sup>nd</sup> RESPONDENT IN WP.No.5421 of 2018  
AND 3RD RESPONDENT IN WP.NO.9051 OF 2018

THE DISTRICT COLLECTOR,  
VIRUDHUNAGAR DISTRICT,  
VIRUDHUNAGAR.

..3<sup>rd</sup> RESPONDENT IN WP.No.13567,13568,  
14209 and 14210 of 2018

THE DISTRICT COLLECTOR,  
DHARMAPURI DISTRICT,  
DHARMAPURI DISTRICT.

..3<sup>rd</sup> RESPONDENT IN WP.No.13928  
AND 13949 OF 2018

THE PRINCIPAL SECRETARY,  
GOVERNMENT OF TAMIL NADU,  
INDUSTRIES DEPARTMENT,  
FORT ST.GEORGE,  
CHENNAI -9.

..1<sup>st</sup> RESPONDENT IN WP.No.2986,2987  
2988, 5458, 5459, 13928 &  
13949 of 2018

THE DISTRICT COLLECTOR,  
SALEM DISTRICT, SALEM.

..3<sup>rd</sup> RESPONDENT IN WP.No.2742 of 2018

THE DISTRICT COLLECTOR,  
THIRUNELVELI DISTRICT,  
THIRUNELVELI.

..3<sup>rd</sup> RESPONDENT IN WP.No.2846,  
2986,2987,2988,3447,5458,5459  
and 26806 of 2018

THE DISTRICT COLLECTOR,  
NAMAKKAL DISTRICT,  
NAMAKKAL.

..3<sup>rd</sup> RESPONDENT IN WP.Nos.1256,  
3445 and 3446 of 2018

THE DISTRICT COLLECTOR,  
PERAMBALUR DISTRICT,  
PERAMBALUR.

..3<sup>rd</sup> RESPONDENT IN WP.Nos.3448,  
4065, 9049 and 9050 of 2018

THE DISTRICT COLLECTOR,  
ERODE DISTRICT, ERODE.

..3<sup>rd</sup> RESPONDENT IN WP.Nos.4062,  
4063, 4064 and 26823 of 2018

THE DISTRICT COLLECTOR,  
KARUR DISTRICT.

..3<sup>rd</sup> RESPONDENT IN WP.No.4602 of 2018

THE DISTRICT COLLECTOR CUM CHAIR PERSON,  
KANCHEEPURAM DISTRICT, MINERAL FOUNDATION TRUST,  
COLLECTORATE,  
KANCHEEPURAM.

..3<sup>rd</sup> RESPONDENT IN WP.No.5421 of 2018

THE DISTRICT COLLECTOR,  
KRISHNAGIRI DISTRICT,  
KRISHNAGIRI.

..3<sup>rd</sup> RESPONDENT IN WP.No.6803 to 6806  
and 13475 of 2018

THE DISTRICT COLLECTOR,  
THIRUVANNAMALAI DISTRICT.

..3<sup>rd</sup> RESPONDENT IN  
WP.NO.4602 of 2018

THE DISTRICT COLLECTOR,  
VILLUPURAM DISTRICT,  
VILLUPURAM.

..3<sup>rd</sup> RESPONDENT IN WP.No.9048 of 2018

THE DIRECTOR OF GEOLOGY AND MINING,  
DEPARTMENT OF GEOLOGY AND MINING,  
THIRU VI.KA INDUSTRIAL ESTATE,  
GUINDY, CHENNAI -32.

..4<sup>th</sup> RESPONDENT IN WP.No.5421 of 2018

THE ASSISTANT DIRECTOR OF GEOLOGY,  
DEPARTMENT OF GEOLOGY AND MINING,  
COLLECTORATE, KANCHEEPURAM.

..5<sup>th</sup> RESPONDENT IN WP.No.5421 of 2018

**Prayer in W.P.Nos.1256, 2742, 2846, 2847, 2986 to 2988, 3445 to 3448, 4062 to 4065, 4602, 4603, 5458, 5459, 6803 to 6806, 13567, 13568, 13928, 13949, 26806 and 26823 of 2018 :**

Petition filed under Article 226 of the Constitution of India seeking a Writ of Declaration, declaring Rules 8, 9, 10 & 11 of the Tamil Nadu District Mineral Foundation Rules, 2017, introduced by the 1<sup>st</sup> respondent by G.O.Ms.No.57, Industries (MMD-1) Dept., dated 19.05.2017, published in Tamil Nadu

Government Gazette Extraordinary bearing No.143, dated 19.05.2017 and G.O.Ms.No.90, Industries (MMD-1) Dept., dated 27.07.2017, published in Tamil Nadu Government Gazette Extraordinary bearing No.248, dated 27.07.2017, as illegal, ultra vires, null and void.

**Prayer in WP No.5421 of 2018 :**

to declare amended Rule 8 of The Tamil Nadu District Mineral Foundation Rules, 2017 relating to contribution to the Trust fund as illegal, without jurisdiction and beyond the scope of Section 9B of the Central Act, 67 of 1957, in so far as it relates to inclusion of the minor minerals governed under the Tamil Nadu Minor Mineral Concession Rules, 1959.

**Prayer in WP Nos.9048 to 9051, 14209, 14210 and 13475 of 2018 :**

Declaring Rule 8.9.10 and 11 of the Tamil Nadu District Mineral Foundation Rules 2017 introduced by the 1st respondent by G.O. Ms.No. 57 Industries (MMD-1) Department, dated 19.05.2017 published in Tamilnadu Government Gazette Extraordinary bearing No. 143, Part III Sec 1 (A) dated 19.05.2017 and G.O.Ms.No. 90, Industries (MMD-1) Department dated 27.07.2017 published in Tamilnadu Government Gazette Extraordinary bearing No. 248, Part III Sec 1 (A) dated 27.07.2017 as illegal, ultra virus, null and void.

**For Petitioner**

in W.P.Nos.1256,2742,2846,  
2847, 3445 to 3448,4062 to 4065,  
4602, 4603, 6803 to 6806,  
9048 to 9051, 13475, 14209,  
14210 and 2018 : Mr.K.Ramakrishna Reddy  
P.Kalpa Reddy

in WP.Nos.2986,2987,2988,5458,  
5459, 13567,13568,26806 and  
26823 of 2018 : Mr.V.Sanjeevi

in WP.Nos.13928 and  
13949 of 2018 : Mr.K.Krishnan

**For Respondent**

in All the Petitions : Mr.Vijay Narayanan,  
Advocate General  
assisted by  
Mr.Akil Akbar Ali,  
Government Advocate

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Common prayer in all the writ petitions is for a Declaration, declaring Rules 8, 9, 10 & 11 of the Tamil Nadu District Mineral Foundation Rules, 2017, introduced by the 1<sup>st</sup> respondent by G.O.Ms.No.57, Industries (MMD-1) Dept., dated 19.05.2017, published in Tamil Nadu Government Gazette Extraordinary bearing No.143, dated 19.05.2017 and G.O.Ms.No.90, Industries (MMD-1) Dept., dated 27.07.2017, published in Tamil Nadu Government Gazette Extraordinary bearing No.248, dated 27.07.2017, as illegal, ultra vires, null and void.

2. As pleadings and submissions are common, all the writ petitions are disposed of, by this common order.

3. It is the case of the petitioners that Mines and Minerals (Development and Regulations) Act, 1957 (Central Act 67 of 1957) is to provide for the development and regulation of Mines and Minerals under the control of Union of India, enacted by the Parliament and the same came into force on 01.06.1958. The main object of the Act is to conserve minerals. As per Section 2 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the "Act"), the entire mining field is under Union Control. Section 13 of the Act, empowers the Central Government to frame Rules, in respect of Major Minerals. Under Section 15 of the Act, power has been delegated to the States to frame Rules, in respect of Minor Minerals. As per Section 14 of the Act, Sections 5 to 13 do not apply to Minor Minerals.

4. By Mines and Minerals (Development and Regulation) Amendment Act, 2015 (Act.10 of 2015), the Central Government inserted Section 9B, Sub-Clauses (qqa) to (qqk) to Clause (2) of Section 13, Section 15(4) and Section 15-A to the Mines and Minerals (Development and Regulation) Act, 1957. Section 9B mandates establishment of District Mineral Foundation by the States. As stated earlier, in view of Section 14 of the Act, both Sections 9B and 13, will not apply to Minor Minerals.

5. Government of India, Ministry of Mines, by notification / order bearing No.16/7/2015 M.VI(Part), dated 16.09.2015, mandated the State Governments to establish "District Mineral Foundation" in every district in the country, in terms of Sub-Section (1) of Section 9B of the Mines and Minerals (Development and Regulation) Act, 1957 and such foundation shall be deemed to have come into force w.e.f. 12-01-2015. At this juncture, it is most important to note that the order of the

Central Government to establish District Mineral Foundations is under Section 9B of the Act which does not apply to minor minerals.

6. Under Sub-Sections 5 and 6 of Section 9B of the Act, the Central Government issued notification bearing No.G.S.R.715 (E), dated 17.09.2015, making "Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015. By the said rules, rates of contribution have been fixed as 10% of the royalty in terms of the second schedule for the leases or prospecting cum mining leases granted after 12.01.2015 and 30% in respect of the leases or prospecting licenses cum leases granted prior to 12.02.2015. The above said notification is extracted hereunder:

MINISTRY OF MINES

NOTIFICATION

New Delhi, the 17th September, 2015

G.S.R. 715(E). -In exercise of the powers conferred by sub-sections (5) and (6) of Section 9B of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government hereby makes the following rules specifying the amount to be paid by holder of a mining lease or a prospecting licence-cum-mining lease, in addition to the royalty, to the District Mineral Foundation of the district established by the concerned State Government by notification, in which the mining operations are carried on, namely:-

1. Short title and commencement.-(1) These rules may be called the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015.

(2) These rules shall be deemed to have come into force on the 12th day of January, 2015.

Amount of contribution to be made to District Mineral Foundation.-Every holder of a mining lease or a prospecting licence-cum-mining lease shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount at the rate of-

(a) ten per cent of the royalty paid in terms of the Second Schedule to the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (herein referred to as the said Act) in respect of mining leases or, as the case may be, prospecting licence-cum-mining lease granted on or after 12th January, 2015; and

(b) thirty per cent of the royalty paid in terms of the Second Schedule to the said Act in respect of mining leases granted before 12th January, 2015.

[F.No.16/7/2015-M.VI]  
R.SRIDHARAN, Addl. Secy.

According to the petitioners, as stated earlier the said rules are in respect of major minerals.

7. Though Section 9B contemplates the establishment of a Trust to be called the District Mineral Foundation, which provision is only applicable to the Major Minerals and not Minor Minerals like granite. However, Section 15(A) of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 provides that the State Government may prescribe the payment by all the holders of concessions related to minor minerals of amounts to the District Mineral Foundation of the district in which the mining operations are carried on. The whole of Section 15 is the power of the State Government to make Rules in respect of Minor Minerals. Section 15(4) of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 gives power to the State Government to make Rules for regulating the provisions of the Act for the following, namely,

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

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

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

8. It is submitted that under Section 15(4) of the Act by the impugned G.O.No.57, Industries (MMD-1) Department, dated 19.05.2017, published in Tamil Nadu Gazette Extraordinary No.143, dated 19.05.2017, the State Government have framed Tamil Nadu District Mineral Foundation Rules, 2017 and the said rules are extracted hereunder:

THE TAMIL NADU DISTRICT MINERAL FOUNDATION RULES,  
2017

In exercise of the powers conferred under sub-section (4) of section 15 of the Mines and Minerals (Development and Regulation) Act, 1957

(Central Act 67 of 1957), the Governor of Tamil Nadu hereby makes the following rules namely:-

1. Short title.- These rules may be called the Tamil Nadu District Mineral Foundation Rules, 2017.

2. Definitions.- In these rules, unless the context otherwise requires, -

(i) "Act" means the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957);

(ii) "affected people" means the persons living in directly affected areas and indirectly affected areas and such other peoples as may be identified by the District Collector including the people who have legal and occupational rights over the land being mined, and also those with usufruct and traditional rights;

(iii) "directly affected areas" means the areas where direct mining related operations such as excavation, mining, blasting, beneficiation and waste disposal (over burden dumps, tailing ponds, transport corridors, etc.), etc., are located;

(iv) "Foundation" means the District Mineral Foundation established under section 9B of the Act;

(v) "Fund" and "Trust Fund" means the "District Mineral Foundation Trust Fund" generated out of the contributions collected under these rules;

(vi) "Government" means the State Government;

(vii) "Governing Council" means all the Trustees of the District Mineral Foundation Trust;

(viii) "indirectly affected areas" means those areas where local population is adversely affected on account of economic, social and environmental consequences due to mining related operations;

(ix) "Local Body" means and includes District Panchayat, Panchayat Union, Village Panchayat, Town Panchayat, Municipalities and Municipal Corporations in the District concerned or any other authority entrusted with the functions of the local bodies;

(x) "Trust" and "Trustees" means respectively, the 'District Mineral Foundation Trust' established under section 9B of the Act and the Trustees of the District Mineral Foundation;

(2) Words and expressions used and not defined in these rules shall have the meanings assigned to them in the Act, the Mineral Concession Rules, 1960 and the Tamil Nadu Minor Mineral Concession Rules, 1959.

3. Composition of District Mineral Foundation Trust.- (1) The District Mineral Foundation Trust shall consist of -

- (i) District Collector - Chairperson;
- (ii) District Revenue Officer- Vice-Chairperson
- (iii) Deputy Director or Assistant Director of Geology and Mining - Convener;
- (iv) Project Director, Panchayat Development;
- (v) Personal Assistant to Collector, Panchayat Development (PAPD);
- (vi) Deputy Director or Assistant Director, Rural Development Department;
- (vii) Deputy Director or Assistant Director, Adi Dravidar and Tribal Welfare Department;
- (viii) Environment Engineer, Tamil Nadu Pollution Control Board;
- (ix) District Forest Officer;
- (x) Chief Engineer, Public Works Department;
- (xi) Assistant Director of Survey and Land Records;
- (xii) District Treasury Officer of the District concerned;
- (xiii) District Social Welfare Officer; and
- (xiv) Deputy Director, Health Department in charge of Public Health Centres.

(2) The District Collector can nominate two other members as Ex-officio members of the Governing Council.

4. Funds of the Trust .- The funds of the Trust shall comprise of initial deposit of Rs.1,000/- (Rupees one thousand only) made by the Government and include -

- (a) payment to the Trust made by the lessees of major mineral leases at the rates specified by the Central Government;
- (b) payment to the Trust made by the lessees of minor mineral leases at the rates specified in these rules;
- (c) all receipts and incomes including interest accrued on the deposits made in the bank; and
- (d) voluntary contributions, if any, received by the Trust from any person or Organisation.

5. Governing Council and Managing Committee of the District Mineral Foundation.-

(1) The members of the District Mineral Foundation Trust shall function as the members of the Governing Council and the District Collector shall be the chairperson of the Governing Council.

(2) A Managing Committee shall consist the following members :-

- (a) District Collector - Chairperson
- (b) The District Revenue Officer - Member-Secretary of the Managing Committee
- (c) Deputy Director or Assistant Director of Geology and Mining - Convener
- (d) (i) Project Director - District Rural Development Agency - Member;  
(ii) Deputy Director (Health) - Member;  
(iii) Chief Educational Officer - Member;  
(iv) District Treasury Officer - Member;  
(v) District Social Welfare Officer - Member;  
(vi) Assistant Director (Panchayat) - Member;  
(vii) One Non-governmental organization nominated by the District Collector; and  
(viii) One Non Official Member nominated by the District Collector, who is having sufficient experience and better knowledge in the field as a Member.

(3) The management of the Trust shall be vested with the Governing Council and the Managing Committee shall manage the day to day affairs of the Trust.

(4) The members shall continue as Trustees during such period they are holding the post and designation and deemed to have ceased to be the Trustees once they ceased to hold the post and designation by virtue of which they were so appointed and in all such cases, the successors in office concerned, shall be deemed to have appointed as trustees, in their place, from the date of their acquiring such official designation.

(5) The nominated Trustees shall be appointed for a term, initially, for a term of three years with effect from the date of their appointment and, the Government, thereafter, may renew their appointment for a further term of three years or may nominate other persons in their place:

Provided that the term of such appointment of nominated Trustees shall not, in any case, exceed three years each.

(6) The Governing Council shall meet at least twice in a year, and shall be convened as desired by the Chairman.

(7) The quorum of such meeting shall be one third of the total members.

(8) The nominated members of the Managing Committee shall be appointed for a term of one year with effect from the date of their appointment and the

Government, thereafter, may renew their appointment for a further term of one year or may nominate other persons in their place:

Provided that the term of such appointment of nominated Trustees shall not, in any case, exceed a total period of two years.

(9) The District Mineral Foundation shall execute a deed appended to these Rules.

(10) The Managing Committee shall meet at least six times in a financial year and it shall be convened as decided by the Member Secretary of the Managing Committee.

6. Powers and functions of the Governing Council.- The Governing Council shall-

(1) lay down broad policy framework and or approve rules and procedures for the functioning of the Trust and review its working;

(2) approve annual plan and annual budget of the Trust upon the recommendations of the Managing Committee;

(3) manage, administer, supervise, monitor and review the expenditure of the Trust Fund at regular intervals; and

(4) appoint an auditor from the List of approved auditors notified by the Accountant General of Tamil Nadu for the Trust Fund in the meeting of the Governing Council on such terms and conditions as may be decided by the Trustees.

7. Powers and functions of the Managing Committee.- The Managing Committee shall -

(1) while discharging its functions, follow the policy framework and the directions of the Governing Council from time to time;

(2) exercise due diligence in carrying out its duties for protecting the interests of the Trust;

(3) ensure timely collection of contribution from the concerned mining lease holders in accordance with the provisions of the Act;

(4) prepare the Master Plan/Vision Document, rules and procedures for the functioning and for the activities of the trust;

(5) assist in the preparation of the annual plan and the annual budget of the Trust along with the proposed schemes and projects;

(6) supervise and ensure the execution of the annual plan and the approved schemes and projects;

(7) accord sanction to the projects, release and disburse the Trust Fund for the purpose;

(8) operate the Fund and to invest the same in diligent manner and to open bank accounts in the name of the Trust and operate such accounts and investments;

(9) monitor the progress of the utilization of Trust funds;

(10) place the audited accounts along with an annual report before the Governing Council for its approval within 60 days of close of financial year;

(11) do all other things which are necessary for smooth functioning and management of the Trust;

(12) lay down and / or approve rules and procedures for the functioning of the Trust.

8. Contribution to the Trust Fund.- Every holder of a mining lease or a prospecting-cum-mining lease or quarry lease shall, of minor minerals in addition to the seigniorage fee, as the case may be, to be paid under the Tamil Nadu Minor Mineral Concession Rules, 1959, pay to the District Mineral Foundation of the District in which mining or quarry operations are carried on, an amount at the rate of ten per cent of royalty or seigniorage fee to be paid under the Tamil Nadu Minor Mineral Concession Rules, 1959 in respect of mining or quarry leases, as the case may be, or prospecting-cum-mining leases granted before the 12th January 2015 and thirty per cent in respect of mining or quarry leases, as the case may be or prospecting-cum-mining leases granted on or after the 12th January 2015.

9. Collection and monitoring of the amount payable to the Trust.- (1) All payments of royalty/seigniorage fee, as the case may be, shall be collected with the District Mineral Foundation Trust Fund component at the rate specified in rule 8 of these rules and also the amount of payment to be made under sub-sections (5) and (6) of section 9B of the Act with effect from 12.1.2015, i.e. the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (Central Act 10 of 2015) and no royalty/seigniorage fee shall be accepted without mandatory contribution towards the Trust Fund.

(2) Every Officer who is authorised to collect the royalty or seigniorage fee, as the case may be, shall direct the lessee to pay the contribution to the Trust Fund to the credit of such bank as may be specified by the Trust.

(3) Every Officer who is authorised to collect the royalty or seigniorage fee, as the case may be,

shall maintain a register of the amount payable as well as paid by the lessee and furnish monthly consolidated statement thereof, to the Member Secretary of the Managing Committee by 15th day of each succeeding month.

10. Interest.- Notwithstanding anything contained in the Act or in any other rule, the District Collector charge simple interest at the rate of twenty four per cent per annum on the component on the royalty / seigniorage fee which the lessee has failed to remit within the period.

11. Penalty.- Whoever contravenes rule 8 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 case of continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first contravention.

12. Operation of the Trust Fund.- The Trust Fund shall be deposited in any Nationalized Bank only in the name of the Trust and all accounts shall be operated under the joint signatures of the Chairperson and any one other member of the Managing Committee nominated by the Chairperson. The Trust shall maintain the books of accounts of the Fund.

13. Expenditure from, and of the Trust Fund.- (1) The Funds available with the Trust shall be used for undertaking activities for the interest and benefit of persons and overall development of the areas affected by mining related operations in the District, in accordance with the Annual Plan prepared by the trustees of the Foundation for the purpose, subject to such guidelines as may be issued by the Government, from the time to time;

(2) The Fund may be utilized for, but not limited to, the activities for the creation of local infrastructure for socioeconomic purposes; for providing, maintaining or upgrading of community assets and services for local population in the area affected by mining related operations; for organising or conducting training programmes for skill development and capacity building for creating employment and self-employment capabilities in such a way as provided and in the manner specified in sub-rules (3) and (4).

(3) Not less than Sixty per cent of the Trust Fund shall be utilized for high priority objects including the following heads:

(i) Welfare of mine affected People

(a) Drinking water supply: centralized purification systems, water treatment plants, permanent/temporary water distribution network including standalone facilities for drinking water; laying of piped water supply system;

(b) Health care: creation of primary / secondary health care facilities in the affected areas with special infrastructures designed to take care of mining related illnesses and diseases possibly with the help of National Institute of Miners' Health; providing necessary staffing, equipment and supplies required making such facilities effective to supplement and work in convergence with the existing health care infrastructure of the Local Bodies, State and Central Government; Providing endowment for medical treatment for diseases caused by mining/quarrying activities for the poor or aged or underprivileged people; Group Insurance Scheme for health care;

(c) Education: construction of school buildings, additional class rooms, laboratories, Libraries, art and crafts room, toilet blocks, drinking water provisions; residential hostels for students/teachers in remote areas, sports infrastructure, engagement of teachers/other supporting staff, e-learning setup, other arrangement of transport facilities (bus/van/cycles/rickshaws/etc.), awarding scholarships to deserving students at various levels of education and nutrition related programs;

(d) Welfare of women and children: special programmes for addressing problems of maternal and child health, malnutrition, infectious diseases;

(e) Welfare of aged and disabled people: special programme for welfare of aged and disabled people, endowment fund for providing sustainable livelihood of aged and disabled people;

(f) Skill development: skill development for livelihood support, income generation and economic activities for local eligible persons. The projects / schemes may include training, development of skill development center, selfemployment schemes, support to Self Help Groups and provision of forward and backward linkages for such selfemployment economic activities.

(ii) Welfare of mine affected area

(a) Physical infrastructure: for providing required physical infrastructure viz. road, bridges, railways and waterways projects; maintenance and damage repair of the existing physical infrastructure viz. road, bridges, railways and waterways under the control of the Local Bodies, State and Central Government caused by mining or quarrying activities in the nearby area;

(b) Environment preservation and pollution control measures: for controlling air, water, surface and dust pollution caused by mining operations and mine dumps in the nearby areas; mine pollution prevention and control technologies or measures that could be adopted by the affected people, safety measures for abandoned mines;

(c) and for any other purposes/activities for the interest and benefit of the affected persons and areas, as may be decided by the Government, time to time, by notification.

(4) Not more than forty per cent of the Trust Fund may be utilized for other priority areas under the following heads and such other heads as may be decided by the Government:-

(a) Irrigation developing: alternate sources of irrigation, adoption of suitable and advanced irrigation techniques;

(b) Energy and Watershed Development: alternate source of energy (including micro hydel) and rainwater harvesting system, development of orchards, integrated farming and economic forestry and restoration of catchments;

(c) Environment preservation and pollution control measures: prevention of pollution of streams, lakes, ponds, ground water, other water sources in the region; development and maintenance of drainage system for mine or quarry effluents; for establishing effluent treatment plants;

(d) Any other measures for enhancing environmental quality in mining district, or for such other purpose, as may be decided by the governing council:

Provided that an amount not exceeding six per cent of the annual receipts of the Fund, subject to an upper limit fixed by the Government may be utilized for administrative, supervisory and overhead costs or establishment expenses of the Foundation:

Provided further that the Trust may bear an

expenditure upto three per cent, from and within the six per cent as provided in the first proviso, of its accrued funds for the services of the personnel appointed from the Government departments or from regular employees of the District Panchayat or such other cadre as may be decided by the Government, for providing administrative and technical assistance to the Trust.

(5) Notwithstanding anything contained in sub-rules (3) and (4), the Trust Fund or any part thereof shall not be used for advancement of any loan or grants in any case to any of the beneficiaries other than the purposes specified therein.

14. Annual Plan.- (1) The Member - Secretary of the Managing Committee of the Trust shall-

(i) at the beginning of each financial year, cause preparation of plans for short term projects and long term projects proposed to be undertaken by the Trust in relevant financial year, to be referred as annual plan, together with details of activities to be undertaken or completed by the Trust during such time, the expected time for completion of the projects and cost for such projects;

(ii) publish a notice in the District Gazette and in the official website of the Trust and also issue an advertisement, at least in two dailies, one in Tamil and another in English, having wide circulation in the District, every year during the month of January, inviting applications/ suggestions from the Public, Panchayats, Non-governmental organizations and Environmentalists regarding the projects/activities to be included in the annual plan of the Trust for the succeeding financial year. A copy of the notice shall also be sent to all Panchayats and Village Administrative Offices in the District inviting suggestions;

(iii) scrutinize the suggestions thus received and from other sources in the monthly meeting of the Managing Committee, fix priority in the manner as provided under rule 13 of this rule and shortlist the activities that can be taken up in the order of priority in annual plan for next financial year for approval of the Governing Council.

(2) The approved annual plan shall contain all projects, programmes, activities proposed to be undertaken by the trust for achieving its objectives and shall have clearly demarcated milestones;

(3) Notwithstanding anything contained in sub-rule (1), the Governing Council, in its meeting, with the approval of three-fourth of its members can decide to include any other project, that it may find as necessary to be taken up.

15. Annual Budget.- The Member - Secretary of the Managing Committee shall, at the beginning of each financial year, cause preparation of an annual budget containing details of the proposed income and expenditure on activities covered in the annual plan for that particular financial year, including legal, administrative and other costs and expenditure proposed to be incurred by the Trust together with details of funding requirements in this regard, to be referred to as annual budget, for approval of the Governing Council.

16. Approval of an annual plan and annual budget.- (1) The annual plan and annual budget shall be laid before the Governing Council for its approval.

(2) The Member - Secretary of the Managing Committee shall, on receipt of the copies of duly approved annual plan and related annual budget from the Chairperson of the Governing Council, furnish the same to the Government within a period of thirty days from the date of receipt of approval of the Governing Council.

(3) Without prejudice to the provisions of sub-rule (2), the Trust may undertake expenditure for activities that are not approved in the annual plan, but warrants immediate action, subject to specific approval by the Chairperson of the Governing Council, which shall be laid before the Governing Council in the immediate next meeting.

17. Execution of work.- (1) The activities undertaken by the Trust shall be executed through Government Departments, agencies and Public Sector Undertakings, who are entrusted to, and have specific norms and procurement procedures to, undertake such works, as may be applicable to the implementation of Government projects

(2) Notwithstanding anything contained in sub-rule (1), the Managing Committee may, with the approval of the Governing Council, award the execution of those work which otherwise could not be executed through Government Departments, agencies and Public Sector Undertakings, to other agencies, competent and sound in executing the work, through transparent processes like tender-cum-auction. In all such cases,

all the terms, conditions and procedures that shall be followed for Government projects, whenever the work is executed through Government Departments, agencies and Public Sector Undertakings, as the case may be, shall be followed.

(3) Technical approval and supervision of the work will be looked after by the officers competent to do so under the administrative delegation of powers as applicable to the Department concerned.

(4) Transfer of fund to all agencies and beneficiaries shall be into their bank account only.

18. Maintenance of accounts and audit .- (1) The accounts and audit of the Fund shall be in the manner as specified below:-

(i) The accounting of financial year of the Trust shall be from 1st of April to 31st of March.

(ii) The Managing Committee shall maintain or cause to be maintained proper books of accounts, documents and records with respect to the Trust Fund to give a true and fair picture of the affairs of the Trust, in the form, mode and manner as may be decided by the Government.

(iii) The accounts of the Trust shall be audited on the completion of each half year by the qualified auditor/ auditors appointed by the Trust. The auditor/auditors shall submit the half-yearly audit report to the Managing Committee and on receipt, the Managing Committee shall place the report before the Governing Council for approval, in its meeting, by three-fourth of its members.

(iv) The auditor/auditors of the Trust shall be appointed by the Trustees from the list of approved auditors notified by the Accountant General of Tamil Nadu in the meeting of the Governing Council, on such terms and conditions as may be decided by the Trustees.

(v) The Governing Council, in its meeting, with the approval of three-fourth of its members may decide to remove and replace the auditor/auditors of the Trust.

(2) Notwithstanding anything contained in sub-rule (1), the Government may, by notification in the Tamil Nadu Government Gazette, entrust the District Accounts Officer in the District, and also request the Accountant General (Audit) for the audit of the Fund annually on completion of each year.

(3) The Trust shall forward the approved budget and annual plan along with schemes and projects for

the next financial year, to the District Panchayat, District Administration and the Government for publication on their respective websites.

(4) The Trust shall prepare a quarterly progress report in physical and financial terms in respect of the approved schemes and projects within forty-five days of the close of the quarter and forward it to the District Panchayat and District Administration, immediately thereafter for publication on their respective websites.

(5) The Trust shall forward the approved annual report and the approved audit report immediately after their approval by the Governing Council within sixty days of close of financial year to the District Panchayat, District Administration, and to the Government along with audit report for publication on their respective websites.

19. Compliance of transparency.- (1) Every foundation will prepare and maintain a website on which, inter alia, the following information will be hosted and kept updated, namely:-

(i) Details of composition of the bodies of the Foundation.

(ii) List of areas and people affected by mining.

(iii) Quarterly details of all contributions received from lessees and others.

(iv) All meeting agenda, minutes and action taken reports (ATRs) of the Foundation.

(v) Annual Plans and budget work orders, annual report.

(vi) Online status of ongoing works implementation status / progress of all the projects / programmes being undertaken under Pradhan Mantri Khanij Kshetra Kalyan Yojana should be made available on the website, including description of work, details of beneficiaries, estimated cost, name of implementing agencies, expected date of commencement and completion of work, financial and physical progress upto last quarter, etc.,

(vii) List of beneficiaries under various welfare programs.

(viii) Voluntary disclosures under the Right to Information Act, 2005 (Central Act 22 of 2005).

20. Annual report.- (1) The Member-Secretary, Managing Committee shall, every year, within ninety days from the date of closure of the financial year, cause to prepare an annual report on the activities for the respective financial year and with the concurrence of the Managing Committee submit the

report before the Governing Council for its approval.

(2) The annual report shall be submitted to the Government within one month from the date of its approval by the Governing Council and shall also be hosted on the website of the Foundation.

21. General conditions for the use of the Fund.-

(1) The development and welfare activities to be taken up under these rules should be, as far as possible, in the nature of complementing the ongoing schemes/projects being funded by the State as well as Central Government. However, without prejudice to the powers of the Foundation, efforts shall be made to achieve convergence with the State and the District Plans, so that the activities taken up by the Foundation supplement the development and welfare activities and are treated as extra budgetary resources for the State Plan.

(2) If the affected area of a mine or quarry, existing in one district, also falls in the jurisdiction of another district, proportionate amount collected from the mine or quarry by the Foundation, as may be decided by the Government in the District Collector, shall be transferred to the Foundation of the other district concerned for taking up the activities in such areas. A project that is for benefit of the affected area/people, but stretches beyond the geographical boundary of the district should be taken up after obtaining prior approval of the Government.

(3) A reasonable sum of the annual receipts should be kept as endowment fund for providing sustainable livelihood.

22. Administrative arrangements.-

(1) The Government shall provide services of the personnel under its control including employees working in the District Collectorate for management of the Trust and for execution of the annual plan as may be required for the purpose.

(2) The District Collector shall provide required number of core personnel from regular employees of the District Collectorate or such other cadre, for providing administrative and technical assistance to the Trust. The services of such personnel shall continue to remain in their own respective cadres. The Trust may bear expenditure upto three per cent of its accrued funds for this purpose from the six per cent of the Fund provide for expenditure for administration

of the Trust as provided in the second proviso to sub-rule (4) of rule 13.

(3) The Trust may also seek services providers to provide such services as may be needed for smooth functioning of the Trust and may provide for incurring contingent expenditure for its functioning.

23. Liability of Trustees.- (1) The Trustees shall not be liable on account of anything done in good faith, bonafide with due diligence. The Trustees shall also not be liable or responsible for any banker, broker, custodian or other person in whose hands the same may, in good faith, be deposited or placed nor for the deficiency or insufficiency in the value of any investments of the Trust Fund nor otherwise for any involuntary loss.

24. Trustees' remuneration.- The Trustees shall not be entitled to any remuneration for their services.

25. The Seal of the Trust.- The Trustees, in a meeting of the Governing Council may decide to provide a seal for the purpose of the Trust and shall have power from time to time to destroy the same and substitute a new seal in lieu thereof. The Seal of the Trust shall remain in the custody of the Chairperson of the Managing Committee and the Chairperson shall have the authority to use the same for and on behalf of the Trust.

26. Revocability.- The Government shall have the discretion to revoke the Trust if desired to do for the reasons recorded in writing. The Trust shall continue to exist till such time as may be decided by the Government. At the time of extinguishment of the Trust, all the assets and liabilities of the Trust shall be transferred to the Government.

27. Exemption.- Public Works Department is exempted from payment of contribution to the Fund in respect of sand quarried by it on behalf of the Government.

9. Subsequently, by G.O.Ms.No.90, Industries (MMD-1) Dept, dated 27.07.2017, published in Tamil Nadu Gazette Extraordinary No.248, dated 27.07.2017, the State Government made some amendments to the rules, framed under G.O.Ms.No.57, dated 19.05.2017. By the said rules, mining and quarrying lease holders, have been mandated to pay contribution to the District Mineral Foundation w.e.f 17.09.2015. Amendment to the Tamil Nadu District Mineral Foundation Rules, 2017, is hereunder,

No.SRO A-35(a)/2017

In exercise of the powers conferred by sub-section (4) of section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957), the Governor of Tamil Nadu hereby makes the following amendments to the Tamil Nadu District Mineral Foundation Rules, 2017.

2. The amendments hereby made shall be deemed to have come into force on 19th May 2017.

#### AMENDMENT

In the said Rules,

(1) in rule 8 -

(i) for the expression "before the 12th January 2015" , the expression "after the 12th January 2015" shall be substituted;

(ii) for the expression "after the 12th January 2015" the expression "before the 12th January 2015" shall be substituted;

(2) in Appendix, for the para 13 the following para shall be substituted, namely:-

"13. OPERATION OF THE TRUST FUND.-The Trust Fund shall be deposited in any Nationalized Bank only in the name of the Trust and all accounts shall be operated under the joint signatures of the Chairperson and any one other member of the Managing Committee nominated by the Chairperson. The Trust shall maintain the books of accounts of the Fund".

10. It is the contention of the petitioners that as per Rule 8, holder of a mining lease is liable to pay the contribution to the said Foundation in addition to the seigniorage fee which is levied under the Tamil Nadu Minor Mineral Concession Rules, 1959 in favour of the Trust at the rate of 30% the seigniorage fee before 12.1.2015 and 10% on or after 12.01.2015. By the said Rules, the mining and quarrying lease holders have been mandated to pay contribution to the District Mineral Foundation with effect from 12.1.2015.

11. According to the petitioners, though the 1st respondent is not vested with any power to frame rules, to have retrospective application, by the said G.O.Ms.No.57, dated 19.05.2017, the 1st respondent framed rules, having retrospective application and published the rules contemplating that there can be a levy of contribution to the Trust at the rate of 30% seigniorage fee which has to be paid for the leases granted before 12.1.2015 and 10% of the seigniorage fee for leases granted after 12.1.2015. Apart from the retrospective levy of contribution to the said Trust, the interest portion is

also fixed in the rule, fixing the liability at 24% and in case of not paying the amount it also becomes a criminal offence liable for punishment for a period of 2 years with or without fine of Rs.5,000/-.

12. As stated, earlier Section 9B does not apply minor minerals. Sub-Clause (a) and (b) of Clause (4) of Section 15 are in respect of Section 9B of the Act, which do not apply to minor minerals. Sub-Clause (c) of Clause (4) of Section 15 will apply to Minor Minerals. The said sub-clause (c) reads as follows:-

"15(4) (c). the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under Section 15-A"

13. The 1st respondent is not having any jurisdiction to frame the rules, contemplating either prosecution or fine for delayed payments of contribution to the District Mineral Foundation. The penalties and prosecution contemplated under Section 21 of the Act, are for contraventions of Sub-Section (1) or Sub-Section (1-A) of Section 4 of the Act. The Central Government did not contemplate any prosecution or penalty or fine or interest for the delayed payment of contributions to the District Mineral Foundation. Based on Rules 8, 9, 10 and 11 of the Tamil Nadu District Mineral Foundation Rules, 2017, in some of the writ petitions, notices have been issued, levying and demanding contributions to the mineral development fund, from 17.09.2015 with retrospective effect. The said notices further states that, if the demanded amounts are not paid on or before 31.12.2017, the same will carry interest @ 15% p.a.

14. The issue, as to whether, a demand can be made for contribution to District Mineral Foundation with retrospective application has been considered by the Hon'ble Supreme Court in Transfer Case (Civil) No.43 of 2016, (Federation of Indian Mineral Industries & others -Vs- Union of India & another) and by a Judgment, dated 13.10.2017, the Hon'ble Supreme Court held that unless the Act enables the Central Government or the State Governments, to frame rules, the Centre and the States do not have any jurisdiction or authority to frame rules having retrospective application. Though the said Judgment is dealing with the leases pertaining to Major Minerals, the issue as to whether the States can frame rules having retrospective application also has been considered and held that, the States are not conferred with such power under the Act. By the said Judgment it has been further held that, even the Central Government does not have power under the Act to frame rules with retrospective application.

15. It is a settled principles of law that, the subordinate legislative authority is not vested with the power of framing rules with retrospective application, unless the Act confers such power and therefore, it is the contention of the petitioners that the State Government does not have any jurisdiction whatsoever, to issue G.O. framing rules, to have retrospective application, prosecution or fine for delayed contributions and also does not have power to levy interest over the delayed payments under the Act. Since levy and collection of interest over the delayed payments is not contemplated under the notification of the Central Government, dated 16.09.2015, the Hon'ble Supreme Court in the said Judgment, directed to pay interest @ 15% p.a. on the delayed payments.

16. It is submitted that the issue in the said Judgment, is whether the rules framed by the Central Government, by notification dated 17.09.2015, can have retrospective application of the date of establishment of District Mineral Foundation i.e., 12.01.2015. It has been held that, since the "Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015", were framed by the Central Government under Section 9B of the Act, by notification dated 17.09.2015, the said rules will have prospective application i.e., from 17.09.2015.

17. As stated earlier, the said rules framed by the Central Government, dated 17.09.2015, are dealing with major minerals. The State Government have framed the "Tamil Nadu District Mineral Foundation Rules, 2017", by the impugned G.O.Ms.No.57, dated 19.05.2017. which will have only prospective application i.e., from 19.05.2017. However, the State Government has misconstrued the "Mines and Minerals (Contribution District Mineral Foundation) Rules, 2015" of the Central Government, dated 17.09.2015 and also the judgment of the Hon'ble Supreme Court rendered in Transfer Case (Civil) No.43 of 2016 (Federation of Indian Mineral Industries & Ors -Vs- Union of India), dated 13.10.2017, based on which, the demand notices have been issued to the petitioners. In view of the said settled principles of law, subject Rules 8, 9, 10 and 11 of the Tamil Nadu District Mineral Foundation Rules, 2017 are totally without jurisdiction, and ultra virus Section 15 of the Act.

18. It is contended by the petitioners that since the Central Government have framed Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015, on 17.09.2015, fixing percentage of contributions to be made, the Hon'ble Supreme Court held that, the Central Government can levy and

demand contributions as per the rates fixed by the said G.O, prospectively i.e., from 17.09.2015. Since the State Government have framed the Tamil Nadu District Mineral Foundation Rules, 2017, by the subject G.O.Ms.No.57, dated 19.05.2017, the same will have prospective application and does not have retrospective application.

19. It is the further contention of the petitioner that there is no enabling provision either to contemplate prosecution or impose fine or interest, on the delayed contributions to the District Mineral Foundation. The prosecutions and action contemplated under Section 21 of the Act are in respect of contraventions of Sub-Section (1) or Sub-Section (1-A) of Section 4 of the Act.

20. The petitioners have further contended that there is no pre-requisite of making contribution to the District Mineral Foundation along with payment of seigniorage or royalties, which are payable to the government to obtain transport permits under Section 15(3) of the Act. Whereas, contributions to the District Mineral Foundation is payable under the Tamil Nadu District Mineral Foundation Rules, 2017.

21. Main grounds of challenge in all these writ petitions are as follows:

(i) The Impugned Rules 8, 9, 10 and 11 of the "Tamil Nadu District Mineral Foundation Rules, 2017" framed in G.O.Ms.No.57, Industries (MMD.1), dated 19.5.2017 and G.O.Ms.90, Industries (MMD.1) Department, dated 27.7.2017 are contrary to law, illegal, without jurisdiction and ultra vires the Rule making power of the State Government.

(ii) The parent Act viz., The Mines and Minerals (Development and Regulation) Act, 1957 does not empower the State Government to levy any charge or contribution to the District Mineral Foundation retrospectively. Therefore, the levy under the impugned Rules are liable to be struck down.

(iii) As per Section 2 of the Act, the entire mining field is under the Union Control. Under Section 15 of the Act, the power has been delegated to the States to frame Rules, in respect of the Minor Minerals. The said Act does not enable the State Government to frame Rules, having retrospective application / operation.

(iv) The State Government have failed to note that as per Section 14 of the Act, Section 5 to 13 does not apply to Minor Minerals. Hence, Section 9B

and Section 13, does not have any application in respect of Minor Minerals. Similarly, Rules framed by the Central Government under Section 13 of the Act, does not apply to minor minerals like granite. Therefore, the rates fixed by the Central Government for contribution to the DMF will not apply to the minor mineral.

(v) The State Government have failed to understand the actual ratio of the Judgement of the Hon'ble Supreme Court of India rendered in Transfer Case (Civil) No.43 of 2016, (Federation of Indian Mineral Industries & Others - vs - Union of India & another delivered on 13.10.2017 (reported in 2017 (12) Scale 586). In fact, by the said Judgement, the Hon'ble Supreme Court clearly held that unless the Act enables the States to frame Rules having retrospective applications, no Rules can be framed by the States having retrospective application / operation. By applying the ratio of the Hon'ble Supreme Court of India, the demand for levy from 17.09.2015 by the respondents cannot be sustained.

(vi) The State Government have failed to note that though several states established District Mineral Foundation and framed Rules in the year 2015 itself, the State Government neither issued notification establishing District Mineral Foundation nor framed District Mineral Foundation Rules, till 19.5.2017 in respect of the minor minerals.

(vii) Since the State Government have framed "Tamil Nadu District Mineral Foundation Rules, 2017" on 19.5.2017, by G.O.Ms.No.57, dated 19.5.2017, it can levy and demand contributions to the District Mineral Foundation over and above the payment of seigniorage fee from 19.5.2017 and not prior to that.

(viii) The State Government have failed to note that since the Central Government framed "Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015" on 17.9.2015, fixing percentage of contributions to be made, the Hon'ble Supreme Court held that the Central Government can levy and demand contributions as per the rates fixed by the said G.O. prospectively i.e., from 17.9.2015. Since the 1st respondent framed the Tamil Nadu District Mineral Foundation Rules, 2017, by the G.O. Ms. No. 57, dated 19.5.2017, the same will have prospective application and does not have retrospective application. The issue before the Hon'ble Supreme Court of India was whether the contribution can be collected with retrospective

effect from 12.1.2015 or from the date of framing of the "Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015" dated 17.9.2015, by the Central Government. The Hon'ble Supreme Court held that the levy and demand can be only prospective from the date of framing of the Rules, i.e., from 17.9.2015 and not with retrospective effect from 12.1.2015.

(ix) The State Government have failed to note that the "Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015", framed under Sec. 13 of the Act, and as per Section 9B of the Act, these Rules are applicable throughout India in respect of major minerals and the 1st respondent is bound to follow the said Rules and is entitled to levy and demand contributions to the District Mineral Foundation w.e.f. 17.9.2015 in respect of major minerals as per the judgment of the hon'ble Supreme Court of India. So far as minor minerals are concerned, the Rules framed by the 1st respondent under Section 15 or 15(4) of the Act will apply prospectively and does not have retrospective application.

(x) The State Government have failed to note that since there is no enabling provision to levy and demand interest over the delayed contributions to the District Mineral Foundation, the Hon'ble Supreme Court in the said Judgement fixed 15% interest over the delayed contributions to the District Mineral Foundation, which is applicable only to the major mineral.

(xi) The State Government have failed to note that there is no enabling provision either to contemplate prosecution or fine or interest, on the delayed contributions to the District Mineral Foundation. The prosecutions and fines contemplated under Section 21 of the Act are in respect of contraventions of Sub-Section (1) or Sub-Section (1-A) of Section 4 of the Act. There is no other enabling provision to the 1st respondent either to contemplate prosecution or levy fine or interest over the delayed contributions to the District Mineral Foundation.

(xii) The State Government have failed to note that the petitioner quarried and marketed the minor minerals (granite blocks) as per the rates available during the relevant period. Now, the 1st respondent cannot make the petitioner to pay the contributions, which were not collected from the respective customers during the relevant period.

(xiii) The direction to pay 30% of the seigniorage fee for the leases granted prior to 12.1.2015 is also illegal, whereas 10% of the seigniorage fee alone is fixed for the leases granted after 12.1.2015. The two different levies are irrational and discriminatory in nature. There is no reason for such a discrimination for levying contribution differently.

(xix) No doubt, the State Government is empowered to establish a Trust as a non-profit body, which is called District Mineral Foundation and also frame the Rules for direction to make the contribution to District Mineral Foundation only in the case of any district affected by mining related operation. Here, there is no mention in the Impugned G.Os as to which District or which part of the District are affected by mining operation, in the absence of the area being notified as affected by mining related operation, the impugned G.Os/Rules levying contribution are unsustainable."

22. The Deputy Secretary to Government, Industries Department, Secretariat, Chennai-9, on behalf of the respondents, has made a preliminary objection, regarding on the maintainability of the writ petition filed by the Petitioners-Association that on the basis of the settled proposition of law that an Association or Sangam cannot maintain a writ petition under Article 226 of the Constitution, on behalf of the members of that Sangam. In fact, the Hon'ble Supreme Court has laid down the dictum in the case reported in Mahinder Kumar Gupta vs Union Of India reported in 1995(1) SCC 85 that the Association cannot file a writ petition as it has no fundamental right under Article 32 of the Constitution of India.

23. Further, the Hon'ble Supreme court of India has decided the matter in the Transferred Case (Civil) No.43 of 2016 on 13.10.2017 directing that the contributions to the DMF are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of minerals other than coal, lignite and sand for stowing with effect from 17th September, 2015 ie., when the rates were prescribed by the Central Government and in respect of coal, lignite and sand for stowing with effect from 20th October, 2015 ie., when the rates were prescribed by the Central Government or with effect from the date on which the DMF was established by the State Government by a notification, (ie., 19.5.2017) whichever is later, before 31.12.2017 and failing which they will be liable to make the contribution with interest at 15% per annum from the

due date.

24. The respondents have submitted that the ecological imbalance and environmental degradation over the years due to mining operations all over the Nation was the concern of the Government for a long period of time. The Hon'ble Supreme Court of India evolved the "polluter pay" concept in the "Vellore Citizens Forum case". Hence with a view to find a fool-proof mechanism in gathering and maintaining corpus fund which could be utilized to remedy the ecological imbalance due to mining the Parliament has enacted the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (here in after called the Amendment Act) in Notification No.10/2015 dated 12.1.2015 introducing mandatory provisions for the establishment of District Mineral Foundation (DMF) by the State Government with effect from 12.1.2015.

25. The respondents have further submitted that Section 9-B of the Amended Act envisages District Mineral Foundation as a non-profit body with an objective to work for the interest and the benefit of the persons and the areas affected by mining operations and directs all the State Governments to establish District Mineral Foundation in the Districts. It states as follows:

"9-B. District Mineral Foundation (1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation.

(2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.

(3) The composition and functions of District Mineral Foundation shall be such as may be prescribed by the State Government.

(4) The State Government while making rules under sub-sections (2) and (3) shall be guided by the provisions contained in Article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007).

(5) The holder of a mining lease or a prospecting licence-cum-mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.

(6) The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the categorization of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government".

26. The respondents have further submitted that sub section (3) and (4) of Section 9-B and Sub section (4) of Section 15 of the Amendment Act empowers the State Government to prescribe the composition and functions of District Mineral Foundation and to make rules for DMF in respect of major and minor minerals respectively.

"Sub section (4) of Section 15 of the Amendment Act provides that:

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

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

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

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

Section 15-A "Power of State Government to collect funds for District Mineral Foundation in case of minor minerals:-

The State Government may prescribe the payment by all holders of concessions related to minor minerals of amounts to the District Mineral Foundation of the district in which the mining operations are carried on.

27. The respondents have further submitted that subsequently, the Central Government, in exercise of powers conferred under section 20-A of the Amendment Act, issued orders directing all the State Governments to incorporate the Pradhan Mamtiri Khanij Kshetra Kalyan Yojana (PMKKKY)" into the rules framed by them for the District Mineral foundation and to implement the said rules. PMKKKY defines the affected areas and affected people and also prescribes the utilization of the DMF Trust fund. "Pradhan Manthri Khanij Kshetra Kalyan Yojana (PMKKKY)" of the Government of India have identified the thrust areas for the welfare and development of the mine affected people and area and set up priorities so that the 60% of the District Mineral Foundation Trust fund have to be utilised for high priority items such as Drinking Water Supply, Environment preservation and pollution control measures, Health Care, Education, Welfare of Women and Children, Welfare of Aged and Disabled People, Skill Development and Sanitation and 40% of the District Mineral Foundation Trust fund have to be utilised for other priority items such as Physical Infrastructure, Irrigation, Energy and Watershed Development.

28. The respondents have further submitted that the sub section (5) and (6) of Section 9-B of the Amendment Act, empowers the Central Government to prescribe the rate of contribution by the concessionaires towards District Mineral Foundation in respect of Major Minerals and Section 15-A of the Act empowers the State Government to prescribe the rate of contribution in respect of minor mineral. Sub section (5) and (6) of Section 9-B of the Amendment Act, the Ministry of Mines, Government of India notified "District Mineral Foundation by framing Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015" on 17.9.2015 prescribing the DMF contribution to be paid in addition to the royalty while removing the mineral by the major mineral lessees, as

- \* 10% of the royalty in respect of leases granted after the amendment of the Act ie., after 12.1.2015 and

- \* 30% the royalty in respect of leases granted prior to the amendment of the Act ie., before 12.1.2015

29. The respondents have further submitted that as per the rules, the contributions towards DMF fund have to be collected with effect from 12.1.2015 i.e., date of enactment of the Amended Act. Similarly, the Ministry of Coal also prescribed the contribution to be made by the concessionaires in respect of Coal and Lignite and Sand for Stowing vide "Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015" notified on 20.10.2015, with effect from the "date of notification issued under Section 9-B (1) of the Amendment Act by the State Government establishing District Mineral Foundation or the date of coming into force of these rules, whichever is later". However, subsequently, the Ministry of Coal in their "Mines and Minerals (Contribution to District Mineral Foundation) (Amendment) Rules, 2016" has modified the effective date as "12th January 2015".

30. The respondents have further submitted that the Central Government has fixed the rate of contribution as 30% of royalty for mining leases or prospecting licence-cum-mining leases which were granted prior to 12.1.2015 and as 10% of royalty for leases which were granted after 12.1.2015, paid in terms of the Second Schedule to the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957). The Second Schedule to the Act contains the 31 minerals which were declared as minor minerals vide Ministry of Mines, Government of India vide their notification No. S.O.423E, dated 10.02.2015 also. Therefore, the rate of contribution towards District Mineral Foundation in respect of common use minor minerals only was remained to be fixed by the State Government.

31. At the time of the notification i.e., on 17.9.2015, since the said 31 minerals have become minor minerals, the power to fix the rate of contribution in respect of those 31 minor minerals, is vested with the State Government, as per Section 15-A of the amended Act. It is submitted that the Government of Tamil Nadu vide G.O.(Ms).No.57, Industries Department, dated 19.05.2017 have notified the Tamil Nadu District Mineral Foundation Rules, 2017 for both Major and Minor Minerals. In connection with effective date of mandatory contributions to the District Mineral Foundation, the Hon'ble Supreme Court of India, in its orders in the case of Federation of Indian Mineral Industries & Ors. Vs. Union of India and Anr. in Transferred Case (Civil) No.43 of 2016, dated 13.10.2017 has held that:

(i) Merely because the District Mineral Foundations have been established or are deemed to have been established from a date prior to the issuance of the relevant notifications does not make their operation retrospective;

(ii) In any event, the establishment of the District Mineral Foundations (assuming the establishment is retrospective) from 12th January, 2015 does not prejudicially affect any holder of a mining lease or a prospecting licence-cum-mining lease;

(iii) In view of the failure of the Central Government to prescribe the rate on 12th January, 2015 at which contributions are required to be made to the District Mineral Foundation, the contributions to the District Mineral Foundation cannot be insisted upon with effect from 12th January, 2015. Fixing the maximum rate of contribution to the District Mineral Foundation is insufficient compliance with the law laid down by the Constitution Bench in Vatika;

(iv) Contributions to the District Mineral Foundation are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of minerals other than coal, lignite and sand for stowing with effect from 17th September, 2015 when the rates were prescribed by the Central Government;

(v) Contributions to the District Mineral Foundation are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of coal, lignite and sand for stowing with effect from 20th October, 2015 when the rates were prescribed by the Central Government or with effect from the date on which the District Mineral Foundation was established by the State Government by a notification, whichever is later;

(vi) The notification dated 31st August, 2016 issued by the Central Government is invalid and is struck down being ultra vires the rule making power of the Central Government under the MMDR Act.

32. The respondents have further submitted that in consequent to the orders of the Hon'ble Supreme Court dated 13.10.2017, the effective date from which the collection of contribution towards District Mineral Foundation fund for major leases are to be made is 17.09.2015 and for Coal and Lignite is 19.05.2017 i.e. date of notification of District Mineral Foundation Rules by Government of Tamil Nadu. The Hon'ble Supreme Court in the said judgment has considered the fact that State of Tamil Nadu and Uttar Pradesh have notified their respective DMF Rules after a lapse of more than one year from the date of enactment of the mandatory provisions for DMF in the Act and held in Paragraph 37 and 38 of the order that:

"37...xxxxx...The object of the District Mineral Foundation is "to work for the interest and benefit of persons, and areas affected by mining related operations". The purpose of Section 9B of the MMDR Act and the object of the District Mineral Foundation are in furtherance of the cause of social justice for those affected by the mining related operations - including tribals who may be dislocated or displaced from their habitat. To deny them a benefit that is rightfully theirs only because the State Government has been lax in establishing the District Mineral Foundation would be doing injustice to them.

38. Additionally, Section 9-B of the MMDR Act creates a liability and only the quantum of the liability remained to be determined. That determination came on the issuance of the notification of 17th September, 2015. The fact that it would take time (even more than a year as in the case of Tamil Nadu and Uttar Pradesh) for the benefit to reach the affected persons cannot detract from the liability of the petitioners to contribute nor does it absolve them of their liability to pay the contribution."

The Hon'ble Supreme Court, in Para 48 of the said order dated 13.10.2017, has further observed that,

"48. We grant time till 31st December, 2017 to those holders of a mining lease or a prospecting licence-cum-mining lease who have not made the full contribution to the District Mineral Funds to pay the contribution, failing which they will be liable to make the contribution with interest at 15% per annum from the due date."

33. The respondents have further submitted that regarding the rate of contributions already made by the lessees prior to 17.9.2015 in respect of major minerals other than Coal, Lignite and Sand for stowing and prior to 19.5.2017 in respect of Coal, Lignite and Sand for stowing, the Hon'ble Supreme Court, in the Para 48, held that:

"...xxxxx...We also make it clear that in the event any holder of a mining lease or a prospecting licence-cum-mining lease has mistakenly made contributions to the District Mineral Fund from a date prior to the date that we have determined, such a holder of a mining lease or a prospecting licence - cum - mining lease shall not be entitled to any refund but may adjust the contribution against future contributions, without the benefit of any interest."

Therefore, contributions, if any, made by any lessee prior to

the effective date determined by the Supreme Court cannot be refunded, instead, the same could be adjusted towards the subsequent payments.

34. The respondents have further submitted that in order to comply the orders of the Hon'ble Supreme Court dated 13.10.2017, necessary instructions were given to the District officers to collect the contributions to the respective District Mineral Foundations in the State with effect from 17.9.2015 in respect of all minerals other than Coal, Lignite and Sand for stowing and from 19.5.2017 in respect of Coal, Lignite and Sand for stowing. The District Collectors have issued demand notices requesting to pay the contributions to the respective District Mineral Foundations on or before 31.12.2017 in respect of ail minerals other than Coal, Lignite and Sand for stowing due to the State from 17.9.2015. It is further submitted that as on 31.3.2018, an amount of Rs.264.640 crores have been collected as contribution towards District Mineral Foundation Fund from both major and minor mineral lessees in the State. Some of the minor mineral lessees who are aggrieved by the demand notices issued by the respective District Collectors in respect of contribution towards District Mineral Foundation have challenged the levy of District Mineral Foundation on them.

35. The respondents have further submitted that the contributions of the lessees to the District Mineral Foundation will be utilized for the interest and benefit of the mine affected people and area as per the guidelines of the Government of India and as per the notification No. 10/2015, dated 12.01.2015. On the averments that the petitioner's association are a registered society with 51 members, it is submitted that no remarks would be offered. In other words it is submitted that this matter cannot be treated as affecting the society activity. Further, it is submitted that each and every individual member of the society who are having lease for any mineral have to remit the dues as calculated by the District Collector as per the directions of the Government of India by way of statutory provisions both in the Act and in the rules as well.

36. The respondents have further submitted that the Government of India have vide notification dated 26.3.2015 in notification No.10/2015 have brought out a Parliamentary amendment to the Mines and Minerals (Development and Regulation) Act, 1957 in which a new provision was introduced as follows:-

"9-B. (1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation.

(2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.

(3) The composition and functions of District Mineral Foundation shall be such as may be prescribed by the State Government.

(4) The State Government while making rules under sub-sections (2) and (3) shall be guided by the provisions contained in article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

(5) The holder of a mining lease or a prospecting licence-cum-mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.

(6) The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the categorization of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government''.

37. The respondents have further submitted that in consequence of the above statutory Parliamentary directions to all the States, the State of Tamil Nadu vide notification in G.O.Ms.No. 57, Industries (MMD.1) Department, dated 19.5.2017 by which the Tamil Nadu District Mineral Foundation Rules, 2017 were issued. In consequence of this State rules only all the District Collectors have issuing notices to all the lessees levying the dues of DMF from the crucial date at that time

namely, 12.1.2015. But the Government of India have issued notification fixing the rates at which the major mineral lessees and minor mineral lessees have to remit the dues of District Mineral Foundation i.e., from 17.9.2015. This notification was called Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015. Meanwhile, challenges have been raised before the Hon'ble Supreme Court of India regarding in the levy of District Mineral Foundation.

"In respect of the submission of the petitioner that, the Government is not vested with any power to frame rules to have retrospective application, by G.O. dated 19.5.2017, and further contention that the rules 8, 9, 10 & 11 are stated to have been given with retrospective effect with a consequence of Criminal prosecution and levy of interest on the principal amount due to the Government. In this regard it is submitted that the Parliament had created the indirect tax levy to be made available for the benefit of the common public from the date of notification issued by the Parliament namely 12.1.2015, but the rules of the Government of India were framed subsequently on 17.9.2015. But still further in the same notification the Government of India have mentioned as follows-."

" 1. Short title and commencement - (1) These rules maybe called as the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015.

(2) These rules shall be deemed to have come into force on the 12th day of January, 2015.

2. Amount of contribution to be made to District Mineral Foundation- Every holder of a mining lease or a prospecting license-cum-mining lease shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operation are carried on, an amount at the rate of-

a) ten per cent of the royalty paid in terms of the Second Schedule to the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (herein referred to as the said Act) in respect of mining leases of, as the case may be, prospecting licence-cum-mining lease granted on or after 12th January, 2015; and

b) thirty per cent of the royalty paid in terms of the Second Schedule to the said Act in respect of mining leases granted before 12th January 2015".

Ultimately, the Hon'ble Supreme Court have issued a direction as follows:

"General in different perspectives, we hold:

i). Merely because the DMFs have been established or are deemed to have been established from a date prior to the issuance of the relevant notifications does not make their operation retrospective.

ii). In any event, the establishment of the DMFs (assuming the establishment is retrospective) from 12th January, 2015 does not prejudicially affect any holder of a mining lease or a prospecting licence-cum-mining lease.

iii). In view of the failure of the Central Government to prescribe the rate on 12th January, 2015 at which contributions are required to be made to the DMF, the contributions to the DMF cannot be insisted upon with effect from 12th January, 2015. Fixing the maximum rate of contribution to the DMF is insufficient compliance with the law laid down by the Constitution Bench in Vatika.

iv) Contributions to the DMF are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of minerals other than coal, lignite and sand for stowing with effect from 17th September, 2015 when the rates were prescribed by the Central Government, (v) Contributions to the DMF are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of coal, lignite and sand for stowing with effect from 20th October, 2015 when the rates were prescribed by the Central Government or with effect from the date on which the DMF was established by the State Government by a notification, whichever is later.

v) The notification dated 31st August, 2016 Federation of Indian Mineral ... vs Union Of India on 13 October, 2017, issued by the Central Government is invalid and is struck down being ultra vires the rule making power of the Central Government under the MMDR Act".

38. According to the respondents, in view of the above, order of the Hon'ble Supreme Court the issue of date from which the levy of District Mineral Foundation has to commence has been given a clean quietus and hence, the order of the District Collector for levy of District Mineral Foundation has to be respected keeping in view the directions of the Hon'ble Supreme Court. If the orders are issued against the decision of the Supreme Court the same would constitute violation of the direction of the Supreme Court and in further it may lead to contempt of the order of the Supreme Court.

39. In respect of the petitioner's contention that Section 9B does not apply to minor mineral etc., it is submitted that in the notification dated 27th March 2015, in Notification No.10 of 2015, giving amendments to MMDR Act, 1957, the Parliament has introduced a new section called Section 15 (4) and Section 15A which are as follows:-

Sub section (4) of Section 15 of the Act states that:

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

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

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

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

Section 15-A

"15-A. The State Government may prescribe the payment by all holders of concessions related to minor minerals of amounts to the District Mineral Foundation of the district in which the mining operations are carried on".

40. It is submitted that the levy of District Mineral Foundation has come into force by way of Parliamentary amendment to the parent Act viz., MMDR Act, 1957 and notifications of the Government of India fixing the rates of levy and procedural law for such levy by the corresponding State Government Orders in the State Notifications issuing State Rules. Hence, the procedural rules which have been issued by the State Government as per the directions of the Parliament in the amendment Act cannot be faulted and it has to be upheld. In respect of the retrospective application of statutory rules 8,9, 10 & 11 of the State Rules, it is submitted that those rules were framed, pursuant to Section 15A of the Act.

41. It is further submitted that State rules were framed consequent to the Parliament direction issued in the notification No.10/2015 amending the parent Act MMDR Act, 1957. In consequence of the same, the State rules were framed by G.O.Ms.No.57, dated 19.05.2017. The rates at which the levy of

District Mineral Foundation in respect of major and minor minerals were to be collected had faced certain impact because of the notification of the Government of India fixing the rates and the subsequent order of the Hon'ble Supreme Court dated 13th October 2017, in Federation of the Mineral Industries and others vs., Union of India in Transferred case (Civil) No.43 of 2016, with W.P.(C).No.989/2016. In consequence above stated factual, legal and due to the orders of the Supreme Court the levy of District Mineral Foundation directed by the District Collectors for collection of dues are correct and to be upheld. In the order dated 13.10.2017 in the above referred Supreme Court Order, the Hon'ble Court while deciding the date of levy has stated as follows:

"37. We are afraid this line of questioning does not appeal to us. The object of the DMF is to work for the interest and benefit of persons, and areas affected by mining related operations. The purpose of Section 9B of the MMDR Act and the object of the DMF are in furtherance of the cause of social justice for those affected by the mining minted operations including tribals who may be dislocated or displaced from their habitat. To deny them a benefit that is rightfully theirs only because the State Government has been lax in establishing the DMF would be doing injustice to them.

38. Additionally, Section 9B of the MMDR Act creates a liability and only the quantum of the liability remained to be determined. That determination came on the issuance of the notification of 17th September, 2015. The fact that it would take time (even more than a year as in the case of Tamil Nadu and Uttar Pradesh) for the benefit to reach the affected persons cannot detract from the liability of the petitioners to contribute nor does it absolve them of their liability to pay the contribution. The only criticism could be of the tardiness and lack of concern by State Governments in setting up the DMF in spite of the direction of the Central Government.

39. In A. Prabhakara Reddy Vs. State of Madhya Pradesh one of the questions raised was that since the Madhya Pradesh Building and Other Construction Workers Welfare Board came to be constituted only on 9th April, 2003 the recovery of cess under the Building and Other Construction Workers Welfare Cess Act, 1996 with effect from 1st April, 2003 did not arise. On this basis, the requirement to pay cess was challenged.

40. This Court rejected the contention and held that after the Cess (2916) 1 s e e 600 Act and the rules framed thereunder came into effect and the Workers Welfare Board was constituted and the rate of cess was notified, the State was under an obligation to collect the cess in respect of on-going projects. The fact that passing on the benefit to the workers might take some time had no impact on the liability to pay the cess. It was further held that: Any other interpretation would defeat the rights of the workers whose protection is the principal aim or primary concern and objective of the BOCW Act as well as the Cess Act.

41. We hold, therefore, that the effective date of payment of contribution to the DMF in the case of those petitioners who are (or were) holders of a mining lease or a prospecting licence-cum-mining lease for minerals other than coal, lignite and sand for stowing would be n th September, 2015".

42. Moreover, the Ministry of Mines, Government of India in their notification order No.16/7/2015-M.VI (Part) dated 16th September 2015 has issued the following orders to ail the Chief Secretaries,

"WHEREAS in terms of the provisions of sub-section (1) of Section 9B of the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 (67 of 1957), the State Governments shall, by notification, establish a District Mineral Foundation in every district in the country affected by mining related operations.

AND WHEREAS mining related operations largely affect less developed and very remote areas of the country, and vulnerable sections of the population, especially Scheduled Tribes, therefore, it is especially necessary that special care and attention is devoted, in an organized and structured manner so as to ensure that these areas and affected persons are benefited by the mineral wealth in their regions and are empowered to improve their standard of living.

AND WHEREAS in terms of sub-section (3) of section, 9-B, the rules for the functioning of the District Mineral Foundation are to be prescribed by the State Governments.

AND WHEREAS the Central Government, on a careful consideration of the matter, is of the opinion that the national interest requires that all District Mineral Foundations should implement a development

programmer for the mining affected areas that includes a certain minimum provision for the social and infrastructure needs of the population and area, and the Central Government has, accordingly framed the Pradhan Mantri Khanji Kshetra Kalyan Yojana to be implemented by the District Mineral Foundations from the funds accruing to them in terms of the MMDR Act, 1957.

NOW THEREFORE the Central Government in exercise of the powers conferred under section 20A of the MMDR Act, 1957, in the national interest hereby directs the concerned State Governments to incorporate the "Pradhan Mantri Khanji Kshetra Kalyan Yonana" (the details of which are annexed herewith) into the rules framed by them for the District Mineral Foundation and to implement the said Scheme."

43. The above stated notification was issued to all the Chief Secretaries to the State for effecting the implementation of the District Mineral Foundation Scheme for the Welfare of the public at large who are affected by the mining activities in their areas and this is implemented by way of Parliamentary Amendment to the parent Act itself and supported by the order of the Hon'ble Supreme Court of India. It is further submitted that the National Institution for Transforming India (Niti Ayog) has identified 100 backward districts now termed as aspirational districts and 30 most backward districts. In the meeting of Committee of Secretaries (CoS) held on 22.11.2017, all the State Governments have been requested to identify 2-3 problem areas and utilize the fund collected under the District Mineral Foundation to completely eradicate the problems and if the problem areas are in the 100 aspirational District, if specific emphasize should be given to the development activities taken up under the District Mineral Foundation Trust Fund. Accordingly, all the District Collectors in the State of Tamil Nadu have taken effective steps for collecting the District Mineral Foundation Fund and due course the scheme under the Welfare measures would be implemented as per the guidelines issued by the Government of India. Hence, the petitioners indirect challenge against the amendment issued by the Parliament and consequential orders of the State Government and notices of the District Collectors may be dismissed and orders of the State Government and District Collectors maybe upheld. Therefore, the respondents have prayed to dismiss all the above writ petitions, as devoid of merits.

44. Based on the averments, Mr.V.T.Gopalan, learned Senior Counsel for the petitioners and others and Mr.Vijay Narayanan, learned Advocate General, made submissions.

45. In Transferred case (civil) No.43 of 2016 [Federation of Indian Mineral Industries v. Union of India and another reported in 2017 SCC Online SC 1237], the Hon'ble Supreme Court framed the following questions and answered thus,

"Questions raised by the petitioners

13. On the basis of these notifications, the questions raised by learned counsel for the petitioners are: Firstly, whether the DMFs could be established with effect from 12th January, 2015? Secondly, whether contributions to the DMFs were required to be made by the petitioners at the rate mentioned in both sets of Contribution Rules with effect from 12th January, 2015? The validity of the notifications was challenged or was under challenge to this extent depending on their interpretation and their impact and effect.

(i) The first question

14. In terms of sub-section (1) of Section 9B the State Government is required to establish a trust as a non-profit body and that trust would be called the District Mineral Foundation. For establishing the trust the State Government is required to issue a notification. It is entirely for the State Government to decide the date from which to set up the trust. The Central Government has no role to play in this, although a direction was issued by the Central Government to the State Governments to establish a trust with effect from 12th January, 2015. But be that as it may, the State Governments did issue a notification establishing the DMF - Some with effect from 12th January, 2015 and some with effect from the date of the notification establishing the DMF.

15. The submission of learned counsel for the petitioners is that the DMF could not have been established from a retrospective date prior to the date of the notification.

16. To answer this issue, it is necessary to first of all decide whether the DMF has in fact been established retrospectively. The learned Additional Solicitor General submitted that the DMFs were not established with retrospective effect. His contention was that under Section 9B of the MMDR Act the DMF could be established with effect from 12th January, 2015 or any date thereafter. Some States chose to

issue a notification establishing the DMF from an anterior date (12th January, 2015) while some others did not, notwithstanding the direction of the Central Government. According to the learned Additional Solicitor General establishing the DMF from a date anterior to the date of the notification did not mean that the DMF was established with retrospective effect. He relied on a decision of the Constitution Bench of this Court in A. Thangal Kunju Musaliar v. M. Venkitachalam Potti(1955) 2 SCR 1196 in support of his contention.

17. Musaliar advances the case of the learned Additional Solicitor General. The Constitution Bench acknowledged that the general law is that a statute comes into force on the day it received the assent of the competent authority. However that date could be postponed if so provided in the statute. In Musaliar the statute provided that it was to come into force on a date notified in the Government Gazette. Since the statute was passed by the Legislature on 7th March, 1949 it would have ordinarily come into force on that date but by virtue of Section 1(3) of the statute, a notification was issued on 26th July, 1949 bringing the statute into force on 22nd July, 1949 a date obviously later than 7th March, 1949. The Constitution Bench held that the notification did not prejudicially affect any vested rights and (by implication) its retrospective operation could not be looked upon with disfavour. Moreover, the operation of the statute was not from a date prior to its passing and so it could not be said to have retrospective operation. Fixing a date anterior to the date of the notification bringing the statute into force did not attract the principle of dis-favouring retrospective operation. The Constitution Bench however did not consider the further submission of the learned Attorney General that the notification was good to bring the statute into operation from the date of issue of the notification. The law laid down by the Constitution Bench is quite explicit when it was held:

"The reason for which the Court disfavours retroactive operation of laws is that it may prejudicially affect vested rights. No such reason is involved in this case. Section 1(3) authorises the Government to bring the Act into force on such date as it may, by notification, appoint. In exercise of the power conferred by this section the Government surely

had the power to issue the notification bringing the Act into force on any date subsequent to the passing of the Act. There can therefore, be no objection to the notification fixing the commencement of the Act on the 22nd July, 1949 which was a date subsequent to the passing of the Act. So the Act has not been given retrospective operation, that is to say, it has not been made to commence from a date prior to the date of its passing. It is true that the date of commencement as fixed by the notification is anterior to the date of the notification but that circumstance does not attract the principle disfavouring the retroactive operation of a statute. Here there is no question of affecting vested rights. The operation of the notification itself is not retrospective. It only brings the Act into operation on and from an earlier date. In any case it was in terms authorised to issue the notification bringing the Act into force on any date subsequent to the passing of the Act and that is all that the Government did. In this view of the matter, the further argument advanced by the learned Attorney-General and which found favour with the Court below, namely, that the notification was at any rate good to bring the Act into operation as on and from the date of its issue need not be considered." (Emphasis supplied by us)

18. The notifications establishing the DMF in the States mentioned in the table above were issued pursuant to the provisions of Section 9B of the MMDR Act. The intention of Parliament appears to have been for the State Governments to establish the DMF with effect from 12th January, 2015 since its object is to work for the interest and benefit of persons and areas affected by mining related operations. The object being the welfare of those adversely affected by mining operations, the DMFs ought to have been established on 12th January, 2015. However, not surprisingly, every State Government took it easy (including to a lesser extent the State Governments of Madhya Pradesh, Odisha and Telangana) compelling the Central Government to issue a direction under Section 20A of the MMDR Act on 16th September, 2015 requiring the State Governments to issue a notification that the DMF shall be deemed to have come into existence with effect from the 12th January, 2015.

19. In any event, even assuming that since the DMFs were established from a date anterior to the date of the notification and therefore they were

established with retrospective effect, their establishment did not adversely affect anybody's vested rights (as will be seen later). This is crucial. Therefore there can be no real objection to the operation of the notifications from 12th January, 2015 in view of the decision in Musaliar. The DMFs were not established from a date prior to 12th January, 2015 and to that extent cannot be said to have been established with retrospective effect.

20. Assuming the DMFs were established with retrospective effect is that permissible in law? This question really does not arise in the view that we have taken following Musaliar but since it was vehemently argued by learned counsel by citing several decisions, we briefly give our views.

21. The power to give retrospective effect to subordinate legislation whether in the form of rules or regulations or notifications has been the subject matter of discussion in several decisions rendered by this Court and it is not necessary to deal with all of them - indeed it may not even be possible to do so. It would suffice if the principles laid down by some of these decisions cited before us and relevant to our discussion are culled out. These are obviously relatable to the present set of cases and are not intended to lay down the law for all cases of retrospective operation of statutes or subordinate legislation. The relevant principles are:

(i) The Central Government or the State Government (or any other authority) cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorizes it to do so. (Hukum Chand v. Union of India (1972) 2 SCC 601 and Mahabir Vegetable Oils (P) Ltd. v. State of Haryana (2006) 3 SCC 620.

(ii) Delegated legislation is ordinarily prospective in nature and a right or a liability created for the first time cannot be given retrospective effect. (Panchi Devi v. State of Rajasthan (2009) 2 SCC 589).

(iii) As regards a subordinate legislation concerning a fiscal statute, it would not be proper to hold that in the absence of an express provision a delegated authority can impose a tax or a fee. There is no scope or any room for intendment in respect of a compulsory exaction from a citizen. (Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar

Pasawalla (1992) 3 SCC 285) and State of Rajasthan v. Basant Agrotech (India) Limited (2013) 15 SCC 1).

22. A much more erudite, general and broad-based discussion on the subject is to be found in the Constitution Bench decision in Commissioner of Income Tax (Central) - I v. Vatika Township Private Limited (2015) 1 SCC 1) and we are obviously bound by the conclusions arrived at therein. It is not at all necessary for us to repeat the discussion and the conclusions arrived at by the Constitution Bench in the view that we have taken except to say that our conclusions do not depart from the conclusions arrived at by the Constitution Bench.

23. On the facts before us, it is clear that Section 15 of the MMDR Act empowers the State Government to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. This section does not specifically or by necessary implication empower the State Government to frame any rule with retrospective effect. Also, the MMDR Act does not confer any specific power on the State Government to fictionally create the DMF deeming it to be in existence from a date earlier than the date of the notification establishing the DMF. Therefore, it must follow that under the provisions of the MMDR Act that we are concerned with, no State Government has the power to frame a rule with retrospective effect or to create a deeming fiction, either specifically or by necessary intendment.

24. Similarly, Section 13 of the MMDR Act does not confer any specific power on the Central Government to frame any rule with retrospective effect. Section 9B(5) and (6) read with clause (qqa) inserted in Section 13(2) of the MMDR Act enable the Central Government to make rules to provide for the amount of payment to be made to the DMF established by the State Government under Section 9B(1) of the MMDR Act. None of these provisions confer any power on the Central Government to require the holder of a mining lease or a prospecting licence-cum-mining lease to contribute to the DMF with retrospective effect. Therefore, even the scope and extent of the rule making power of the Central Government is limited.

25. In view of the position in law as explained above and the factual position before us, the notifications issued by the State Governments must be

understood to mean (assuming the DMF could not be established with effect from 12th January, 2015 by a notification issued on a later date) that the DMF was established on the date of publication of each notification. This is reflective of the further submission of the learned Attorney General in Musaliar that was not considered by the Constitution Bench. In our opinion this submission can be extrapolated to the facts of the cases before us and if we do so, we find it well taken. To the extent possible, the validity of a rule, regulation or notification should be upheld. It is not obligatory to declare any notification ultra vires the rule making power of the State Government if its validity can be saved without doing violence to the law. In these cases, we are of opinion that it is not obligatory to declare the notifications ultra vires the rule making power of the State Governments to the extent of their establishing the DMF from a retrospective date, since we can save their validity by reading them as operational from the date of their publication. In any event, no prayer was made before us for striking down the establishment of the DMF as such.

26. Therefore our answer to the first question is that the DMFs were not established retrospectively even though the notifications established them from a date anterior to the date of the notifications - but not before the date of the Ordinance. Assuming the DMFs were established with retrospective effect from 12th January, 2015 it is of no consequence since the retrospective establishment does not prejudicially affect the interests of anybody (as will be seen later). In this view of the matter, the notifications do not violate the law laid down in Musaliar and Vatika Township. Even otherwise, their validity can be saved by reading them as operational from the date of publication.

(ii) The second question

27. Learned counsel for the petitioners submitted that assuming the issue of retrospective operation of the notifications and the establishment of the DMFs is decided against them, even then the petitioners cannot be compelled to make the contribution for a period prior to the date of the relevant notifications, that is, 17th September, 2015 and 20th October, 2015 (as the case may be). For this purpose, reliance was

placed on M/s Govind Saran Ganga Saran v. Commissioner of Sales Tax 1985 (Supp) SCC 205 and Vatika Township.

28. In Govind Saran this Court was concerned with the taxation of goods under Sections 14 and 15 of the Central Sales Tax Act, 1956 (the CST Act) and the assessment made under the Bengal Finance (Sales Tax) Act, 1941 as applied to the Union Territory of Delhi. Section 15 of the CST Act reads:

"15. Every sales tax law of a State shall, insofar as it imposes or authorizes the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed three percent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage."

This Court noted that Section 15 of the CST Act prescribed the maximum rate of tax that could be imposed and that such tax shall not be levied at more than one point. Expanding on these requirements, this Court observed in paragraph 6 of the Report as follows:

"The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity." (Emphasis supplied by us)

29. After the above observations, this Court primarily dealt with the absence of specifying the single point at which the tax might be levied and held that the prerequisite of Section 15 of the CST Act that the tax shall not be levied at more than one stage had not been satisfied. Therefore, it quashed the assessment complained of and allowed the appeal of the assessee.

30. In Vatika Township the Constitution Bench was concerned with the impact of the proviso appended to Section 113 of the Income Tax Act, 1961 inserted by the Finance Act. The rate of surcharge was not specified in the proviso nor the date for the levy. The consequence of this was that some assessing officers were not levying any surcharge and those who were levying surcharge adopted different dates for the levy. In this context it was held that the rate at which a tax or for that matter a surcharge is to be levied is an essential component of the tax regime. The decision in Govind Saran was referred to by the Constitution Bench, particularly the passage extracted above. It was further held: "It is clear from the above that the rate at which the tax is to be imposed is an essential component of tax and where the rate is not stipulated or it cannot be applied with precision, it would be difficult to tax a person."

31. We may also note a similar view expressed in Principles of Statutory Interpretation by Justice G.P. Singh [14th edition revised by Justice A.K. Patnaik, former Judge, Supreme Court of India, page 876] that:-

There are three components of a taxing statute, viz. subject of the tax, person liable to pay the tax and the rate at which the tax is levied. If there be any real ambiguity in respect of any of these components which is not removable by reasonable construction, there would be no tax in law till the defect is removed by the legislature."

32. In view of the decision of the Constitution Bench of this Court that the specification of the rate of tax (or any compulsory levy for that matter) is an essential component of the tax regime, it is difficult to agree with the learned Additional Solicitor General that specifying the maximum amount of compensation to be paid to the DMF in terms of Section 9B of the MMDR Act, being an amount not exceeding onethird of the royalty, satisfies the requirements of law. What is required by the law is certainty and not vagueness - not exceeding one-third could mean one-fourth or one-fifth or some other fraction. It is this uncertainty that is objectionable.

33. Therefore, our answer to the second question is that the petitioners are not liable to make any contribution to the DMF from 12th January, 2015.

Crucial date for making the contribution to the DMF

34. What then is the crucial date for making the contribution? There are two categories of holders of a mining lease or a prospecting licence-cum-mining lease. We will consider the effect of the notifications on each such category.

Lease holders for minerals other than coal, lignite and sand for stowing

35. On 17th September, 2015 the Ministry of Mines in the Central Government issued a notification regarding the contribution to the DMF in respect of minerals other than coal, lignite and sand for stowing. The rate at which the contribution was required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease is specified in the notification. Although the notification provides that the contribution is payable from 12th January, 2015 in view of our conclusion that the contribution to the DMF cannot be with retrospective effect, it would be payable only from the date of the notification, that is, 17th September, 2015 even though the DMF was established or deemed to be established with effect from 12th January, 2015.

36. The further question raised by learned counsel for the petitioners in this regard was: How can the contribution be made to an entity like the DMF that was established only on a date subsequent to 17th September, 2015 (except for the States of Madhya Pradesh, Odisha and Telangana)? Can the contribution be paid to a non-existent trust?

37. We are afraid this line of questioning does not appeal to us. The object of the DMF is "to work for the interest and benefit of persons, and areas affected by mining related operations". The purpose of Section 9B of the MMDR Act and the object of the DMF are in furtherance of the cause of social justice for those affected by the mining related operations - including tribals who may be dislocated or displaced from their habitat. To deny them a benefit that is rightfully theirs only because the State Government has been lax in establishing the DMF would be doing injustice to them.

38. Additionally, Section 9B of the MMDR Act creates a liability and only the quantum of the liability remained to be determined. That determination came on the issuance of the notification of 17th September, 2015. The fact that it would take time (even more than a year as in the case of Tamil Nadu and Uttar Pradesh) for the benefit to reach the

affected persons cannot detract from the liability of the petitioners to contribute nor does it absolve them of their liability to pay the contribution. The only criticism could be of the tardiness and lack of concern by State Governments in setting up the DMF in spite of the direction of the Central Government.

39. In *A. Prabhakara Reddy v. State of Madhya Pradesh* (2016) 1 SCC 600, one of the questions raised was that since the Madhya Pradesh Building and Other Construction Workers Welfare Board came to be constituted only on 9th April, 2003 the recovery of cess under the Building and Other Construction Workers Welfare Cess Act, 1996 with effect from 1st April, 2003 did not arise. On this basis, the requirement to pay cess was challenged.

40. This Court rejected the contention and held that after the Cess Act and the rules framed thereunder came into effect and the Workers Welfare Board was constituted and the rate of cess was notified, the State was under an obligation to collect the cess in respect of on-going projects. The fact that passing on the benefit to the workers might take some time had no impact on the liability to pay the cess. It was further held that:

"Any other interpretation would defeat the rights of the workers whose protection is the principal aim or primary concern and objective of the BOCW Act as well as the Cess Act."

41. We hold, therefore, that the effective date of payment of contribution to the DMF in the case of those petitioners who are (or were) holders of a mining lease or a prospecting licence-cum-mining lease for minerals other than coal, lignite and sand for stowing would be 17th September, 2015.

Lease holders for coal, lignite and sand for stowing

42. The position with regard to contribution to the DMF by the holders of a mining lease or a prospecting licence-cum-mining lease for coal, lignite and sand for stowing is quite different from the situation of the other holders of a mining lease or a prospecting licence-cum-mining lease. The reason for this is to be found in the text of paragraph 3 of the notification of 20th October, 2015 which is very explicit. It provides that the contribution, though payable, shall be paid only from the date of the notification (20th October, 2015) or from the date of establishment of the DMF in the concerned State,

whichever is later. Therefore, only Madhya Pradesh, Odisha and Telangana would be entitled to the contribution from holders of a mining lease or a prospecting licence-cum-mining lease from 20th October, 2015 since their DMF was established much earlier. As far as all other States are concerned, the holders of a mining lease or a prospecting licence-cum-mining lease could claim to postpone payment to the DMF till it was established, as per the notification issued by the State Government.

43. It is true that many notifications establishing the DMF provided the date of establishment as 12th January, 2015 but as mentioned earlier the rule making power of the Central Government and the State Government under the MMDR Act does not permit retrospective operation of subordinate legislation. It cannot also be said that the Contribution Rules have retrospective operation by necessary implication. Even this occasion does not arise. Furthermore, as held above, the rate at which the contribution was to be paid came to be notified only on 20th October, 2015. Therefore in view of the law discussed above, it cannot be said that the contribution should be paid by the holders of a mining lease or a prospecting licence-cum-mining lease with effect from 12th January, 2015.

44. The learned Additional Solicitor General sought to rely on the subsequent notification dated 31st August, 2016 which substituted paragraph 3 in the notification of 20th October, 2015 with the requirement that the contribution "shall be paid with effect from the 12th January, 2015." For the same reasons already given by us, such a retroactive substitution is ultra vires the rule making power of the Central Government. The notification dated 31st August, 2016 is clearly beyond the rule making power of the Central Government and must be struck down and we do so. All that this means is that the notification of 20th October, 2015 remains untouched and must be read and understood on its plain language. The result is that in respect of coal, lignite and sand for stowing the holder of a mining lease or a prospecting licence-cum-mining lease shall pay the contribution to the DMF from 20<sup>th</sup> October, 2015 or the date of establishing the DMF, whichever is later.

45. Finally, it was submitted by one of the learned counsel that Section 9B of the MMDR Act was a conditional legislation and that it could become

operative only on the fulfilment of certain conditions. We cannot agree. Section 9B of the MMDR Act delegates power to the State Governments to establish the DMF without any pre-condition. Similarly, it delegates power to the Central Government to prescribe the rate at which the contribution should be made to the DMF. This again is without any pre-condition. In view of this, we are unable to describe Section 9B of the MMDR Act as a conditional legislation.

#### Conclusion

46. Having considered the issues raised by the petitioners and by the learned Additional Solicitor General in different perspectives, we hold:

(i) Merely because the DMFs have been established or are deemed to have been established from a date prior to the issuance of the relevant notifications does not make their operation retrospective.

(ii) In any event, the establishment of the DMFs (assuming the establishment is retrospective) from 12th January, 2015 does not prejudicially affect any holder of a mining lease or a prospecting licence-cum-mining lease.

(iii) In view of the failure of the Central Government to prescribe the rate on 12th January, 2015 at which contributions are required to be made to the DMF, the contributions to the DMF cannot be insisted upon with effect from 12th January, 2015. Fixing the maximum rate of contribution to the DMF is insufficient compliance with the law laid down by the Constitution Bench in *Vatika*.

(iv) Contributions to the DMF are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of minerals other than coal, lignite and sand for stowing with effect from 17th September, 2015 when the rates were prescribed by the Central Government.

(v) Contributions to the DMF are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of coal, lignite and sand for stowing with effect from 20th October, 2015 when the rates were prescribed by the Central Government or with effect from the date on which the DMF was established by the State Government by a notification, whichever is later.

(vi) The notification dated 31st August, 2016 issued by the Central Government is invalid and is

struck down being ultra vires the rule making power of the Central Government under the MMDR Act.

47. We fervently hope the State Governments recognize their responsibilities and utilize the contributions to the District Mineral Funds quickly and for the object for which they have been established, particularly since the amounts involved are huge.

48. We grant time till 31st December, 2017 to those holders of a mining lease or a prospecting licence-cum-mining lease who have not made the full contribution to the District Mineral Funds to pay the contribution, failing which they will be liable to make the contribution with interest at 15% per annum from the due date. We also make it clear that in the event any holder of a mining lease or a prospecting licence-cum-mining lease has mistakenly made contributions to the District Mineral Fund from a date prior to the date that we have determined, such a holder of a mining lease or a prospecting licence-cum-mining lease shall not be entitled to any refund but may adjust the contribution against future contributions, without the benefit of any interest.

49. With the above conclusions, Transfer Petition Nos.74-76/2017 are allowed, Transferred Cases (arising out of Transfer Petition (C) Nos.74-76/2017), Transferred Cases (C) Nos.43 and 51 of 2016 and the batch of petitions are disposed of. All other pending applications are also disposed of."

46. A perusal of the judgment of the Hon'ble Supreme Court in Federation of Indian Mineral Industries and others vs. Union of India and Another reported in (2017) 16 SCC 186, answers all the questions raised in these writ petitions. The Hon'ble Supreme Court has observed that though the Mines and Minerals (Development and Regulation) Amendment Act, came into effect on 12.1.2015 warranting the State Governments to issue notifications, State Governments showed laxity in performing their obligations under the Act. The State of Tamil Nadu brought out a Notification on 19.5.2017 establishing the fund. The grievance raised by the petitioners is that though the Notification by the Tamil Nadu District Mineral Foundation Rules, 2017, came out only on 19.5.2017 and the fund was created only on that date, Rules 8 and 9 mandate the contribution to the Trust Fund would be made from 12.1.2015. Rule 10 provides that an interest at the rate of 24% per annum would be charged for the delay. Rule 11 postulates penalty as whoever contravenes rule 8 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 case of continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first contravention.

47. Rules 8, 9, 10 and 11 of the Tamil Nadu District Mineral Foundation Rules, 2017, have been extracted in the earlier portion of this judgment and not being repeated.

48. The challenge in these writ petitions is to the retrospective collection to the District Mineral Foundation from 12.1.2015 even though the Tamil Nadu District Mineral Foundation Rules, 2017 came out only on 19.5.2017.

49. The Hon'ble Supreme Court in the above said judgment has categorically held that Section 15 of the Mines and Minerals (Development and Regulation) Act, empowers the State Government to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purpose connected therewith, but the Hon'ble Supreme Court in paras 23 and 24 of the judgment quoted supra, has held that Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, does not specifically or by necessary implication empower the State Government to frame any rule with retrospective effect. The Hon'ble Supreme Court was of the view that Mines and Minerals (Development and Regulation) Act, 1957, does not confer any specific power on the State Governments to fictionally create the District Mineral Foundation deeming it to be in existence from a date earlier than the date of the notification establishing the District Mineral Foundation. The Hon'ble Supreme Court, therefore held that under the provisions of Mines and Mineral (Development and Regulation) Act, 1957, no State Government have power to frame a rule with retrospective effect or to create a deeming fiction, either specifically or by necessary intendment. To arrive at this conclusion, the Hon'ble Supreme Court applied the principle that a State Government cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorises it to do so. The Hon'ble Supreme Court relied on the judgments of *Hukam Chand vs. Union of India* reported in (1972) 2 SCC 601 and *Mahabir Vegetable Oils (P) Ltd. vs. State of Haryana* reported in (2006) 3 SCC 620.

50. The learned Advocate General appearing for the State of Tamil Nadu has fairly accepted that in view of the proposition in law laid down by the Hon'ble Supreme Court in *Federation of Indian Mineral Industries and others vs. Union of India* and

Another reported in (2017) 16 SCC 186, the State Government does not have the power to collect contribution to District Mineral Foundation, from an anterior date to the establishment of fund, by the rules framed on 19.05.2017.

51. In view of the above, all the writ petitions are disposed of in the light of the judgment of the Hon'ble Supreme Court in Federation of Indian Mineral Industries and others vs. Union of India and Another reported in (2017) 16 SCC 186. It goes without saying that the above judgment of the Hon'ble Supreme Court has the effect of striking down Rules 8 to 11 of the Tamil Nadu District Mineral Foundation Rules, 2017. In all the cases, amount demanded has been paid. The petitioners are entitled to refund of the excess amount paid. Hence, the respondents are directed to refund the excess amount to the petitioners, within a period of two months, from the date of receipt of a copy of this order. No costs. Consequently, all the connected writ miscellaneous petitions are closed.

Sd/-

Assistant Registrar(C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

1.THE SECRETARY TO GOVERNMENT,  
STATE OF TAMIL NADU, INDUSTRIES DEPARTMENT,  
FORT ST.GEORGE, CHENNAI-9.

2.THE COMMISSIONER OF GEOLOGY AND MINING,  
THIRU.VI.KA.INDUSTRIAL ESTATE, GUINDY, CHENNAI 600 032.

3.THE ADDITIONAL CHIEF SECRETARY,  
INDUSTRIES DEPARTMENT, FORT ST.GEORGE, CHENNAI -9.

4.THE PRINCIPAL SECRETARY  
INDUSTRIES (MMD-I) DEPARTMENT,  
FORT ST.GEORGE, CHENNAI -9.

5.THE DISTRICT COLLECTOR,  
KANCHEEPURAM DISTRICT, KANCHEEPURAM.

6.THE DISTRICT COLLECTOR,  
VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR.

7.THE DISTRICT COLLECTOR,  
DHARMAPURI DISTRICT, DHARMAPURI DISTRICT.

8.THE DISTRICT COLLECTOR,SALEM DISTRICT, SALEM.  
9.THE DISTRICT COLLECTOR,THIRUNELVELI DISTRICT,THIRUNELVELI.  
10.THE DISTRICT COLLECTOR,NAMAKKAL DISTRICT, NAMAKKAL.  
11.THE DISTRICT COLLECTOR,PERAMBALUR DISTRICT, PERAMBALUR.  
12.THE DISTRICT COLLECTOR, ERODE DISTRICT, ERODE.  
13.THE DISTRICT COLLECTOR,KARUR DISTRICT, KARUR.  
14.THE DISTRICT COLLECTOR CUM CHAIR PERSON,  
KANCHEEPURAM DISTRICT, MINERAL FOUNDATION TRUST,  
COLLECTORATE, KANCHEEPURAM.

15.THE ASSISTANT DIRECTOR OF GEOLOGY,  
DEPARTMENT OF GEOLOGY AND MINING,  
COLLECTORATE,KANCHEEPURAM.

16.THE DISTRICT COLLECTOR,  
KRISHNAGIRI DISTRICT, KRISHNAGIRI.

17.THE DISTRICT COLLECTOR,  
VILLUPURAM DISTRICT, VILLUPURAM.

18.THE DIRECTOR OF GEOLOGY AND MINING,  
DEPARTMENT OF GEOLOGY AND MINING,  
THIRU.VI.KA.INDUSTRIAL ESTATE,  
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19.THE DISTRICT COLLECTOR,  
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+1cc to Mr.V.P.Sengottuvel,Advocate Sr.No. 79414  
+1cc to Mr.V.Sanjeevi,Advocate Sr.No. 80019  
+1 cc to The Government Pleader Sr.No. 79663

AKM/03.02.2020/60P-27C /सत्यमेव जयते

W.P.Nos.1256, 2742, 2846, 2847, 2986 to 2988, 3445 to 3448  
4062 to 4065, 4602, 4603, 5421, 5458, 5459, 6803 to 6806,  
9048 to 9051, 13475 13567, 13568, 13928, 13949, 14209, 14210,  
26806 and 26823 of 2018 and connected Miscellaneous Petitions