



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P. (MD)Nos.5081 of 2019 and 17092 of 2020

and

W.M.P. (MD)No.14265 of 2020 in W.P. (MD)No.17092 of 2020

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W.P. (MD)No.5081 of 2019:

C.Stephen

... Petitioner

Vs.

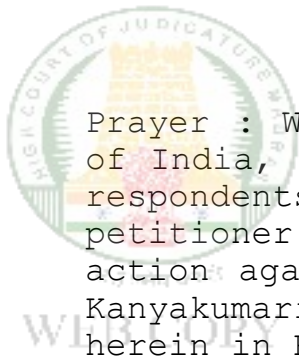
- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Fort St. George, Chennai - 600 009.
 - 2.The Director of Geology and Mining,
Guindy, Chennai - 600 032.
 - 3.The District Collector,
Kanyakumari District,
Nagercoil - 629 001.
 - 4.The Revenue Divisional Officer,
Padmanabhapuram, Kanyakumari District.
 - 5.Thasildar,
Kalkulam Taluk,
Kanyakumari District.
 - 6.The Assistant Director of Geology and Mining,
Kanyakumari District.
 - 7.S.Muthiah
 - 8.A.Ajikumar
 - 9.Anitha Raja Bai
 - 10.Senthilkumar Murugesan
 - 11.Crusher Owners Federation Hosur,
(Regd. No.112/2018)
Represented by its President S.R.Sampangi,
Registered Office at 136/1, 2nd Floor, Ragavendra Towers,
Inner Ring Road, Hosur - 635 109.
- ... Respondents

(R7 & R8 *Suo Motu* impleaded vide Court Order
dated 14.03.2019)

(R11 is impleaded vide order dated 23.09.2020 in
WMP (MD) No.9678/2020 in W.P. (MD) No.5081/
2019 by MSNJ and PRMJ)

R9 is impleaded vide order dated 23.09.2020 in WMP (MD) .No.5950/2019
in WP (MD) 5081/2019

R10 is impleaded vide order dated 23.09.2020 in WMP (MD) .No.9664/2020
in WP (MD) 5081/2019



Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, directing the respondents herein to take suitable action forthwith based on the petitioner's representation dated 05.02.2019 seeking appropriate action against illicit mining operations in Western Ghat areas of Kanyakumari District as per proceedings issued by the 2nd respondent herein in RC No.5266/MM6/2018 dated 03.08.2018.

For Petitioner	:	Mr.E.V.N.Siva
For Respondent Nos.1 to 6	:	Mr.P.H.Aravind Pandian Additional Advocate General Assisted by Mr.K.P.Krishnadoss Special Government Pleader
For Respondent Nos.7 & 8	:	Mr.M.Suresh
For Respondent No.9	:	Mr.M.Gnanagurunathan
For Respondent Nos.10 & 11	:	Mr.N.L.Rajah Senior Counsel for Mr.Abdulsaleem

W.P. (MD)No.17092 of 2020:

M.Satheesh ... Petitioner

Vs.

- 1.The District Collector,
Kanyakumari District.
- 2.The District Collector,
Tirunelveli.
- 3.The Superintendent of Police,
Kanyakumari District.
- 4.The District Revenue Officer,
Kanyakumari District.
- 5.The Assistant Director, Mines,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, to consider petitioner's representation dated 06.11.2020 and prevent the transport of M-sand, rough stone, jelly to Kerala originating anywhere from Tamilnadu.

For Petitioner	:	Mr.P.Puhazh Gandhi
For Respondents	:	Mr.P.H.Aravind Pandian Additional Advocate General Assisted by Mr.K.P.Krishnadoss Special Government Pleader

COMMON ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

W.P.(MD) No.5081 of 2019 has been filed seeking appropriate action against illicit mining operations affecting natural wealth,

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



including minerals. W.P.(MD) No.17092 of 2020 has been filed for issuance of a Writ Mandamus to take action to prevent the transport of M-Sand, Rough Stone and Jally to Kerala and other States from the State of Tamil Nadu.

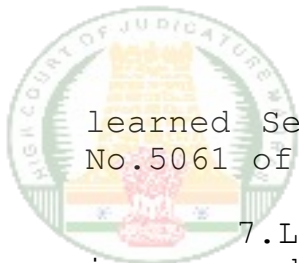
2.The case of the petitioner in W.P.(MD) No.5081 of 2019 is that in the District of Kanyakumari, illegal and illicit quarrying operations are taking place by removing rough stones in a rampant manner under the eyes of the official respondents. Despite representations given, no action is taken. After extracting rough stone and jally, they are being transported to the adjacent State of Kerala.

3.The case of the petitioner in W.P.(MD) No.17092 of 2020 is that the Parliament in its wisdom has categorised minerals into two viz., minor minerals and major minerals. The power to regulate minor minerals was delegated to the State Governments, while retaining the power with the Central Government regarding major minerals. Minor minerals are used mostly in local areas for local purposes and therefore, there is no question of transporting it from State to State.

4.Learned Additional Advocate General appearing for the official respondents in both the writ petitions and the learned Senior Counsel appearing for respondents 10 and 11 in W.P.(MD) No.5061 of 2019 submitted that there is no power or authority under the Mines and Minerals (Development and Regulation) Act, 1957 to frame regulations to prevent transport of minor minerals. Reliance has been made to the decision of the Hon'ble Apex Court in **State of Gujarat v. Jayeshbhai Kanjibhai Kalathiya** reported in **(2019) 16 SCC 513**.

5.The issue is no longer *res-integra*. It has been held by the Hon'ble Apex Court in **State of Gujarat v. Jayeshbhai Kanjibhai Kalathiya** reported in **(2019) 16 SCC 513**, that such a power of regulation cannot be extended after the lessee is permitted to remove the minerals. Therefore, the power to regulate could emanate at the time of imposing conditions and at the time of granting licence for quarry, apparent action has to be taken and when such licensee took minerals quarried to a different place of destination, the State Government does not have power to stop it except to the extent of invoking the power under Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957.

6.By way of reply, learned counsel appearing for the petitioner in W.P.(MD) No.17092 of 2020 submitted that even in that case Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, has to be seen in the context of regulations. The learned counsel for petitioner also made reliance on the judgment of the Hon'ble Apex Court, which has been relied on by the



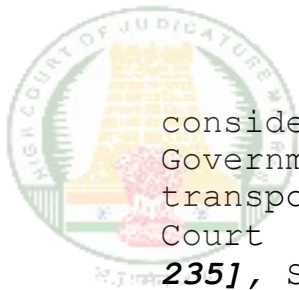
learned Senior Counsel for the respondents 10 and 11 in W.P.(MD) No.5061 of 2019.

7.Learned Additional Advocate General, on a query on this issue, submitted that Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, can be pressed into service, if the Court feels so. In such a case, endeavour would have to be made to take appropriate measures to prevent illegal and unauthorised transportation of minerals in violation of the Mines and Minerals (Development and Regulation) Act, 1957.

8.On the larger issue involved, it is no longer *res-integra*. In the above said decision reported in **(2019) 16 SCC 513**, the Hon'ble Apex Court was pleased to hold that the power to regulate, though rather wide, will not extend to exercise power by the State after the mineral has been extracted. Therefore, the State Government cannot prohibit or restrict a licensee from transporting it outside the State, however, such a regulation can be done at the time of granting licence by keeping in mind the actual quantity, which can be permitted to be extracted. Therefore, once the quantity is restricted, the question of transporting would not arise and it would have an excellent economic factor attached to it, including the cost of the manufacture, which would dissuade the transport of minerals to different State. We shall not contravene from the aforesaid Apex Court's decision reported in **(2019) 16 SCC 513**, except extracting the relevant portions:

"18) From the above judgment, his line of action was that if the power of regulation permits the States to utilise the minor minerals for the benefit of the State through its own agency, it would necessarily also encompass the power to ensure that even private parties utilise the sand within the State as a condition of the lease. Furthermore, the argument that sub-section (1) of Section 15 is for regulating the grant of leases and other mineral concessions in respect of minor minerals and that rules under that sub-section can be made only with respect to the time when such leases or concessions are granted and not with respect to any point of time subsequent thereto, was specifically considered and rejected in the case of **D.K. Trivedi & Sons [1986 Supp SCC 20]**.

19) Mr. Kapur also argued that a three Judge Bench of this Court in **U.P. Power Corpn. Ltd., v. N.T.P.C. Ltd. [(2009) 6 SCC 235]** has reiterated the view that the power of regulation conferred upon an authority is not spent or exhausted with the grant of permission. He relied upon the judgments in **State of T.N. v. Hind Stone [(1981) 2 SCC 205]** and **K. Ramanathan v. State of T.N. [(1985) 2 SCC 235]** wherein this Court reiterated that the word 'regulate' must be given the widest amplitude. He submitted that in **K. Ramanathan's [(1985) 2 SCC 235]** case this Court was



considering the validity of an order issued by the State Government under the Essential Commodities Act banning the transport of paddy outside the State. In that context, this Court has observed that: (**K. Ramanathan's [(1985) 2 SCC 235]**, SCC pp. 130-32, paras 19 & 23)

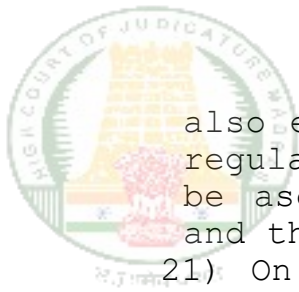
"19...At the same time, the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. ... The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression...

* * *

23...One of the ways in which such regulation or control over the production, supply and distribution of, and trade and commerce in, an essential commodity like foodstuffs may be exercised is by placing a ban on inter-State or intra-State movement of foodstuffs to ensure that the excess stock of foodstuffs held by a wholesale dealer, commission agent or retailer is not transported to places outside the State or from one district to another with a view to maximise the procurement of such foodstuffs from the growers in the surplus area for their equitable distribution at fair prices in the deficit areas. The placing of such ban on export of foodstuffs across the State or from one part of the State to another with a view to prevent outflow of foodstuffs from a State which is a surplus State prevents the spiral rise in prices of such foodstuffs by artificial creation of shortage by unscrupulous traders...These are nothing but regulatory measures."

20) Mr. Kapur further submitted that the above observations and the expansive interpretation given to the power of regulation in both the aforesaid cases have been approved by a Constitution Bench of this Court in **U.P. Coop. Cane Unions Federations v. West U.P. Sugar Mills Assn [(2004) 5 SCC 430]**. In this case, the Constitution Bench was considering the competence of the State Government to fix the State advised price for purchase of sugarcane by an occupier of a sugar factory over and above the minimum price fixed by the Central Government. The relevant section, i.e. Section 16, also provided merely a power of regulation and the power to provide for terms and conditions and did not grant the power to fix prices. Discussing that aspect, it was observed as under: (SCC pp 454-55, para 20)

"20. ... "Regulate" means to control or to adjust by rule or to subject to governing principles. It is a word of broad impact having wide meaning comprehending all facets not only specifically enumerated in the Act, but



also embraces within its fold the powers incidental to the regulation envisaged in good faith and its meaning has to be ascertained in the context in which it has been used and the purpose of the statute."

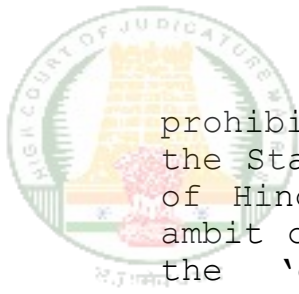
21) On the basis of the aforesaid judgments, submission of Mr. Kapur was that this Court has consistently held that power to regulate was of widest amplitude and, therefore, it would encompass power to regulate the movement of minor minerals as well, including the condition not to transport the excavated sand outside the State of Gujarat in the lease itself. He submitted that this Court in State of **T.N. v. M.P.P. Kavery Chetty [(1995) 2 SCC 402]** held that there is no power conferred upon the State Government under the MMDR Act to exercise control over the minor minerals after they have been excavated. His submission was that this is the only judgment which has taken discordant note and while deciding this, the earlier judgment in **D.K. Trivedi & Sons [1986 Supp SCC 20]** was not brought to the notice of the Court.

...

27) Likewise, in **D.K. Trivedi & Sons**, this Court held that minor minerals are used mostly in local areas and for local purposes while minerals other than minor minerals are those necessary for industrial development on a national scale. She submitted that it is totally different proposition. She also pointed out that in the said case the finding that the State Government could enhance dead rent even during the subsistence of a lease has no application in the present case. Such observations of this Court in **D.K. Trivedi & Sons** were in the context of enhancement of dead rent which is collected as a fixed amount in consideration for the grant of the lease by the lessor apart from royalty and is incidental to the regulation and development of mines and minerals which is avowed object of the MMDR Act as stated in its Preamble. But, in the present case, what is sought is a blanket prohibition of the sale of minor minerals beyond the borders of the State of Gujarat. She argued that on the other hand, both **M.P.P. Kavery Chetty [(1995) 2 SCC 402]** and **K.T. Varghese v. State of Kerala [(2008) 3 SCC 735]** were matters wherein what was sought to be controlled post grant of lease was the sale of the excavated minerals. Such restrictions were found to be beyond the powers granted to the State as a delegate of Parliament and were accordingly struck down.

...

39) In the cases of **Amritlal Nathubhai Shah v. Union of India [(1976) 4 SCC 108]**, **D.K. Trivedi & Sons [1986 Supp SCC 20]** and **Hind Stone [(1981) 2 SCC 205]**, the measures in question had a direct nexus with the grant or the refusal to grant a lease. In the instant appeals, which concern the sale of already excavated minerals that belong to the lessee, a



prohibition by the State Government on sale thereof outside the State is not permissible under the MMDR Act. In the case of *Hind Stone*, this Court succinctly stated the scope and ambit of the MMDR Act, highlighting that the Act is aimed at the 'conservation and the prudent and discriminating exploitation of minerals'. Following passage from the said judgment shows that as a method of regulation, prohibition is clearly permissible, provided, however, that it has a direct nexus with the conservation, exploitation and excavation of minerals: (***Hind Stone case***, SCC p. 217, para 10)

"10...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 conservation 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 the leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

40) On the other hand, 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.

41) Insofar as Section 23-C of the MMDR Act is concerned, it was inserted by the Amendment Act of 1999 with the objective to prevent illegal mining. That is clearly spelled out in the Statement of Objects and Reasons. We may reproduce a portion thereof again:

"(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.

(emphasis supplied)"

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.

47) 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."

9. In view of the judgment rendered by the Apex Court referred supra, the main submission of the counsel of the petitioner in W.P. (MD) No.17092 of 2020 that there should be a blanket ban by way of prohibition under the Mines and Minerals (Development and Regulation) Act, 1957 stands rejected. In fact, the Apex Court went to the extent of saying that even the Act does not provide so. We do not wish to travel beyond that. Suffice to state that there is no power to the State Government to regulate or prevent the transport of minor minerals outside the State.

10. Now, incidentally we deal with the issue with respect to the prevention of transport of minerals and the power to regulate it otherwise. Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, provides the measures that can be taken, including the arrangement of a weigh bridge, establishment of check-posts for checking of minerals under transit and regulation of mineral being transported from the area granted under a prospecting licence. Though the provisions say that a duty is cast upon the State Government to see to it that minerals are not used without any restrictions, as rightly submitted by Mr. P. Puhazh Gandhi, learned counsel for the petitioner in W.P. (MD) No.17092 of 2020 that the Government is the custodian of natural resources and therefore, the concept of public trust or the theory of trusteeship certainly come into play and as such transport of minerals will have to be



regulated and protected for the posterity. The concept of sustainable development also would demand such an action.

11. In such view of the matter, we hold that the implementation of Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, is the discretion of the State Government as we cannot go into the said issue being in the realm of the executive. The State Government shall also keep in mind the fact that there would be large scale transport of minor minerals and there may be a need to give permission for lesser extent of sand as indicated by the Hon'ble Apex Court in the aforesaid judgment in paragraph 47. We are of the view that adequate compliance of Section 23-C the Mines and Minerals (Development and Regulation) Act, 1957, would certainly stop illegal mining, otherwise there would be depletion of the minerals in the State.

12. These Writ Petitions are disposed of with the above observations. No costs. Consequently, connected W.M.P. (MD) No.14265 of 2020 in W.P.(MD) No.17092 stands closed and the interim order already granted shall stand vacated.

Sd/-

Assistant Registrar (CO)

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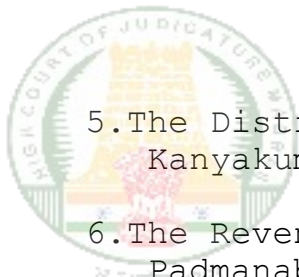
/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Principal Secretary,
State of Tamil Nadu,
Fort St. George, Chennai - 600 009.
2. The Director of Geology and Mining,
Guindy, Chennai - 600 032.
3. The District Collector,
Kanyakumari District,
Nagercoil - 629 001.
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Kalkulam Taluk,
Kanyakumari District.

9.The Assistant Director of Geology and Mining,
Kanyakumari District.

10.The Assistant Director of Geology and Mining,
Kanyakumari District.

+2 CC to M/s.ABDUL SALEEM, Advocate (SR-4735[F] dated 12/02/2021)

+1 CC to M/s.M.GANAGURUNATHAN, Advocate (SR-4806[F] dated 12/02/2021)

+1 CC to M/s.SPL GP (SR-4915[F] dated 15/02/2021)

W.P.(MD)Nos.5081 of 2019 and 17092 of 2020
11.02.2021

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