



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P(MD)NOS.27081 of 2019,17880,20279,20280 OF 2017 and 818 of 2020

and

**W.M.P(MD)Nos.14405 to 14407,15330,16524,16525 of 2017, 23418 of 2019
and 598 of 2020**

W.P(MD)NOS.27081 of 2019 and 818 of 2020

1.P.Madhavadas :Petitioner in W.P(MD)No.27081 of 2019

2.V.Thangaraj :Petitioner in W.P(MD)No.818 of 2020

vs.

The District Collector,
Tirunelveli District,
Tirunelveli.

: Respondent in both Writ Petitions.

W.P(MD)No.17880 of 2017

Virudhunagar District Quarry Owners Welfare
Association

(Reg.No.57 of 2014),
represented by its Secretary
A.Narayana Perumalsamy.

:Petitioner

.vs.

1.The Principal Secretary to Government,
Industries Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Geology and Mining,
Thiru.Vi.Ka Industrial Estate,
Guindy,
Chennai -32.

3.The District Collector,
Virudhunagar District.

:Respondents

W.P(MD)Nos.20279 and 20280 of 2017

1.M/s.Sqny Granites
represented by its Partner Mr.P.Karvannan
74-A,Velayutham Road,

:Petitioner in W.P(MD)No.20279 of 2017



2.M/s.Chindia Granites(P)Limited,
represented by its Director Mr.P.Karvannan,
74-A, Velayutham Road,
Sivakasi

:Petitioner in W.P(MD)No.20280 of 2017

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.vs.

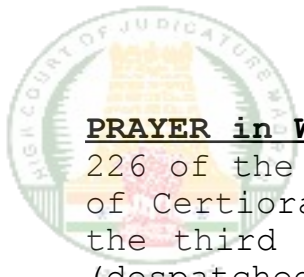
1.The Principal Secretary to Government,
Industries Department,
Government of Tamil Nadu,
Fort St.George,
Chennai -5.

2.The Commissioner of Geology and Mining,
Thiru.Vi.Ka,Industrial Estate,
Guindy, Chennai-32.

3.The District Mineral Foundation,
represented by its Chairman, the District Collector,
District Collectorate Campus
Virudhunagar District. :Respondents in W.P(MD)Nos.20279
and 20280 of 2017

PRAYER in W.P(MD)No.27081 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified mandamus calling for the records relating to the impugned Memorandum of the respondent bearing Na.Ka.No.M1/50935/R.G-11/2017, dated 30.12.2017 with reference to the lease granted to the Petitioner in Poramboke land (stone quarry) bearing S.F.No.907, admeasuring 1.49.5 hectares in Pazhavur Part-I Village, Radhapuram Taluk, Tirunelveli District and to quash the same and to direct the respondent to issue the Petitioner No Mining Due Certificate, as requested in the representation dated 9.12.2019 within the time prescribed by this Court.

PRAYER in W.P(MD)No.17880 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent in G.O.Ms.No.57, Industries (MMD.1), dated 19.5.2017 insofar as rules 8,9,10 and 11 are concerned published in Tamil Nadu Government Gazette Extraordinary Part-III Section 1(a), dated 19.5.2017 and the impugned G.O(Ms) No.90, Industries(MMD.1) Department, datged 27.7.2017 and to quash the same and consequently to forbear the respondents from in any way taking coercive steps against the members of the Petitioner Association for recovery of the alleged contribution to the District Mineral Foundation.



PRAYER in W.P(MD)No.20279 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records on the file of the third respondent in Na.Ka.No.KV-1/588/2017-67, dated 11.09.2017 (despatched on 13.10.2017 and received by the Petitioner on 14.10.2017) following the orders of the first respondent in G.O.Ms.No.57, Industries(MMD.1),dated 19.5.2017 insofar as the rules 8,9,10 and 11 are concerned published in Tamil Nadu Government Gazette Extraordinary Part-III Sec,1(a), dated 19.5.2017 and G.O.Ms.No.90, Industries(MMD-1)Department, dated 27.7.2017 and to quash the same and consequently to direct the respondents not to take any coercive steps against the Petitioner for recovery of the alleged contribution to the District Mineral Foundation.

PRAYER in W.P(MD)No.20280 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records on the file of the third respondent in Na.Ka.No.KV-1/588/2017-61, dated 11.09.2017 (despatched on 12.10.2017 and received by the Petitioner on 13.10.2017) following the orders of the first respondent in G.O.Ms.No.57, Industries(MMD.1),dated 19.5.2017 insofar as the rules 8,9,10 and 11 are concerned published in Tamil Nadu Government Gazette Extraordinary Part-III Sec,1(a), dated 19.5.2017 and G.O.Ms.No.90, Industries(MMD-1)Department, dated 27.7.2017 and to quash the same and consequently to direct the respondents not to take any coercive steps against the Petitioner for recovery of the alleged contribution to the District Mineral Foundation.

PRAYER in W.P(MD)No.818 of 2020: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned Memorandum of the respondent bearing Na.Ka.No.M1/50935/R.P-88/2017, dated 25.1.2018 with reference to the lease granted to the Petitioner in patta land (stone quarry) bearing S.F.Nos.754/21, 754/22 and 754/23, admeasuring 0.83.5hectares in Keelakadayam Part-I Village, Ambasamudram Taluk, Tirunelveli District and to quash the same.

W.P(MD)Nos.27081 of 2019 and 818 of 2020

For Petitioner	: Mr.V.Sanjeevi
For Respondent	: M/s.J.Padmavathi Devi Special Government Pleader

W.P(MD)No.17880 of 2017

For Petitioner	: Mr.Veera Kathiravan Senior Counsel for M/s.Veera Associates
For Respondents	: M/s.J.Padmavathi Devi Special Government Pleader



W.P(MD)Nos.20279 and 20280 of 2017

For Petitioner
in both W.Ps

:Mr.A.Chandrasekaran

For Respondents
1 to 3 in both W.Ps'

:Mr.J.Padmavathi Devi
Special Govt. Pleader

COMMON ORDER

In all these Writ Petitions, the challenge is to the impugned order passed by the District Collector demanding District Mineral Fund with retrospective effect.

2.It is stated that all the Petitioners are dealing with quarrying of rough stones/Jally, which are the minor minerals as prescribed in the Mines and Minerals (Development and Regulation) Act, 1957 (in short "MMDR Act") and their lease was also governed by the Tamil Nadu Minor Mineral Concession Rules, 1959. Section 15 of the MMDR Act gives power to 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 the purposes connected therewith. There were several amendments to the MMDR Act. The amendments to Section 9B, Sub-Clauses (qqa) to (qqk) to Sub-section (2) of Section 13, Section 15(4) and Section 15-A of the MMDR Act, 1957 were made with effect from 12.01.2015. It is stated that Section 9B contemplates the establishment of a Trust to be called as the District Mineral Foundation, the said provision is only applicable to the major minerals and not for minor minerals. Section 15-A of the MMDR Act provides that the State Government may prescribe the payment by all holders of concessions related to minor minerals to the District Mineral Foundation of the District, in which the mining operations are carried on. The whole of Section 15 deals with the power of the State Government to make rules in respect of minor minerals. As per Section 15-A and Section 15(4) of the MMDR Act, as amended, the State Government is empowered to frame Regulations/Rules for the District Mineral Foundation for the minor minerals.

3. It is pointed out by the learned counsel appearing for the Petitioners that though the amended Act came into force only on 12.01.2015, the State had not framed any Regulations/Rules for the purpose of levy of contribution to the said Trust till 19.5.2017. Thereafter, the Government of Tamil Nadu framed Rules called Tamil Nadu District Mineral Foundation Rules, 2017 in G.O.Ms.No.57, Industries(MMD.1), dated 19.5.2017, subsequently amended by another Government Order in G.O(Ms)No.90, Industries (MMD-1) Department, dated 27.7.2017. As per the amended rule, the holder of a mining lease in respect of whom the lease is granted before 12.1.2015, is



liable to pay the contribution to the said Foundation in addition to the seigniorage fee in favour of the Trust at the rate of 30% of the seigniorage fee and the mining lease holder, in respect of whom the lease is granted on or after 12.1.2015, is liable to pay 10% of the seigniorage fees. It is urged by the learned counsel for the Petitioners that the respondent is not vested with any power to frame the rules with retrospective obligation. It is contended that the petitioners are liable to pay the said fee only with prospective effect from the date of rule framed, establishing the fund and not retrospectively.

4.A similar question came up for consideration before the Division Bench of this Court in the case of **Namakkal District Stone Crusher, Owners Association, Reg.No.67/2004, represented by its Secretary P.Mani Vs. The State of Tamil Nadu, represented by its Secretary to Government, Industries Department, Fort St. George, Chennai-9 and others, (2019) 8 MLJ 181**. The Division Bench, after discussing the powers and consensus of the Governing council, powers of the Managing Committee, the contribution of trust fund, collection and monitoring of the amount payable to the Trust and interest, penalty and operation of the Trust fund etc., and following the judgment of the Hon'ble Apex Court in **Federation of Indian Mineral Industries V. Union of India and Another, (2017) 16 SCC 186**, held that the retrospective levy of the contribution to the said Trust cannot be demanded. The Division Bench has extensively discussed about the powers of the Special Legislative Authority in framing rules where retrospective obligation was demanded and held that unless the said powers is conferred specifically, the said authority does not have the powers for framing rules having retrospective obligation. It is useful to extract the relevant portion of the above-said judgement, which runs as follows:

"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



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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.

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 AIR 1972 SC 2427



and Mahabir Vegetable Oils (P) Ltd. vs. State of Haryana reported in (2006) 3 SCC 620."

5. To arrive at such a conclusion, the Division Bench placed heavy reliance on the above judgment of the Hon'ble Apex Court in **Federation of Indian Mineral Industries V. Union of India and Another, (2017) 16 SCC 186**, wherein, *inter alia*, it was held as follows :

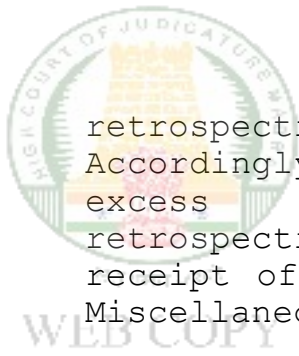
"43. It is true that many notifications establishing the DMF provided the date of establishment as 12th January, 2015 but as mentioned earlier the rule making power of the Central Government and the State Government under the MMDR Act does not permit retrospective operation of subordinate legislation. 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."

6. The Division Bench in the **Namakkal District Stone Crusher case (cited supra)** in the penultimate paragraph held as follows :

"51. 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."

7. In view of the above discussion and also the cases of the Petitioners are identical challenging the retrospective demand based on the rules framed establishing the fund, this Court is inclined to follow the same.

8. Accordingly, all these Writ Petitions are disposed of in line with the judgment of the Division Bench cited supra. It is stated by the learned counsel for the Petitioners that they have also paid the amount demanded by the authorities and for many of the petitioners, lease came to an end within two months after the rules have been framed on 19.5.2017 and brought into force and during the subsistence of the lease period, the Petitioners have made payment and they have no objection for the same. However, the payment, which has already been made by the Petitioners for the demand



retrospectively made is liable to be refunded by the respondents. Accordingly, the respondents concerned are directed to refund the excess amount already paid to the Petitioners towards the retrospective demand, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)

vsn/gg

To

- 1.The Principal Secretary to Government,
Industries Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.
- 2.The Commissioner of Geology and Mining,
Thiru.Vi.Ka Industrial Estate,
Guindy,
Chennai -32.
- 3.The District Collector,
Virudhunagar District.
- 4.The District Collector,
Tirunelveli District,
Tirunelveli.
- 5.The Chairman/the District Collector,
District Mineral Foundation,
District Collectorate Campus
Virudhunagar District.

+2 CC to M/s.V.SANJEEVI, Advocate (SR-6709,6710[F]dated
17/02/2020)

+1 CC to Mr.S.RAJA JEYACHANDRAPAUL, Advocate (SR-6747[F] dated
18/02/2020)

<https://hcservices.ecourts.gov.in/hcservices/>



+1 CC to SPL.GP (SR-6758,6762[F] dated 18/02/2020)

+1CC to M/S.Veera Associates, Sr.No.6987

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COMMON ORDER MADE IN
W.P(MD)NOs.27081 of 2019,
17880,20279,20280 OF 2017 and
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and
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