HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 4101/2019

M/s Surana Minerals Pvt Ltd., Having Its Registered Office At 33, Shreeji Vihar, Sukhadiya Nagar, Nathdwara, Distt. Rajsamand Through Its Director Shri Brijendra Kumar Agarwal S/o Sukhbir Singh Agarwal Aged About 54 Years R/o Nathdwara, 313301, District Rajsamand (Raj).

----Petitioner

Versus

1. State of Rajasthan, Through Secretary, Mines And Geology Department, Secretariat, Jaipur 302001.
2. Joint Secretary, Industries Department, Government of Rajasthan, Jaipur.
3. Joint Secretary, Mines (Gr. II) Department, Government of Rajasthan, Jaipur.

----Respondents

Connected With

D.B. Civil Writ Petition No. 4076/2019

M/s Bherunath Enterprises, Having Its Registered Office At Khemli, Khopa Ka Kua, Pallach Village, Tehsil Mavli, Pulla, District Udaipur Through Its Authorized Signatory Shri Dinesh Dangi S/o Shri Narayan Dangi Aged About 28 Years, R/o Udaipur, (Raj.).

----Petitioner

Versus

1. State of Rajasthan, Through Secretary, Mines And Geology Department, Secretariat, Jaipur- 302001.
2. Joint Secretary, Industries Department Government of Rajasthan, Jaipur.
3. Joint Secretary, Mines (Gr.II) Department Government of Rajasthan, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 4098/2019

M/s Chandra Minerals, Having Its Registered Office At 22, Krishna Kunj, Shreeji Vihar, Sukhadiya Nagar, Nathdwara, Distt Rajsamand Through Its Proprietor Smt. Monika Jain W/o Shri Deepak Jain Aged About 50 Years R/o Nathdwara 313301, District Rajsamand.

----Petitioner

Versus

1. State of Rajasthan, Through Secretary, Mines And Geology Department, Secretariat, Jaipur 302001.
2. Joint Secretary, Industries Department, Government of Rajasthan, Jaipur.
3. Joint Secretary, Mines (Gr. II) Department, Government of Rajasthan, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 4135/2019

M/s A And J Sisodia Mineral LLP, Having Its Registered Office At 17, Mangalam Nilak Nagar, Hiran Mangri, Sector No. 03, Udaipur, Distt. Udaipur Through Its Director And Partner Shri Bheru Singh Shoisodia S/o Shri Rai Singh Sisodia Aged About 34 Years, Udaipur, District Udaipur (Raj.).

----Petitioner

Versus

1. State of Rajasthan, Through Secretary, Mines And Geology Department, Secretariat, Jaipur- 302001
2. Joint Secretary, Industries Department Government of Rajasthan, Jaipur.
3. Joint Secretary, Mines (Gr.II) Department Government of Rajasthan, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 4139/2019

M/s Texmo Minerals, Having Its Registered Office At 02, Shivam Samarpit Complex, Pulla Distt, Udaipur Through Its Authorized Signatory Shri Kishan Somani S/o Shri Ratan Lal Somani Aged 40 Years R/o Nathdwara, 313301, District Rajsamand. (Raj).

----Petitioner

Versus

1. State of Rajasthan, Through Secretary, Mines And Geology Department, Secretariat, Jaipur 302001.
2. Joint Secretary, Industries Department, Government of Rajasthan, Jaipur.
3. Joint Secretary, Mines (Gr. II) Department, Government of Rajasthan, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 4143/2019

M/s Pearl Mines And Minerals, Having Its Registered Office At A-3, Shriji Vihar, Near Lad Parishad, Nathdwara, 313301, District Rajsamand (Raj). Through Its Authorized Signatory (Proprietor) Shri Rishi Agarwal S/o Shri Vinod Agarwal Aged About 34 Years, R/o A-3 Shriji Vihar, Near Lad Parishad, Nathdwara, 313301, District Rajsamand (Raj).

----Petitioner

Versus

1. State of Rajasthan, Through Secretary, Mines And Geology Department, Secretariat, Jaipur 302001.
2. Joint Secretary, Industries Department, Government of Rajasthan, Jaipur.
3. Joint Secretary, Mines (Gr. II) Department, Government of Rajasthan, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 4692/2019

Meracus Mineral LLP, Old Khantu Road, Near Sona Ceramics, Morbi, Gujarat Through Its Partner Vadaliya Nikunj Kumar S/o Shri Narbhe Rambhai, Aged About 54 Years, Meracus Mineral LLP, Old Khantu Road, Near Sona Ceramics, Morbi, Gujarat.

----Petitioner

Versus

1. State of Rajasthan, Through The Principal Secretary Mines And Geology Department, Government Secretariat, Jaipur.
2. Principal Secretary, Industries Department, Government Secretariat, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 5554/2019

M/s. Shree Laxmi Minerals And Suppliers, Registered Office At P.No. 50, Laxmi Nagar, Bidara, N.H. 8, Shahpura, District Jaipur, Through Its Partner Shri Deshraj Meena S/o Shri Ram Kishore Meena, Aged 42 Years.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Mines And Geology, Department, Government Secretariat,

Jaipur.

2. Principal Secretary, Industries Department, Government Secretariat, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 5881/2019

Grace Micron L L P, Through Its Designated Partner Rameshbhai Bhurabhai Sadatiya Having Registered Office, Survey No. 41, At-Chanchavadrada TA-Maliya (MI) District Morbi (Gujrat)

----Petitioner

Versus

1. State of Rajasthan, Through Secretary Mines, Government of Rajasthan, Rajasthan Secretariat, Jaipur (Raj.)
2. Joint Secretary, Government of Rajasthan, Mines (Gr-II), Department, Rajasthan Secretariat, Govt. of Rajasthan, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 5886/2019

D S A Mines And Minerals Pvt Ltd, Through Its Director Sachin Agarwal, Branch Office At 27/2, Ajmeri, Neem-Ka-Thana, Jaipur (Raj.). Registered Office At 53, Vigyan Vihar, Delhi-92, A Company Duly Registered Under The Provisions Of Companies Act Bearing Its Certificate Of Incorporation No. U14103DL2007PTC165039

----Petitioner

Versus

1.State of Rajasthan, Through Secretary Mines, Government of Rajasthan, Rajasthan Secretariat, Jaipur (Raj.)

2. Joint Secretary, Government of Rajasthan, Mines (Gr-II), Department, Rajasthan Secretariat, Govt. of Rajasthan, Jaipur.

----Respondent

D.B. Civil Writ Petition No. 5889/2019

Fusion Minerals Pvt Ltd, Through Its Director, Milan Gami S/o. Shri Ramesh Gami Having Registered Office, Survey No. 83/1,

Aniyari Village, Maliya, Halwad Highway, Morbi, District Morbi (Gujrat) A Company Duly Registered Under The Provisions Of Companies Act bearing Its Certificate Of Incorporation No. U26933GJ2015PTC082380

----Petitioner

Versus

1. State of Rajasthan, Through Secretary Mines, Government Of Rajasthan, Rajasthan Secretariat, Jaipur (Raj.)
2. Joint Secretary, Government Of Rajasthan, Mines (Gr-II), Department, Rajasthan Secretariat, Govt. of Rajasthan, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 5893/2019

Leuco Microns Pvt Ltd, Through Its Director, Jagdish Kumar S/o Shri Dhanjibhai Kavar Having Registered Office, Survey No. 95/3-P-2, Near Millennium Vitrified, Village Bhadiyad Tal. Morbi, District Morbi (Gujrat) A Company Duly Registered Under The Provisions Of Companies Act Bearing Its Certificate Of Incorporation No. U26999GJ2017PTC096796

----Petitioner

Versus

1. State of Rajasthan, Through Secretary Mines, Government Of Rajasthan, Rajasthan Secretariat, Jaipur (Raj.)
2. Joint Secretary, Government of Rajasthan, Mines (Gr-II), Department, Rajasthan Secretariat, Govt. of Rajasthan, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 5895/2019

Girdhar Natural Ressources Pvt Ltd., Through Its Director Prashant Tibrewala, Having Its Registered Office At C-114, Lal Kothi Scheme, Jaipur, A Company Duly Registered Under The Provisions Of Companies Act Bearing Its Certificate Of Incorporation No.U14200RJ2012PTC037520

----Petitioner

Versus

1. State of Rajasthan, Through Secretary Mines, Government of Rajasthan, Rajasthan Secretariat, Jaipur

(Raj.)

2. Joint Secretary, Government Of Rajasthan, Mines (Gr-II), Department, Rajasthan Secretariat, Govt. of Rajasthan, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 6068/2019

Balaji Industries, 11, Satyam, Chaudhary Colony, Saket Nagar Beawar- 305901, District Ajmer, Rajasthan. Through Its Partner Shri Sunil Vashisht S/o Shri SN Sharma, R/o 11, Satyam, Chaudhary Colony, Saket Nagar Beawar- 305901, District Ajmer, Rajasthan.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary, Department Of Mines, Secretariat, Jaipur.
2. The Additional Chief Secretary, Department of Mines, Govt Of Rajasthan, Secretariat, Jaipur.
3. The Joint Secretary, Department of Mines, Govt of Rajasthan, Secretariat, Jaipur.
4. Commissioner Industries, Office of The Commissioner of Industries, Department of Industries Udhyog Bhawan, Tilak Marg, Jaipur 302005.

----Respondents

D.B. Civil Writ Petition No. 6071/2019

Federation of Mining Associations Of Rajasthan, Incorporated Under The Non-Trading Companies. Rajasthan, Under The Through Its Secretary General, Akshaydeep Mathur, Who is Authorised To Sign This Petition Vide A Resolution Dated 12Th April 2017 Passed By The Executive Of The Federation.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary, Mines And Geology, Dept., Jaipur.
2. State of Rajasthan, Through Principal Secretary, Industries Dept., Secretrate, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 6073/2019

Radhey Krishna Minerals, Regd. Add Malhotra Engineers And

Traders, 34-35, Ravidutt Arya Nagar, Delwara Road, Beawar. Through Its Partner Shri Sandeep Gehlot S/o Shri Kanhayalal Gehlot, R/o Radha Kunj, Shiv Mandir, Delwara, Delwara Road, Beawar- 305901, District Ajmer, Rajasthan.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Department of Mines, Secretariat, Jaipur.
2. The Additional Chief Secretary, Department of Mines, Govt of Rajasthan, Secretariat, Jaipur.
3. The Joint Secretary, Department of Mines, Govt of Rajasthan, Secretariat, Jaipur.
4. Commissioner Industries, Office of The Commissioner of Industries, Department of Industries Udhyog Bhawan, Tilak Marg, Jaipur 302005.

----Respondents

D.B. Civil Writ Petition No. 6074/2019

Charbhuja Mines, A Partnership Firm Registered With The Registrar Of Firms, Bhilwara, Through Its Partner Dinesh Kumar Toshniwal, Aged 45 Years S/o Manohar Lal Toshniwal, R/o Barsani, Ashind. ML No.28/2006

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary, Mines And Geology Department, Jaipur.
2. State of Rajasthan, Principal Secretary, Industries, Department, Secretariat, Jaipur
3. Beawar Laghu Udyog Sangh, RIICO Industrial Area, Ajmer Road, Beawar - 305901, Registered Under The Societies Act, At No. 1968/67, Through Its President Ashishpal Padawat, S/o Shri Abhay Raj Padawat, Aged About 40 Years.

----Respondents

D.B. Civil Writ Petition No. 6076/2019

Jai Vardhman Industries, Regd. Add-113, Radha Vallabh Industrial Area, Ajmer Road, Beawar 305901. Through Its Partner Shri Kamal Pushalal Kothari S/o Shri Pushalal Kothari, R/o B 433, Lokasha Nagar, Beawar- 305901, District Ajmer, Rajasthan.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Department of Mines, Secretariat, Jaipur.
2. The Additional Chief Secretary, Department of Mines, Govt of Rajasthan, Secretariat, Jaipur.
3. The Joint Secretary, Department of Mines, Govt of Rajasthan, Secretariat, Jaipur.
4. Commissioner Industries, Office of The Commissioner of Industries, Department of Industries Udhyog Bhawan, Tilak Marg Jaipur 302005.

----Respondents

D.B. Civil Writ Petition No. 6077/2019

Kamal Granules, Regd. Address Khasara No. 773/1, Village Kanhakhera, Tehsil Masuda, District Ajmer. Through Its Proprietor Shri Vishal Garg S/o Shri Vinod Garg, R/o 7-8, Vardhaman Vihar, Gayatri Nagar, Opp. Ramdev Temple, Ajmer Road, Beawar- 305901.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Department of Mines, Govt. of Rajasthan, Secretariat, Jaipur.
2. The Additional Chief Secretary, Department of Mines, Govt of Rajasthan, Secretariat, Jaipur.
3. The Joint Secretary, Department of Mines, Govt of Rajasthan, Secretariat, Jaipur.
4. Commissioner Industries, Office of The Commissioner of Industries, Department of Industries Udhyog Bhawan, Tilak Marg, Jaipur 302005.

----Respondents

D.B. Civil Writ Petition No. 6079/2019

Prem Industries, Regd. Add- Kh. No. 1941/10, Radha Vallabh Industrial Area, Piplaj, Beawar - 305901. Through Its Partner Shri Ashish Kumar Surana S/o Shri Mahaveer Prasad Surana, R/o Samta Nagar, Behind Jain Jawahar Bhawan, Beawar-305901, District Ajmer, Rajasthan.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Department of Mines, Secretariat, Jaipur.
2. The Additional Chief Secretary, Department of Mines, Govt of Rajasthan, Secretariat, Jaipur.
3. The Joint Secretary, Department of Mines, Govt of Rajasthan, Secretariat, Jaipur.
4. Commissioner Industries, Office of The Commissioner of Industries, Department of Industries Udhyog Bhawan, Tilak Marg Jaipur 302005.

----Respondents

D.B. Civil Writ Petition No. 6080/2019

Kamla Minchem, Regd. Add. F65, RIICO Industrial Area, Ajmer Road, Beawar. Through Its Partner Shri Mohit Bhansali S/o Shri Om Prakash Bhansali, R/o C 104, RIICO Housing Colony, Ajmer Road, Beawar- 305901, District Ajmer, Rajasthan.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Department of Mines, Secretariat, Jaipur.
2. The Additional Chief Secretary, Department of Mines, Govt of Rajasthan, Secretariat, Jaipur.
3. The Joint Secretary, Department Of Mines, Govt of Rajasthan, Secretariat, Jaipur.
4. Commissioner Industries, Office of The Commissioner of Industries, Department of Industries Udhyog Bhawan, Tilak Marg, Jaipur 302005.

----Respondents

D.B. Civil Writ Petition No. 6081/2019

Komal Yadav, Through His Power-Of-Attorney Holder, Dinesh Bohra Aged 33 Years S/o Sh. Jaiparkash Bohra RO: 29, New Grain Market, Bhiwani, Haryana. ML No. 283A/2007

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Mines And Geology Department, Jaipur
2. State of Rajasthan, Principal Secretary, Industries Department, Secretariat, Jaipur.

3. Beawar Laghu Udyog Sangh, RIICO Industrial Area, Ajmer Road, Beawar - 305901, Registered Under The Societies Act, At No. 1968/67, Through Its President Ashishpal Padawat, S/o Shri Abhay Raj Padawat, Aged About 40 Years.

----Respondents

D.B. Civil Writ Petition No. 6082/2019

Lycon Microns LLP, Having Its Office Address At Survey No. 147, B/h Bahadurgadh Bus Stop, 8/A National Highway, Village Bahagurghad, Morbi, Rajkot, Gujrat, Through Its Designated Partner Name Lalit Bhai.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary, Mines And Geology Department, Jaipur (Raj.).
2. State of Rajasthan, Through Principal Secretary, Industries Department, Administrative Secretariat, Jaipur (Raj.).

----Respondents

D.B. Civil Writ Petition No. 6083/2019

Sanwariya Minerals, a proprietorship whose proprietor is Harjiram Choudhary Aged 51 Years S/o Jawaharlal R/o Nath Ka Kheda, Barsani, Tehsil Asind, District Bhilwara. ML No. 814/2005.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Mines And Geology Department, Jaipur.
2. State of Rajasthan, Principal Secertary, Industries, Department, Secretariat, Jaipur.
3. Beawar Laghu Udyog Sangh, RIICO Industrial Area, Ajmer Road, Beawar- 305901, Registered Under The Societies Act, At No. 1968/67, Through Its President Ashishpal Padawat, S/o Shri Abhay Raj Padawat, Aged About 40 Years.

----Respondents

D.B. Civil Writ Petition No. 6085/2019

Ganpati Mines And Minerals, A Partnership Firm Registered With The Registrar Of Firms, Bhilwara, Through Its Partner Chandar

Singh Tak, Aged 52 Years, S/o Bhanwar Singh Tak R/o Darbar Colony, Bijainagar. ML No. 131/2003

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Mines And Geology Dept. Jaipur.
2. Principal Secretary, Industries, Dept. Secretariat, Jaipur.
3. Beawar Laghu Udyog Sangh, RIICO Industrial Area, Ajmer Road, Beawar- 305901, Registered Under The Societies Act, At No. 1968/67, Through Its President Ashishpal Padawat, S/o Shri Abhay Raj Padawat, Aged About 40 Years.

----Respondents

D.B. Civil Writ Petition No. 6086/2019

Bharat Kumar Suthar S/o Khubi Ram Suthar, Aged About 39 Years, Through His Power-Of-Attorney Holder, Vikas Verma, Aged 30 Years S/o Shri Bhanwar Singh, R/o Kamla Crystal, Bhilwara. ML No. 8/1999

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Mines And Geology Department, Jaipur
2. State of Rajasthan, Principal Secretary, Industries Department, Secretariat, Jaipur.
3. Beawar Laghu Udyog Sangh, RIICO Industrial Area, Ajmer Road, Beawar - 305901, Registered Under The Societies Act, At No. 1968/67, Through Its President Ashishpal Padawat, S/o Shri Abhay Raj Padawat, Aged About 40 Years.

----Respondents

D.B. Civil Writ Petition No. 6087/2019

Pukhraj Kumar S/o Premlal, Aged About 40 Years, Village Shambhugarh, Tehsil Asind, District Bhilwara. ML No. 634/2005

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary, Mines And Geology Dept., Jaipur.
2. State of Rajasthan, Through Principal Secretary,

Industries, Dept., Secretariat, Jaipur.

3. Beawar Laghu Udyog Sangh, RIICO Industrial Area, Ajmer Road, Beawar- 305901, Registered Under The Societies Act, At No. 1968/67, Through Its President Ashishpal Padawat, S/o Shri Abhay Raj Padawat, Aged About 40 Years.

----Respondents

D.B. Civil Writ Petition No. 6088/2019

Harji Ram Gurjar S/o Shri Jawharlal Gurjar, Aged About 51 Years, Village Nathu Ka Kheda, Tehsil Asind, District Bhilwara. ML No. 488/2004.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Mines And Geology Dept. Jaipur.
2. Principal Secretary, Industries, Dept. Secretariat, Jaipur.
3. Beawar Laghu Udyog Sangh, RIICO Industrial Area, Ajmer Road, Beawar- 305901, Registered Under The Societies Act, At No. 1968/67, Through Its President Ashishpal Padawat, S/o Shri Abhay Raj Padawat, Aged About 40 Years.

----Respondents

D.B. Civil Writ Petition No. 6089/2019

Vishnu Rawal W/o Hardev Rawal, Aged About 40 Years, R/o Barsani Tehsil Asind District Bhilwara. ML No. 448/2007

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary, Mines And Geology Dept., Jaipur.
2. Principal Secretary, Industries, Dept. Secretariat, Jaipur.
3. Beawar Laghu Udyog Sangh, RIICO Industrial Area, Ajmer Road, Beawar- 305901, Registered Under The Societies Act, At No. 1968/67, Through Its President Ashishpal Padawat, S/o Shri Abhay Raj Padawat, Aged About 40 Years.

----Respondents

D.B. Civil Writ Petition No. 6094/2019

Shringar Minerals, A Proprietorship Firm Through Proprietor,

Shivraj Sharma, Aged 34 Years, S/o Sh. Mahaveer Sharma Ro Village Chapaneri, Ajmer. ML No. 364/2005

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Mines And Geology Department, Jaipur.
2. State of Rajasthan, Principal Secretary, Industries, Department Secretriat, Jaipur.
3. Beawar Laghu Udyog Sangh, Industrial Area, Ajmer Road, Beawar- 305901, Registered Under The Societies Act, At No. 1968/67, Through Its President Ashishpal Padawat, S/o Shri Abhay Raj Padawat, Aged About 40 Years.

----Respondents

D.B. Civil Writ Petition No. 6098/2019

VK Industries, A Partnership Firm Registered With The Registrar Of Firms, Bhilwara, Through Its Partner Piyush Bansal, Aged 34 Years S/o Pavan Kumar Bansal, R/o Man Ka Khera, Village Mokhunda, Tehsil Raipur, District Bhilwara- 311805. ML No. 412/2006.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Mines And Geology Department, Jaipur.
2. State of Rajasthan, Principal Secretary, Industries, Department, Secretariat, Jaipur.
3. Beawar Laghu Udyog Sangh, RIICO Industrial Area, Ajmer Road, Beawar- 305901, Registered Under The Societies Act, At No. 1968/67, Through Its President Ashishpal Padawat, S/o Shri Abhay Raj Padawat, Aged About 40 Years.

----Respondents

D.B. Civil Writ Petition No. 6101/2019

Mahakal Minerals, A Partnership Firm Registered With The Registrar of Firms, Ajmer , Through Its Partner, Manish Jindal Aged 48 Years S/o Shri Ramesh Jindal Ro - Hotel Premdeep, Tehsil Bijainagar, District Ajmer ML. No. 431A/2007.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary, Mines And Geology Department, Jaipur.
2. State of Rajasthan, Principal Secretary, Industries, Department, Secretariat, Jaipur.
3. Beawar Laghu Udyog Sangh, RIICO Industrial Area, Ajmer Road, Beawar- 305901, Registered Under The Societies Act, At No. 1968/67, Through Its President Ashishpal Padawat, S/o Shri Abhay Raj Padawat, Aged About 40 Years.
4. Mineral Grinding Plant Association Rajsamand, Through President, Gordhan Lal Teli, S/o Kelwa, Amet Road, Baman Tukda, Rajasmand.

----Respondents

D.B. Civil Writ Petition No. 6102/2019

Your Micron LLP, Registered Office At Block No. 130, Flora, Vorabug, Morbi (Gujarat), Through Its Partner Shri Bhavesh Kumar Dhirajlal Patel.

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Mines And Geology, Department, Government Secretariat, Jaipur.
2. Principal Secretary, Industries Department, Government Secretariat, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 6103/2019

Hardev Rawal S/o Laduram, Aged About 45 Years, R/o Barsani, Tehsil Asind, District Bhilwara. ML No. 395/2006

----Petitioner

Versus

1. State of Rajasthan, Through Principal Secretary Mines And Geology Department, Jaipur.
2. State of Rajasthan, Principal Secretary, Industries Department, Secretariat, Jaipur.
3. Beawar Laghu Udyog Sangh, RIICO Industrial Area, Ajmer Road, Beawar- 305901, Registered Under The Societies Act, At No. 1968/67, Through Its President Ashishpal Padawat S/o Shri Abhay Raj Padawat, Aged

About 40 Years.

----Respondents

D.B. Civil Writ Petition No. 6199/2019

1. M/s. Vishnu Industries, H-98-101, Industrial Area, Neem Ka Thana, Sikar Through Its Proprietor Brahmdutt Modi S/o Late Shri Biharilal Modi By Caste- Mahajan, Aged About 68 Years, Resident Of Kapil Mandi, Neem Ka Thana, Sikar.
2. M/s Ganga Suppliers, Kamla Modi Market, Kapil Mandi, Neem Ka Thana, Sikar, Through Its Proprietor Raghav Modi S/o Brahmdutt Modi By Caste- Mahajan, Aged About 30 Years, Resident Of Kapil Mandi, Neem Ka Thana, Sikar.

----Petitioners

Versus

1. State of Rajasthan, Through Principal Secretary, Mines And Geology Department, Jaipur.
2. The Principal Secretary, Industries Department, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 6407/2019

Sawriya Mineral Proprietor Shri Devkaran, S/o Shri Roopa Ram By Cast Jat Aged About 30 Years R/o Indawat Tehsil Merta District Nagaur Rajasthan.

----Petitioner

Versus

1. State of Rajasthan, Through Its Secretary, Department of Mines And Mineral, Government of Rajasthan, Secretariat, Jaipur.
2. The Joint Secretary Department of Mines (Gr. II), Department of Government of Rajasthan Secretariat Jaipur.
3. The Director Mines And Mineral Department, Government of Rajasthan, Jaipur
4. The Superintendent of Engineer Bhilwara, District Bhilwara Rajasthan

----Respondents

For Petitioner(s)	:	Mr. P.P.Choudhary, Senior Advocate assisted by Mr. Rajendra Kataria & Mr. Gaurav Thanvi Mr.Ramit Mehta with Mr. Saurabh Maheshwari Mr. Vikas Balia assisted by Mr. Kunal Bishnoi and Mr. Samarpit Gupta, Mr. Kuldeep Mathur, Mr. N.K.Jain, Mr. Aditya Singh Rathore
For Respondent(s)	:	Mr. M.S.Singhvi, Advocate General assisted by Mr. K.S.Lodha Mr. Sandeep Shah, Additional Advocate General assisted by Mr.Abhimanyu Singh, Dr. Sachin Acharya assisted by Mr. Chayan Bothra for applicants Mr. Rajesh Joshi, Senior Advocate assisted by Mr. CVS Shekhawat for applicant.

HON'BLE MR. JUSTICE SANGEET LODHA
HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Judgment

Per Hon'ble Mr. Sangeet Lodha, J.

16th April, 2020

Reportable

1. These writ petitions have been filed by the petitioners challenging the legality of notification dated 10.3.19 issued by the Department of Mines, Government of Rajasthan, in exercise of the power conferred by Rule 82 of Rajasthan Minor Mineral Concession Rules, 2017 ('the Rules of 2017'), whereby on recommendation of Department of Industry to protect the domestic industries and in public interest, the transportation of mineral feldspar in the form of grains, chips and gitti out of the State has been restricted for a period upto 4.10.21. In some of the petitions, vires of Rule 82 of the Rules of 2017 and legality and propriety of notification dated

5.10.18 issued by the State Government restricting the transportation of mineral feldspar in lumps out of the State for a period of three years, are also impugned.

2. Out of these petitions, some of the petitions initially filed before the learned Single Judge of this Court and some of the petitions filed at Jaipur Bench of this Court, all were directed to be heard together by the order of the Chief Justice passed on an application preferred on behalf of the State under Rule 54 of the Rajasthan High Court Rules. Accordingly, all the petitions were placed before us for hearing and disposal together.

3. To appreciate the controversy, a brief narration of the facts is quintessential and for this purpose, the facts of Writ Petition No.4101/19, which was argued before us as a lead case, are taken into consideration.

4. The petitioner Surana Minerals Private Limited, a company registered under the Companies Act, 1956, is engaged in business of grinding of various minerals including feldspar, marble and masonry stones, slabs of marble and other stones. The petitioner was granted permission to operate a Grinding plant at Warjunda, Tehsil-Nathdwara, District Rajsamand for grinding of various minerals including feldspar. After the grant of approval to establish the plant as aforesaid, the petitioner was also granted 'Consent to operate' for grinding of 'Feldspar and Quartz', by the Rajasthan Pollution Control Board vide letter dated 29.6.16.

5. The State of Rajasthan has largest deposits of mineral feldspar in the country, around 85%. The mineral feldspar in the form of gitti, grain and chips and powder is used in manufacturing of ceramic products and vitrified tiles. The State of Gujarat is the

leading producer of ceramic tiles, sanitary wares and other products, wherein feldspar is used as raw material.

6. The petitioner has established an industry with equipments, called Vertical Shaft Impact ('VSI') machine, a grain plant. About 50 such plants are in operation in the State of Rajasthan, which converts the feldspar lump into grain, which are later sent to ball mill for conversion of grain into powder. There are around 3,000 ball mill industries operating in the State of Rajasthan.

7. There exists one more technology known as 'Washing Plants' for processing of mineral feldspar, wherein mineral feldspar is reduced to finer particles of 150/200/300 mesh size and simultaneously the impurities are removed. There are around 50 such machines operating in Morbi, Gujarat, which are totally automated plants with human interference in minimal.

8. The transportation of mineral feldspar from the State of Rajasthan to State of Gujarat to cater the need of raw material for automated plant established in Gujarat was adversely affecting 3,000 small scale industries established in the State of Rajasthan engaged in the activity of converting mineral feldspar lump into gitti, chips and grains and then grains into powder and therefore, in the first instance the State Government issued notification dated 5.10.18 restricting transportation of mineral feldspar in lumps out of State for a period of three years from the date of publication of the notification in the official gazette. Thereafter, yet another notification dated 10.3.19 is issued by the State Government on the recommendation of Department of Industry, Government of Rajasthan to protect the domestic industries and in public interest, to restrict the transportation of mineral feldspar in

the form of grains, chips and gitti out of the State for a period upto 4.10.21. Hence, these petitions.

9. Precisely, the case set out by the petitioner is that notification dated 10.3.19 issued by the Department of Mines, Government of Rajasthan in purported exercise of the power conferred under Rule 82 of the Rules of 2017, is issued not to regulate the mines and mineral development within the State of Rajasthan, but to restrict the inter-State trade and commerce, which is *per se* illegal, void and unconstitutional. According to the petitioner, Section 15 of Mines and Minerals (Development and Regulation) Act, 1957 ('MMDR Act') provides for delegation of power to the State Government to make the rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of the minor minerals and for the purposes connected therewith, but while issuing the impugned notifications, the State authorities have ventured far beyond the powers delegated to them by restricting the movement of goods from one State to another, which is besides being beyond the power conferred under the MMDR Act, is violative of Articles 301, 302, 303 & 304 of the Constitution of India.

10. A reply to the writ petition has been filed on behalf of the State taking the categorical stand that the impugned notifications regulating the transportation of the mineral feldspar in lumps, gitti, chips and grains have been issued to protect 3,000 ball mills, which fall under the category of 'small scale industry' and wherein 50,000 people are directly or indirectly employed. It is submitted that the transportation of the mineral feldspar in lump, gitti, chips and grains, outside the State shall result in closure of 3,000 ball mills established in the State of Rajasthan engaged in the activity

of converting mineral feldspar into powder. It is submitted that while issuing the impugned notifications, the movement of the mineral feldspar as such has not been restricted inasmuch as the mineral in powder form is ultimately sold in inter-State trade and commerce for the use in ceramic industries, basically operating in the State of Gujarat. According to the State, Rule 82 of the Rules of 2017, includes within its ambit power to regulate the transportation of mineral intra-State and inter-State. It is emphasized that the notifications issued nowhere cast any impediment or restriction on trade and commerce but it is only regulating the transportation of mineral, which is permissible under the relevant statute. It is submitted that the notifications have been issued considering overall aspects of the matter in the public interest involved and there is no blanket ban imposed on transportation of mineral as projected by the petitioner. It is submitted that the feldspar in powder form is used as raw material for manufacturing of vitrified tiles and other ceramic products manufactured in the State of Gujarat, the transportation whereof has not been restricted and therefore, there is no violation of Article 301 or 302 of the Constitution of India.

11. Mr. P.P.Choudhary, learned Senior Advocate appearing for the petitioners contended that the MMDR Act has been enacted to provide for the development and regulation of the mines and minerals under the control of Union. Under Section 15 of the Act, the State Government is empowered 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. The rule making power of the State Government under Section 15 in no manner empowers it to

restrict the transportation of the mineral excavated in whatever form in inter-state trade and commerce. Learned counsel would submit that the Rule 82 framed by the State Government in purported exercise of power conferred under Section 15 of the MMDR Act, in no manner empowers it to restrict the transportation of any mineral out of the State rather, it permits it to restrict or regulate transportation of mineral from 'any area' which obviously refers to area covered by quarry license or mining lease within the State of Rajasthan. The rule as framed in no manner could be intended to give power to the State Government to restrict the transportation of minerals so as to prohibit its transportation in inter-state trade and commerce inasmuch as any other interpretation of the rule would render it unconstitutional being violative of Article 19(1)(g), 301 & 302 of the Constitution of India.

12. Relying upon the decision in "*State of Gujarat vs. Jayeshbhai Kanjibhai Kalathiya Etc.*" (Civil Appeal Nos.10373-10374 of 2010), decided vide judgment dated 1.3.19, learned counsel submitted that all the issues raised in the present petitions by the petitioners have already been comprehensively dealt with and decided by the Supreme Court, wherein it is categorically held that in the garb of the power conferred under Section 15 of the Act, the State is not empowered to impose restriction on the freedom of trade, commerce or intercourse inasmuch as, the object of MMDR Act is to regulate mines and mineral development and not trade and commerce. The Court categorically held that once the State permits the excavation of the mineral neither it can legally restrict its movement within the territory of India nor is the same is constitutionally permissible. Learned counsel would submit that

the permissibility of the restriction on transportation of the mineral was examined by the Supreme Court vis-a-vis the provisions of Section 23C of the MMDR Act and it categorically held that no power flows from the said provision to make rule for regulating transportation of legally excavated minerals. The court further held that the power of State Legislature to impose restriction on the freedom of trade, commerce or intercourse as may be required in public interest, requires such a Bill or amendment to be moved in the State Legislature only after receiving previous sanction from the President. The Court observed that going by the Scheme of Chapter XIII of the Constitution, it becomes apparent that when there are such restrictions on State Legislature, then the State Government could not have imposed such prohibition under a statute whose object is to regulate mines and mineral development and not trade and commerce *per se.* Accordingly, learned counsel emphatically submitted that the controversy raised in the present petitions being covered by the decision of the Supreme Court in *Jayeshbhai Kanjibhai Kalathiya's* case (supra), the writ petitions deserve to be allowed as prayed for. Learned counsel submitted that by virtue of Entry No.42 of List I of the Schedule VII of the Constitution, the legislation on the subject inter-state trade and commerce is exclusively within the domain of the Parliament and the State Legislature is not even competent to legislate on the subject and thus, the notification issued by the State Government imposing restriction on transportation of mineral feldspar in the form of grains, chips and gitti out of the State amounts to usurping the power exclusively vested in the Parliament. Relying upon Article 304(1)(b) of the Constitution, learned counsel submitted that any restriction on the freedom of

trade or commerce or inter course with or within the State as may be required in the public interest can also be imposed only by way of a bill introduced or moved in the Legislature of the State with previous sanction of the President and thus, viewed from any angle, the impugned notification issued by the State Government being violative of the provisions of Part XIII of the Constitution deserves to be quashed.

13. Mr. Kuldeep Mathur, learned counsel appearing for some of the petitioners while adopting the arguments advanced by the learned Senior Advocate Mr. Choudhary, contended that Rule 82 of the Rules of 2017, is apparently beyond the rule making power of the State Government under Section 15 of the MMDR Act, inasmuch as it in no manner empowers the State Government to make rules restricting the transportation of the goods in inter-state trade and commerce rather it authorises State only to regulate the grant of quarry leases, mining leases or other minor concessions in respect of the minor minerals and the purposes connected therewith. Learned counsel would submit that the restriction on inter-state movement of the goods is plainly beyond the authority of the State Government emanating from Section 15 of the MMDR Act. That apart, imposition of any such restriction is only within the purview of the Parliament in terms of Article 301 & 302 of the Constitution of India and thus, what to say about such restriction being imposed by the State Government under the Rules of 2017, framed in exercise of the power conferred under Section 15 of the MMDR Act, even the State Legislature has no power to enact the law restricting movement of the goods in inter-state trade and commerce except by enacting the law in the manner prescribed under Article 304 of the Constitution of India

and thus, the Rule 82 of the Rules of 2017 conferring unbridled powers to the State Government to restrict the transportation of the mineral, deserves to be declared ultra vires.

14. Mr. Ramit Mehta, learned counsel appearing for the petitioners while adopting the arguments advanced by the learned Senior Advocate Mr. P.P. Choudhary, contended that as a matter of fact, the State Government could not have issued the notification restricting the movement of feldspar in the form of grains invoking the provisions of Rule 82 of the Rules of 2017. It is submitted that the product manufactured by the petitioners is feldspar grains which is manufactured by processing and crushing feldspar overburden. Explaining the process of manufacturing feldspar grains, learned counsel submitted that the mineral is feldspar lumps/feldspar overburden, which is subjected to series of processes and then the said mineral is converted into feldspar grains and thus, the final product of the petitioners does not remain a mineral, the movement whereof could be restricted/regulated by the State Government invoking the provisions of Rule 82 of the Rules of 2017. In support of the contention, learned counsel relied upon decisions of the Supreme Court in the matters of "*V.P.Pithupitchai vs. Special Secretary to the Government of Tamil Nadu",* AIR 2003 SC 2455 and "*Som Datt Builders Limited vs. Union of India & Ors.",* (2010) 1 SCC 311, which deals with judicial interpretation of expression 'mineral'. Learned counsel submitted that product of the petitioners has a distinct and separate marketable commodity which has the characteristic of mineral but it cannot be treated to be mineral as such. It is submitted that the impugned notification has been issued by the State Government with the presumption

that the product manufactured i.e. feldspar grain continue to be mineral whereas, it does not. Learned counsel submitted that power of the State Government to regulate the grant of mining leases and quarry license and purposes connected therewith does not extend to the manufacturing activities undertaken by the manufacturers, who have nothing to do with the excavation of the mineral as such. Learned counsel submitted that in the notification issued, it is mentioned that the restriction is being imposed pursuant to the recommendation of the Department of Industries but no recommendation if any made, are placed on record. Learned counsel submitted that it is not even clear as to in respect of which industries, the recommendations were made by the Department of Industries. Learned counsel urged that if the impugned notification issued is allowed to stand, it will result in closure of the industries run by the petitioners herein. It is submitted that the petitioners have established the industries after obtaining consent to operate from the Department of Industries and Rajasthan State Pollution Control Board and the petitioners have made huge investment wherein the subsidy is also granted by the Government and thus, the Government in the garb of protecting one industry, cannot create a situation resulting in closure of other industries. Learned counsel submitted that such prohibition will amount to protection of regional interest for political and not of public interest. In this regard, learned counsel relied upon a decision of the Supreme Court in the matter of "*State of Tamilnadu vs. Sanjeetha Trading Co. & Ors.",* (1993) 1 SCC 236.

15. On the other hand, Mr. M.S. Singhvi, learned Advocate General appearing for the State contended that Rule 82 of the

Rules of 2017, within its ambit include the power to regulate the intra-state and inter-state transportation of mineral, which is a purpose directly connected with the grant of quarry licence and mining lease granted in respect of the minor mineral by the State Government. It is submitted that while exercising the power under Section 15, the State Government has framed the rules only for regulating the grant of quarry licence and mining leases and Rule 82 of the Rules of 2017, in no manner travels beyond the rule making authority of the State Government under the relevant statute. Learned counsel submitted that while issuing the impugned notifications the endeavour of the State Government is to only regulate the activities pertaining to mineral concessions extended in respect of minor mineral feldspar and there is no absolute restriction imposed on transportation of the said mineral out of the State inasmuch as the transportation of feldspar in powder form, which is used as raw material by the ceramic industries is still permissible. Learned counsel submitted that the State has all power to impose restriction of the movement of the mineral in public interest involved in protecting the industries operating in the State, which are bound to be closed if the mineral feldspar in its all form is permitted to be transported out of the State. It is submitted that the impugned notifications issued in no manner imposes a blanket ban on transportation of the mineral as projected by the petitioners. Learned AG would submit that while referring to the provisions of Section 15 of the MMDR Act, the learned counsel for the petitioners has ignored the provisions of sub-section (1A) of Section 4 of the MMDR Act incorporated by the Act No.38 of 1999, which provides that no person shall transport or store or cause to be transported or stored any mineral

otherwise than in accordance with the provisions of the Act and Rules made thereunder. Learned AG would submit that sub-section (1A) clearly empowers the rule making authority to make the provisions regulating transportation and storage of the mineral. Learned AG submitted that besides sub-section (1A) of Section 4, Section 23C also empowers the State Government to make rules for preventing illegal mining, transportation and storage of the minerals and thus, the contention of the counsel for the petitioners that Rule 82 as framed is beyond the rule making authority of the State is absolutely devoid of any merit. Learned AG emphasized that the impugned notifications issued in no manner restrict the inter-state movement of the mineral feldspar, rather it only regulates the transportation of the mineral in specified forms for specific period, which is well within the power of the State Government under Rule 82 of the Rules of 2017, validly framed in exercise of the power conferred under the MMDR Act. Learned AG urged that the prohibition on transportation of the mineral feldspar in the form of grains, chips and gitti out of the State is covered by 'regulation' contemplated under Section 15 of the Act. It is submitted that the regulation of mines and mineral development under the MMDR Act must be given wider meaning and not the restricted meaning as suggested by the counsel appearing for the petitioners. In this regard, learned AG relied upon decisions of the Supreme Court in *State of Tamilnadu vs. Hindstone,* (1981) 2 SCC 205 and *PTC India Limited vs. Central Electricity Regulatory Commission,* (2010) 4 SCC 603. Learned AG submitted that in *Jayeshbhai Kanjibhai Kalathiya's* case (supra) relied upon by the learned counsel for the petitioners, the provision incorporated by insertion of sub-section (1A) of Section

4 of the MMDR Act, was though referred but not considered and therefore, the decision being *per incuriam,* the ratio decidendi of the said decision is not a binding precedent applicable to the present case. Learned AG submitted that in the matter of "State of T.N. Vs. M.P.P. Kavery Chetty*",* 1995 (2) SCC 402, which was later followed in the matter of "*K.T.Varghese & Ors. vs. State of Kerala & Ors.",* (2008) 3 SCC 735, the Supreme Court laid down that under the MMDR Act, there is no power conferred upon the State Government to exercise control over minor minerals after they have been excavated and therefore, to get over the law laid down under the said decision by way of amendment the provisions as contained in Section 23C and sub-section (1A) of Section 4 have been inserted. Learned AG submitted that while interpreting the provisions incorporated as aforesaid, the history of legislation has to be looked into and the provision has to be construed in the manner which suppresses the mischief and advance the remedy. In this regard, learned AG relied upon decisions of the Supreme Court in the matters of "*Bengal Immunity Co. Ltd. vs. State of Bihar & Ors.",* AIR 1955 SC 661 and "*Commissioner of Income Tax vs. Smt. Sodra Devi",* AIR 1957 SC 832. Drawing the attention of the Court to Article 39 (b) and (c) of the Constitution, learned AG submitted that the mineral vests in the State and the State is under an obligation to ensure that ownership and control of the material resources of the community are so distributed as best to subserve the common good and therefore, the restriction imposed by issuing the impugned notifications so as to protect the domestic industries in the public interest is well within the power of the State. In support of the submissions made learned counsel relied upon the decisions of the Hon'ble Supreme Court in *Natural*

Resources Allocation, in Re, Special Reference No.1 of 2012: (2012) 10 SCC 1 and *Monnet Ispat and Energy Limited vs. Union of India & Ors.:* (2012) 11 SCC 1. Learned AG emphasized that sub-section (1A) of Section 4 empowers the State Government to frame rules restricting the transportation of the mineral intra-state and inter-state and therefore, the provisions of Section 15 of the MMDR Act are not required to be invoked. Learned AG submitted that the provisions of Section 15 of MMDR Act specifying the matters in respect whereof the State Government can frame the rules in no manner restrict generality of powers of the State Government to frame rules in terms of sub-section (1A) (o) of Section 15 in respect of any other matter which is to be or may be prescribed. Learned AG submitted that if the contention of the counsel for the petitioners regarding the limited power of the State Government to frame the rules is accepted then even in respect of Section 23C of the MMDR Act, the State Government cannot frame any rule. In support of the contention, learned AG relied upon the decision of the Supreme Court in the matter of "*PTC India Limited vs. Central Electricity Regulatory Commission, through Secretary",* (2010) 4 SCC 603. Learned AG would submit that in *Jayeshbhai Kanjibhai Kalathiya's* case (supra) relied upon by the counsels for the petitioners, the Supreme Court was dealing with the matter wherein complete restriction was imposed whereas, no absolute restriction is imposed on transportation of mineral feldspar outside the State by the impugned notification, which cannot be considered to be in violation of Part XIII of the Constitution. Learned AG submitted that as a matter of fact, the MMDR Act is enacted in exercise of the powers conferred by Entry No.54 in the Union List. Learned AG submitted that by virtue of

Entry No.23, the State Legislature is competent to enact the laws for regulation of mines and minerals development subject to provisions of the List I with respect to regulation and development under the control of the Union, but since regulation of minor mineral exclusively falls within the domain of the State Government, the impugned notification issued in exercise of the power conferred under the Rules of 2017 in no manner could be construed to be unconstitutional. In support of the contention, learned counsel has relied upon a decision of the Supreme Court in the matter of "*D.K.Trivedi & Sons and Ors. vs. State of Gujarat & Ors.",* 1986 (Supp) SCC 20. Learned AG submitted that the decision of the State Government in issuing notification in protecting the domestic industries and employment of 50000 persons is certainly in public interest which does not warrant any interference by this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

16. The counsel appearing for the applicants while adopting the arguments advanced on behalf of the State have not chosen to make any further submissions.

17. Replying the arguments advanced by the learned AG, Mr. P.P.Choudhary, Senior Advocate contended that Entry No.23 of the List II is subject to the provisions of the List I with regard to regulation and development under the control of the Union. That apart, in the garb of the provisions relating to mining laws, the State cannot touch the legislative Entry No.42 of the List I which deals with inter-state trade and commerce. Learned AG emphasised that the impugned notification does not regulate the transportation of the mineral as such rather, it puts restriction on the movement of the mineral feldspar in specified forms in the

course of inter-state trade and commerce and thus, as laid down by the Supreme Court in *Jayeshbhai Kanjibhai Kalathiya's* case (supra), the prohibition imposed impinges upon the freedom guaranteed by Article 301 of the Constitution of India and therefore, the impugned notification deserves to be quashed on this count alone.

18. We have considered the rival submissions, perused the material on record and gone through the various decisions cited at the bar.

19. Indisputably, the impugned notifications dated 5.10.18 and 10.3.19 imposing the restriction on transportation of mineral feldspar lumps and in the form of grains, chips and gitti respectively, are issued by the State Government on the recommendation of the Department of Industries to protect the domestic industries and in the public interest, in purported exercise of the power conferred under Rule 82 of the Rules of 2017. For appreciation of various issues raised, Rule 82 of the Rules of 2017 and the notifications dated 5.10.18 and 10.3.19 may be beneficially reproduced:

> **Rule 82. Regulation of transportation of mineral.-**
>
> The Government, in public interest, may by notification in the official gazette, restrict or regulate the transport of any mineral from any area for any specific time.

<u>Notification dated 5.10.18</u>

Mines (Gr.II) Department
NOTIFICATION
Jaipur, October 5, 2018

G.S.R.84.- In exercise of the powers conferred by rule 82 of the Rajasthan Minor Mineral Concession Rules, 2017, the State Government, on the recommendations of

Industry Department and in public interest, hereby restrict the transportation of mineral felspar lumps out of the State for a period of three years from the date of publication of notification in the official gazette.

[No.F.14(25) Mines/Gr.II/2017]
By Order of the Governor,
Dr.B.D.Kumawat,
Joint Secretary to the Government.

Notification dated 10.3.2019

Government of Rajasthan
Mines (Gr.II)Deparmtent

F.14(25)Mines/Gr.II/2017 Jaipur, dated:10.03.2019

Notification

In exercise of the powers conferred by rule 82 of the Rajasthan Minor Mineral Concession Rules, 2017, the State Government, on the recommendations of Industry Department to protect the domestic industries and in public interest, hereby restrict the transportation of mineral felspar in the form of grains, chips and gitti out of the State for a period upto 4th October, 2021.

By order of the Governor,

(Dr.B.D.Kumawat)
Joint Secretary to the Government

20. Precisely, the challenge to the notifications is laid by the petitioners on the ground that under the provisions of the MMDR Act and the Rules of 2017 framed thereunder, the State Government is only empowered to regulate the grant of quarry leases, mining leases or other mineral concessions in respect of the minor minerals and the purposes connected therewith, which in no manner includes within its ambit the power to impose the restriction on transportation of a mineral out of the State and thus, the impugned notifications which impinges upon the provisions of Part XIII of the Constitution, which provides for free

trade, commerce and intercourse throughout the territory of India, deserve to be declared unconstitutional. According to the petitioners, the issues sought to be raised in the present writ petitions stand squarely covered by decision of the Supreme Court in Jayeshbhai Kanjibhai Kalathiya's case (supra) and therefore, the writ petitions deserve to be allowed as prayed for.

21. Per contra, according to the respondents, the power to regulate the mines and mineral development conferred upon the Central Government/State Government under the MMDR Act and the Rules framed thereunder is of widest amplitude so as to include within its ambit even the regulation of transportation of the minerals within the State or out of the State and thus, the impugned notifications issued by the State Government in exercise of the power conferred under Rule 82 of the Rules of 2017 are constitutionally valid and cannot be considered to be violative of the provisions of Part XIII of the Constitution. Rule 82 of the Rules of 2017 in no manner travels beyond the rule making authority of the State Government under the provisions of the MMDR Act. According to the respondents, the impugned notifications do not restrict the inter-state movement of the mineral feldspar rather, it only regulates the transportation of the mineral in specified forms for specific period, which is well within the power of the State Government under Rule 82 of the Rules of 2017. Further, the mineral excavated vests in the State which by virtue of Article 39 (b) and (c) of the Constitution is under an obligation to ensure that ownership and control of the mineral resources of the community are so distributed as best to subserve a common good and therefore, the restriction imposed on the transportation of the mineral feldspar in the specified forms out of the State so as to

protect the domestic industries and in the public interest, cannot be faulted with, moreso, when the restriction imposed is not absolute. Regarding the decision of the Supreme Court in Jayeshbhai Kanjibhai Kalathiya's case (supra), the stand of the respondents is that while rendering the said decision, the provisions of sub-section (1A) of Section 4 though referred, have not been considered by the Supreme Court and the decision of the Supreme Court in Hindstone's case (supra) has also not been appreciated in correct perspective and therefore, being *per incuriam,* it is not a binding precedent.

22. From the rival submissions, the issues which arise for consideration of this Court may be summarised thus:

(i) Whether the Rule 82 of the Rules of 2017 as framed by the State Government travels beyond the rule making power conferred upon it under Sections 15, 23C and 4(1A) of the MMDR Act and therefore, deserves to be declared ultra vires?

(ii) Whether Rules 82 of the Rules of 2017 and the impugned notifications issued by the State Government in purported exercise of the power conferred under Rule 82 of the Rules of 2017 are violative of Part XIII of the Constitution?

(iii) Notwithstanding the provisions of Part XIII of the Constitution, whether the State Government is empowered to restrict the movements of the mineral out of the State in public interest to protect the domestic industries?

(iv) Whether the decision of the Supreme Court in Jayeshbhai Kanjibhai Kalathiya's case (supra) is per incuriam and not a binding precedent on account of non consideration of the provisions of sub-section (1A) of Section 4 of the MMDR Act as alleged by the respondents?

23. Indubitably, under the Constitutional Scheme, both the Parliament and State Legislature of the States are empowered to make laws in respect of regulation of mines and mineral development in terms of Entry No.54 of List I and Entry No.23 of List II of the VII Schedule respectively. The Entry No.54 of the List I and Entry No.23 of the List II read as under:-

List I Entry No.54:

Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

List II Entry No.23:

Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

24. By virtue of Article 246 (1) of the Constitution, notwithstanding Entry No.23 List II, the Parliament enjoys exclusive power to make laws in respect of regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by the Parliament by law to be expedient in the public interest. Apparently, for this reason, while incorporating Entry No.23 in the List II empowering State Legislature of the States to make laws for regulation of mines and mineral development, the same has been made subject to the provisions of List I with respect to regulation and development under the control of the Union.

25. As laid down by the Supreme Court in Monnet Ispat and Energy Ltd.'s case (supra), the State Legislature loses its jurisdiction to enact the law in respect of regulation of mines and

mineral development to the extent to which Union Government had taken over control, the regulation of mines and development of mineral as manifested by Legislation incorporating the declaration.

26. The Parliament while invoking the provisions of List I Entry 54 has enacted the MMDR Act providing for the development and regulation of mines and minerals under the control of the Union. In conformity with List I Entry 54, under Section 2 of MMDR Act, a declaration is made that the control of regulation of mines and development of the mineral to the extent providing for under the MMDR Act, is taken over by the Union in the public interest. Obviously, for this reason, the State Legislature stands denuded of its legislative power to make any law with respect of regulation of mines and mineral development to the extent provided under the MMDR Act.

27. By virtue of Section 5 to Section 13 of the MMDR Act, the power to regulate the mines and mineral development in respect of all the minerals except minor minerals including the power to make rules in respect thereof, vests in the Central Government, however, by way of Section 15, the power to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of the minor minerals and for the purposes connected therewith, has been delegated to the State Government. Under sub-section (1A) of Section 15, without prejudice to the generality of powers conferred under sub-section (1) of Section 15, the matters in respect whereof the State Government may make rules have been specified. Further, while specifying the particular matters in respect whereof the State Government may make the rules, under Clause (o) of sub-section

(1A) of Section 15, the State is empowered to make rules in respect of any other matter which is to be or may be prescribed. But the fact remains that the power of the State Government to make rules under Section 15 does not travel beyond the power to regulate the grant of quarry leases, mining leases and other mineral concessions in respect of the minor mineral and for the purposes connected therewith.

28. In Hindstone's case (supra), relied upon by the learned AG, wherein while examining the issue regarding prohibition of quarrying black granite imposed upon private persons, the Supreme Court observed:

> "10. One of the arguments pressed before us was that Section 15 of the Mines and Minerals (Regulation and Development) Act authorised the making of rules for regulating the grant of mining leases and not for prohibiting them as Rule 8-C sought to do, and, therefore, Rule 8-C was ultra vires Section 15. Well known cases on the subject right from Municipal Corporation of the City of Toronto v. Virge and Attorney-General for Ontario v. Attorney-General for the Dominions up to State of U.P v. Hindustan Aluminium Corporation Ltd., were brought to our attention. We do not think that 'regulation' has that rigidity of meaning as never to take in 'prohibition'. Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated regulation. It was observed by Mathew, J. in G.K. Krishnan v. State of Tamil Nadu: "The word 'regulation' has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied". In modern statutes concerned as they are with economic and social activities, 'regulation' must, of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State. It was pointed out by the Privy Council in *Commonwealth of Australia v. Bank of New South Wales*- and we agree with what was stated therein-that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down that in no circumstances could be exclusion of competition so as to create a monopoly, either in a State or Commonwealth agency, be justified. Each case, it was said, must be judged on its own facts and in its own

> setting of time and circumstances and it might be that in regard to some economic activities and at some stage of social development, prohibition with a view ti State monopoly was the only practical and reasonable manner of regulation. The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the observation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

29. Undoubtedly, in Hindstone's case (supra), the Supreme Court laid down that the "regulation" does not have that rigidity of the meaning as never to take "prohibition" and its meaning depends on the context in which the expression is used in the statute and the objects were to be achieved by contemplated regulation and accordingly, the rule framed creating State monopoly in respect of quarrying black granite was held to be valid. But then, no inference can be drawn therefrom that even the prohibition imposed on transportation of the goods, which do not relate to the regulation of mines and mineral development, rather puts restriction on transportation of the mineral outside the State would also be valid.

30. It is noticed that in M.P.P. Kavery Chetty's case (supra), the Supreme Court while dealing with the scope of power of the State Government as rule making authority under Section 15 of the MMDR Act observed:

> "24. <u>There is no power conferred upon the State Government under the said Act to exercise control over minor minerals after they have been excavated. The power of the State Government as the subordinate rule-making authority, is restricted in the manner set out in Section 15. The power to control the sale</u>

and the sale price of a minor mineral is not covered by the terms of clause (o) of sub-section (1-A) of Section 15. This clause can relate only to the regulation of the grant of quarry and mining leases and other mineral concessions and it does not confer the power to regulate the sale of already mined minerals." (**Emphasis added**).

31. In K.T. Varghese's case (supra) wherein the legality of certain conditions in the form of restrictions incorporated while issuing the licenses under the Kerala Minor Mineral Concession Rules, 1967 including the condition that the licensees were permitted to sell the mineral only within the State of Kerala, that too, for domestic and agriculture purposes, were questioned, the Supreme Court while relying upon its earlier decision in M.P.P. Kavery Chetty's case (supra), struck down the conditions imposed.

32. Admittedly, by the impugned notifications issued by the State Government in purported exercise of the power conferred under Rule 82 of the Rules of 2017, the restriction on the transportation of the mineral feldspar in the form of grains, chips and gitti out of the State, has been imposed on the recommendation of the Department of Industries, Government of Rajasthan to protect the domestic industries and in public interest, rather than, in furtherance of regulation of the feldspar mines or development of the mineral feldspar.

33. As noticed above, it is contended by the learned AG that subsequent to the decision of the Supreme Court in M.P.P. Kavery Chetty's case (supra), so as to empower the Central Government and the State Government to regulate, transport and storage of mineral, by way of Mines and Minerals (Regulation and Development) Amendment Act, 1999 (the Act No.38 of 1999),

sub-section (1A) was added in Section 4 and Section 23C was inserted in the MMDR Act and thus, the subsequent amendment made to suppress the mischief where the Government was not empowered to regulate the transportation of the mineral, has to be construed in furtherance of the object sought to be achieved. Sub-section (1A) of Section 4 and Section 23C of the MMDR Act read as under:

Section 4 (1A)

No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

Section 23-C

(1) The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.
(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
(a) establishment of check-posts for checking of minerals under transit;
(b) establishment of weigh-bridges to measure the quantity of mineral being transported;
(c) regulation of mineral being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;
(d) inspection, checking and search of minerals at the place of excavation or storage or during transit;
(e) maintenance of registers and forms for the purposes of these rules;
(f) the period within which and the authority to which applications for revision of any order passed by any authority be preferred under any rule made under this section and the fees to be paid

therefor and powers of such authority for disposing of such applications; and

(g) any other matter which is required to be, or may be, prescribed for the purpose of prevention of illegal mining, transportation and storage of minerals.

(3) Notwithstanding anything contained in section 30, the Central Government shall have no power to revise any order passed by a State Government or any of its authorised officers or any authority under the rules made under sub-sections (1) and (2).

34. There cannot be any quarrel with the proposition that the Courts must adopt the construction which "shall suppress the mischief and advance the remedy" (vide Bengal Immunity's case, Supra), but then, the said rule laid down in Heydon's case which is also known as 'purposive construction' or mischief rule, can be invoked when the words used in the statutes are capable of two or more construction and in that case while construing the provision, the Court is required to consider (i) What was the law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy.

35. But in the instant case, firstly, the provisions of the relevant statute i.e. sub-section (1A) of Section 4 or Section 23C of the MMDR Act are not capable of bearing two or more interpretation and secondly, the reasons and object for incorporating the said provisions have been clearly delineated in the Bill introduced in the Parliament, which has culminated in the enactment of the Act No.38 of 1999 and therefore, the question of invoking the 'mischief rule' for interpretation of said provisions does not arise.

The "Statement of the Objects and Reasons" to the extent relevant is reproduced as under:

STATEMENT OF OBJECTS AND REASONS

"The Mines and Minerals (Regulation and Development) Act, 1957 provides for the regular and development of minerals other than petroleum and natural gas. Consequent upon the decisions taken in the Conference of the State Ministers/ Secretaries of Mines and Geology held in December, 1996, a Committee under the Chairmanship of the then Secretary, Ministry of Mines was constituted in February, 1997 to, inter alia, make recommendations regarding delegation of powers to the State Governments relating to grant and renewal of prospecting licences and mining leases and other related approvals and to suggest measures to reduce delay in this regard, review of the existing laws and procedures governing the regulation and development of minerals to make them more compatible with the changed policies and measures for prevention of illegal mining. The Committee in his report made wide-ranging recommendations in the area of delegation of powers to the State Governments, procedural simplifications, etc. which will go a long way to mitigate the problems faced by the States and the prospective investors while, at the same time, keeping the interests of the mining industry in particular and the national interest, in general, in tact. After careful consideration of the recommendations of the Committee, the Government has decided to amend the Mines and Minerals (Regulation and Development) Act, 1946.

2. Some of the more important amendments to be made are as follows:

xx xx xx

(iii) A new provision is proposed to be inserted in the Act prohibiting transportation or storage or anything causing transportation or storage of any mineral except under the due provisions of the Act, with a view to preventing illegal mining. Further, the Act is proposed to be amended to cover the breach of the provisions of the proposed new provision of the Act to be punishable. It is also proposed to insert a new provision to provide for anything seized under the Act as liable for confiscation under court orders. A new section is proposed to be inserted to empower the State Governments to make rules for preventing illegal mining, transportation and storage of minerals and for purposes connected therewith."

36. A bare perusal of the Statement of Objects and Reasons, makes it abundantly clear that the aforesaid amendments in the MMDR Act by way of Act No.38 of 1999 are introduced for preventing illegal mining, transportation and storage of minerals

and for the purposes connected therewith and not for the purpose of restricting the movement of the minerals from one place to another within the State or outside the State as such. Thus, the contention sought to be raised on behalf of the State that in terms of provisions of sub-section (1A) of Section 4 and Section 23C, the State is empowered even to restrict the transportation of the mineral outside the State in the public interest, cannot be countenanced by this Court.

37. It is pertinent to note that in M.P.P. Kavery Chetty's case (supra), the vires of Rule 8D and 19B of the Tamilnadu Mineral Concession Rules, 1959 empowering the State Government or its Officer or State Government Company or Corporation, as the State Government may direct to control the sale by every permit holder of quarried granite or other rock suitable for ornamental or decorative purposes, was questioned. The Court opined that it is difficult to see how granite resources can be protected by controlling the sale of granite after excavation and fixing the minimum price thereof and accordingly, these rules were struck down. Suffice it to say that the question with regard to restriction on transportation of the minerals in course of intra-State or inter-State trade and commerce did not come up for consideration before the Supreme Court in M.P.P. Kavery Chetty's case (supra).

38. The Supreme Court in Jayeshbhai Kanjibhai Kalathiya 's case (supra) while considering its earlier decisions in M.P.P. Kavery Chetty's, D.K. Trivedi & Sons and Hindstone cases (supra) categorically held that the prohibition on the transport or sale of the already mined minerals outside the State has no direct nexus with the object and purpose of the MMDR Act, which is concerned

with conservation and prudent exploitation of minerals. That apart while interpreting the provisions of Section 23C in light of the 'Statement of Objects and Reasons' reproduced hereinabove, the Supreme Court observed :

> "42. It is in this context the words 'transportation' and 'storage' in Section 23-C are to be interpreted. Here the two words are used in the context of 'illegal mining'. It is clear that it is the transportation and storage of illegal mining and not the mining of minor minerals like sand which is legal and backed by duly granted license, which can be regulated under this provision. Therefore, no power flows from this provision to make rule for regulating transportation of the legally excavated minerals." (**Emphasis added**)

39. We are firmly of the view that for parity of the reasons, the provisions of sub-rule (1A) of Rule 4 of the MMDR Act, also cannot be given a wider meaning so as to empower the State Government to put restriction on the transportation of the minerals in course of inter-state trade and commerce.

40. Thus, the contention sought to be raised on behalf of the State that the amendments as aforesaid by way of Act No.38 of 1999 were introduced so as to cover up the situation emerging on account of the law laid down by the Supreme Court in M.P.P. Kavery Chetty's case (supra) is absolutely devoid of any merit.

41. Coming to Rule 82 of the Rules of 2017, it is noticed that it empowers the State Government to restrict or regulate the transport of any mineral from any area or for any specific time. Admittedly, the rule as aforesaid has been framed by the State Government in exercise of the rule making power conferred upon it by Section 15 and 23C of the MMDR Act. Sub-section (1A) of Section 4 heavily relied upon by learned AG also prohibits transportation and storage of the mineral otherwise than in accordance with the provisions of the Act and the rules made

thereunder. Obviously, the State Government cannot frame any rule in transgression of the rule making authority vested in it under the relevant statute and thus, Rule 82 has to be interpreted in light of the power conferred upon the State Government to make the rules so as to regulate the illegal mining, transportation and storage of mineral and for the purposes connected therewith. As discussed above, in Jayeshbhai Kanjibhai Kalathiya's case (supra), while interpreting the provisions relating to the rule making authority of the State Government, the Supreme Court has categorically laid down that no power flows from the said provision to make the rule for regulating transportation of legally excavated minerals. In this view of the matter, it is difficult to countenance that Rule 82 as framed empowers the State Government to put restrictions on transportation of legally excavated minerals outside the State in public interest. Suffice it to say that Rule 82 as framed is not ultra vires the provisions of MMDR Act but it cannot be interpreted and used so as to put restriction on free flow of trade, commerce and intercourse within the territory of India allegedly to protect the domestic industries in the larger public interest.

42. Obviously, the power of the Parliament and the State Legislature to make the laws is subject to provisions of the Constitution and therefore, while enacting any law affecting activities of trade, commerce and intercourse within the territory of India, the provisions of Part XIII (Article 301 to 307) of the Constitution have to be strictly adhered to. Article 301 guarantees that the trade and commerce and intercourse shall be free throughout the territory of India. As observed by the Supreme

Court in Atiabari Tea Company Ltd. Vs. The State of Assam & Ors.: AIR 1961 SC 232, Article 301 embodies and enshrines a principle of paramount importance that the economic unity of the country will provide sustaining force for the stability and progress of the political and cultural unity of the country. Article 301 applies not only to inter-state trade, commerce and intercourse but also to intra-state trade and commerce and intercourse. But restrictions, freedom from which is guaranteed by Article 301, would be such restrictions as directly and immediately restrict or impede free flow on movement of trade.

This guarantee of free flow of trade, commerce and intercourse from one place to another within the State or outside the State is ofcourse subject to power of Parliament and State Legislature to put restrictions as provided for under Article 302 to 305 of the Constitution. Article 302 empowers Parliament to impose restriction, by law, on the freedom of trade, commerce and intercourse between one State and another or within any part of the territory of India as may be required in public interest. But by virtue of Article 303, the said power to put restrictions on the freedom of trade, commerce and intercourse, cannot be exercised by the Parliament or the State Legislature to make any law which discriminates between one State and another or gives preference to one State over another, which is again subject to an exception carved out under clause (2) of Article 302 which mandates that nothing in clause (1) shall prevent Parliament from making any law which discriminates between one State and another or gives preference to one State over another if it is necessary to do so for

the purpose of dealing with the situation arising from the scarcity of the goods in any part of the territory of India.

43. Article 304 empowers the State Legislature to make laws imposing; (a) on goods imported from other State or the Union territories, any tax to which similar goods manufactured or produced in the State are subject, however, not so as to discriminate between goods so imported, manufactured or produced, (b) such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in public interest. But by virtue of proviso thereto, no bill or amendment for the purposes of putting restriction in the public interest may be introduced or moved in the legislature of State without the previous sanction of the President. Thus, the legislation under Article 304 (b) triad conditions must be satisfied:

(i) previous sanction of the President must be obtained;

(ii) the legislation imposing restriction must be in public interest;

(iii) the restriction sought to be imposed must be reasonable.

44. In the backdrop of the position of law discussed above, now we proceed to consider the legality of the impugned notifications imposing restriction on the transportation of mineral feldspar in lump and in the form of grains, chips and gittis so as to protect the domestic industries and in the public interest.

45. Apparently, the impugned notifications impose absolute restriction on the transportation of the mineral feldspar in the specified forms out of the State directly affects the free flow of inter-state trade and commerce of the said mineral which is violative of the provisions of Part XIII of the Constitution. As discussed hereinabove, freedom of trade and commerce within the

State or from one State to another cannot be obstructed even by the State Legislature without enacting an appropriate law which satisfies the triad conditions enumerated under Article 304 (b) of the Constitution. In any case, the executive authority has no power to act in any manner which affects or hinders the very essence and thesis contained in the scheme of Part-III of Constitution (vide The Indian Cement & Ors. Vs. State of Andhra Pradesh: AIR 1988 SC 567). Thus, the impugned notifications issued by the State Government imposing absolute restriction on free flow of the mineral feldspar in the specified form in the inter-state trade or commerce are not sustainable in the eyes of law and deserve to be declared unconstitutional.

46. As a matter of fact, this aspect of the matter stands squarely covered by decision of the Supreme Court in Jayeshbhai Kanjibhai Kalathiya's case (supra) wherein while upholding the decision of the Gujarat High Court in declaring Rule 44BB of the Gujarat Minor Mineral Rules, 1966 and Rule 71 of Gujarat Minor Mineral Concession Rules, 2010 ultra vires, whereunder the movement of the sand beyond the border of the State was restricted, the Court held:

> "43. As far as Issue No.(b) above is concerned, we are also of the considered opinion that the impugned rules violates Part XIII of the Constitution as the effect thereof is to fetter the freedom of trade, commerce and intercourse under Article 301 of the Constitution. Under this Article, the expression 'freedom' must be read with the expression 'throughout the territory of India'. Under Article 302, Parliament may impose restrictions on the freedom of trade, commerce or intercourse between one State and another as may be required in the public interest. The expression 'public interest' may include a regional interest as well. However, Article 302 is qualified by Article 303 which prohibits Parliament and the State Legislatures from making any law that gives preference to one State over another or discriminates between one State and another. Situations of scarcity are to be dealt with by Parliament under

Article 302(2). The power of State Legislature to impose reasonable restrictions on the freedom of trade, commerce or intercourse, as may be required in the public interest, requires such a Bill or amendment to be moved in the State Legislature only after receiving previous sanction from the President. The President, being the head of the State and the guardian of the federation, must be satisfied that such a law is indeed required and, thus, acts as a check on the promotion of provincial interests over national interest. Going by the aforesaid scheme of this Chapter, it becomes apparent that when there are such restrictions on a State Legislature, then the State Government could not have imposed such a prohibition under a statute whose object is to regulate mines and mineral development, and not trade and commerce *per se*.

44. That apart, we find force in the submission of the learned Additional Solicitor General that Part XIII of the Constitution is a code on checks and balances on the legislative power intended to achieve the objective of economic integration of the country. This was emphasised in ***Video Electronics Pvt. Ltd. & Anr. v. State of Punjab & Anr.*** Wherein this Court held :

> "20. ...In our opinion, Part XIII of the Constitution cannot be read in isolation. It is part and parcel of a single constitutional instrument envisaging a federal scheme and containing general scheme conferring legislative powers in respect of the matters relating to List II of the Seventh Schedule on the States. It also confers plenary powers on States to raise revenue for its purposes and does not require that every legislation of the State must obtain assent of the President. Constitution of India is an organic document. It must be so construed that it lives and adapts itself to the exigencies of the situation, in a growing and evolving society, economically, politically and socially. The meaning of the expressions used there must, therefore, be so interpreted that it attempts to solve the present problem of distribution of power and rights of the different States in the Union of India, and anticipate the future contingencies that might arise in a developing organism. Constitution must be able to comprehend the present at the relevant time and anticipate the future which is natural and necessary corollary for a growing and living organism. That must be part of the constitutional adjudication. Hence, the economic development of States to bring these into equality with all other States and thereby develop the economic unity of India is one of the major commitments or goals of the constitutional aspirations of this land. For working of an orderly society economic equality of all the States is as much vital as economic unity."

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

45. It is also rightly contended by all the respondents that balanced development of the country is an equally vital facet of economic integration. No doubt, Part XIII permits some forms of differentiation, for example, to encourage a backward region or to create a level playing field for parts of the country that may not have reached the desired level of development. In this context, Part XIII envisions a two-fold object :(i) facilitation of a common market through ease of trade, commerce and intercourse by erasing barriers; and (ii) Regulations (or restrictions) which may have the effect of differentiating between States or regions which may be necessary not only in emergent circumstances of scarcity etc. or but even for development of economically backward regions or otherwise justified in the public interest. That Part XIII is not about "freedom" alone but is a code of checks and balances, intended at achieving economic unity and parity. Such a desired objective for economic integration through checks and balances was also articulated in ***Video Electronics Pvt. Ltd.*** :

> "36. ...Economic unity is a desired goal, economic equilibrium and prosperity is also the goal. Development on party is one of the commitments of the Constitution. Directive principles enshrined in Articles 38 and 39 must be harmonised with economic unity as well as economic development of developed and under developed areas. In that light on Article 14 of the Constitution, it is necessary that the prohibitions in Article 301 and the scope of Article 304(a) and (b) should be understood and construed. Constitution is a living organism and the latent meaning of the expressions used can be given effect to only if a particular situation arises. It is not that with changing times the meaning changes but changing times illustrate and illuminate the meaning of the expressions used. The connotation of the expressions used takes its shape and colour in evolving dynamic situations. A backward State or a disturbed State cannot with parity engage in competition with advanced or developed States. Even within a State, there are often backward areas which can be developed only if some special incentives are granted. If the incentives in the form of subsidies or grant are given to any part of (*sic* or) units of a State so that it may come out of its limping or infancy to compete as equals with others, that, in our opinion, does not and cannot contravene the spirit and the letter of Part XIII of the Constitution. However, this is permissible only if there is a valid reason, that is to say, if there are justifiable and rational reasons for differentiation. If there is none, it will amount to hostile discrimination…."

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

> neither can it legally restrict its movement within the territory of India nor is the same constitutionally permissible. Likewise, there is no restriction on the State importing sand from other states. If it is the case that the demand of any State is not being met, it may purchase sand from other states. In any event, the market will dictate trade in sand inasmuch as it may make no business sense for mining company to transport and sell its sand in a far away destination after incurring large costs on transportation." (**emphasis added**)

47. In view of the discussion above, the vires of Rule 82 of the Rules deserves to be upheld, ofcourse, with the declaration that in exercise of the power conferred under the said rule, the State Government is not empowered to put restriction on transportation of the minerals outside the State and such power can only be exercised so as to regulate the transportation thereof only for the purposes of preventing illegal mining transportation and storage of the mineral and connected therewith. The impugned notifications issued by the State Government in purported exercise of power conferred under Rule 82 of the Rules of 2017, putting restriction on transportation of the mineral feldspar in lumps or in the form of grains, chips and gitti so as to protect the domestic industries and in public interest are ex-facie violative of the provisions of Part XIII of the Constitution and deserve to be quashed.

48. Accordingly, the writ petitions are allowed. The impugned notifications dated 5.10.18 and 10.3.19 issued by the Department of Mines, Government of Rajasthan are declared unconstitutional and quashed. No order as to costs.

(VINIT KUMAR MATHUR),J **(SANGEET LODHA),J**

Aditya/-