

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2153 OF 2022

Orange City Stone Crusher Owners
Association, Nagpur, Registration
No. MH/650/1999/NP/23/8/1999
through its Secretary
Shri Arvind S/o Janrao Gajbhiye,
aged about 55 years,
Occupation : Business,
R/o. 8-Rasta Chowk, Laxmi Nagar,
Nagpur. **PETITIONER**

// VERSUS //

- 1) State of Maharashtra,
through the Principal Secretary,
Revenue Department, Room No.20,
Annex building, Mantralaya,
Mumbai-440032.
- 2) The District Collector,
Collectorate, Civil Lines,
Nagpur.
- 3) The District Mining Officer,
Collectorate Compound,
Civil Lines, Nagpur.
- 4) Joint Secretary,
Revenue and Forest Department,
Mantralaya, Main Building,
1st Floor, Madam Kama Road,
Hutatma Rajguru Square,
Mantralaya, Mumbai-32.
- 5) Sub Divisional Officer,
Umred, Tahsil Umred,
District : Nagpur.

- 6) Tahsildar, Umred,
Tahsil Umred, District : Nagpur. **RESPONDENTS**

WITH

WRIT PETITION NO. 2163 OF 2022

Akhil Maharashtra Quarry and
Crusher Owner's Federation,
through its Working President,
Mr. Keshav S/o. Shankarrao Thakre,
Aged about 60 years,
Office at : Sanskrutik Sankul,
Jhansi Rani Square,
Nagpur – 440012.

.... **PETITIONER**

// VERSUS //

- 1) State of Maharashtra,
through its Joint Secretary,
Ministry of Revenue and Forest,
703/4, 1st Floor, Mantralaya Extension,
Mumbai-400032.
- 2) The Collector,
Ravindranath Tagore Marg,
Civil Lines, Nagpur – 40001,
Maharashtra.
- 3) The Divisional Commissioner,
Ravindranath Tagore Marg,
Civil Lines, Nagpur – 40001,
Maharashtra.
- 4) State Level Environment Impact
Assessment Authority,
through its Chairman, 601,
6th Floor, NKM International House,
behind LIC Yogakshema Building,
177 Babubhai Chinoy Marg,
Nariman Point, Mumbai – 400020,
Maharashtra.

- 5) Sub-Divisional Officer,
Sub-Divisional Office, VCA Stadium
Complex, 129, Civil Lines, Nagpur.
- 6) Tahsildar (Nagpur City),
Tahsil Office, Akashwani Square,
New Collector Compound,
Civil Lines, Nagpur.

.... **RESPONDENTS**

WITH

WRIT PETITION NO. 2731 OF 2022

M/s. Shlok Stone Crusher,
Through its Proprietor,
Ms. Nikita Gopal Chouksay,
aged about : Major,
Having its registered Office at
Shop No.110, Mouraya-1 Apartment,
Ganesh Nagari, Near Patel Petrol,
Koradi Road, Nagpur-441111
Maharashtra

.... **PETITIONER**

// VERSUS //

- 1) The State of Maharashtra,
Through the Secretary,
Revenue & Forest Department,
Room No. 456/461 Annex,
Hutatma Rajguru Chowk,
Madam Cama Road, Mantralaya,
Mumbai-400032.
- 2) District Collector, Nagpur,
Collectorate, Civil Lines,
Nagpur-440001, Maharashtra.
- 3) Sub-Divisional Officer,
Umred, Tehsil Umred,
District – Nagpur.
- 4) The Tehsildar (Umred),
Umred, Tehsil Umred,
District – Nagpur.

- 5) Maharashtra Pollution Control Board,
Through the Regional Officer,
Udyog Bhavan, 5th Floor,
Near Sales Tax Office, Civil Lines,
Nagpur – 440001.
 - 6) State Environment Impact Assessment
Authority, through the Chairman,
601, 6th Floor, NKM International House,
behind LIC Yogakshema Building,
177 Babubhai Chinoy Marg,
Nariman Point, Mumbai-400020.
 - 7) District Mining Officer,
Collectorate Compound,
Civil Lines, Nagpur-440001,
Maharashtra.
- **RESPONDENTS**

WP No.2153/2022

Mr. S.K.Mishra, Senior Advocate with Mr. Kaustabh
Deogade for the petitioner.

Ms. N.P.Mehta, AGP for respondent nos. 1 to 6.

WP No.2163/2022

Mr. S.P. Bhandarkar, Advocate with Advocate Manish
Shukla, Advocate for the petitioner.

Ms. N.P.Mehta, AGP for respondent nos. 1 to 6.

WP No. 2731/2022

Mr. Ganesh H. Barange, Advocate for the petitioner.

Ms. N.P. Mehta, AGP for respondent 1 to 4 and 7.

Mr. S.S.Sanyal, Advocate for respondent no.5..

**CORAM : SUNIL B. SHUKRE
AND ANIL L. PANSARE, JJ.
RESERVED ON : 10.10.2022
PRONOUNCED ON 14.10.2022**

JUDGMENT (Per Sunil B. Shukre, J.)

Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent.

2. A short question involved in all these petitions is - whether it is permissible for the State Government to require a person interested in obtaining quarry permit under Rule 59 of the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013 (for short Rules, 2013) to submit environmental clearance as a condition precedent by issuing an executive instruction in the nature of impugned communication dated 24th March, 2022?

3. The brief facts leading to filing of these petitions are stated as under:-

a) The petitioners in Writ Petition No.2153/2022 and Writ Petition No.2163/2022 are the associations of stone crusher owners, the petitioner in Writ Petition No.2731/2022 is an individual, who runs

a proprietary concern engaged in the business of extraction and removal of minor minerals in specified quantities for short terms. The members of both the associations who have filed Writ Petition No.2153/2022 and Writ Petition No.2163/2022 are also engaged in similar business. Their grievance is common.

b) According to the petitioners, till very recently they used to be granted quarry permits for extraction and removal of minor minerals from the specified area and for a temporary period of time, not more than 30 days at a time, under Rule 59 of the Rules, 2013, without submitting environmental clearance certificate, but, with the issuance of communication dated 24th March, 2022 by respondent no.4, the quarry permits are not being issued to them unless they first submitted environmental clearance certificate from the Competent Authority. Their contention is that quarry permits are different than quarry leases, in the sense that quarry leases are granted usually for five years initially, which period is extendable further up to twenty years thereby making the quarry leases as long term grants but, in case of quarry permits, the permission is granted only for a period of 30 days at a time and it is limited to the areas specified in the permit itself. They further submit that it is this difference which has led to prescription of a

condition of environmental clearance certificate to be obtained by the quarry owner for obtaining a quarry lease under the Rules, 2013 and prescribing no such requirement in case of a quarry permit issued under Rules, 2013.

c) The petitioners submit that Rules, 2013 have been framed following directions of the Apex court in the case of *Deepak Kumar and others Vs. State of Haryana reported in (2012) 4 SCC 629* and, therefore, it is now the Rules, 2013 which would govern the issue. The petitioners also contend that in any case, executive instructions cannot supersede the Rules, 2013 framed under Section 15 of the Mines and Minerals Extraction (Development and Regulation) Act, 1957 (for short, "Act, 1957").

4. The respondents have submitted common reply to these petitions. The stand taken by the State Government, as seen from the reply, is that even in the opinion of the State Government, for issuance of a quarry permit under Rule 59 of the Rules 2013, it is not necessary to obtain prior environmental clearance, the permit being for a short term. The reply also gives an explanation about the issuance of the impugned communication. According to State Government, the

impugned communication has been issued by it in view of the directions given by the National Green Tribunal passed on 17th February, 2022 in OA No.68/2020 (WZ).

5. Shri Mishra, learned Senior Advocate appearing for the petitioner in Writ Petition No.2153/2022 submits that the National Green Tribunal has not considered the nature of the directions issued by the Supreme Court in the case of *Deepak Kumar (supra)* and thus, has held *per incuriam* that it is the duty of the State of Maharashtra to issue a suitable clarification in view of the fact that its Circular dated 12.12.2013 which clarified that for grant of temporary quarry permits there was no requirement of prior submission of environmental clearance certificate goes against the judgment of the Supreme Court in the case of *Deepak Kumar (supra)*. He also submits that the judgment of the National Green Tribunal (NGT) has been stayed in relation to the appellants therein by Supreme Court by its order dated 9.9.2022 passed in Civil Appeal Diary No.(S) 25543/2022.

6. The learned Senior Advocate further submits that in *Deepak Kumar (supra)* the Supreme Court had directed all the State Governments and Union Territories

to take immediate steps to frame necessary rules under Section 15 of the Act, 1957 taking into consideration the recommendations of MoEF made in its report of March 2010 and it had further directed that *in the meanwhile the leases of minor miners* including their renewal for an area of less than five hectares shall be granted by States/Union Territories only after getting environmental clearance from MoEF.

7. The learned Senior Advocate further submits that in compliance with these directions, the State Government has framed Rules, 2013 by issuing a Notification dated 18th July, 2013. He submits that the direction of the Supreme Court regarding submission of prior environmental clearance from MoEF in case of leases of minor minerals has been implemented by the State Government by framing Rules, 2013 and this requirement of submission of prior environmental clearance certificate has been clearly prescribed in Clause (f) of Rule 11 (5) of the Rules, 2013, which provides for making an application for grant of query lease and the manner in which the application should be made. He further submits that in case of quarry permits which are different from quarry leases, there is no such requirement of prior submission of environmental clearance certificate as can be seen from Rule 59 of the Rules, 2013

and the Rule 59 still governs the field as it has not been struck down or declared invalid by any Court. He further submits that in any case the direction given by the Apex Court requiring the prior submission of environmental clearance certificate was only in respect of leases of minor minerals and these directions having been already complied with by the State Government, now the issue involved here would be entirely governed by Rules, 2013.

8. The learned Senior Advocate further submits that the impugned communication has been issued by respondent no.6 and it is in the nature of an executive instruction. He further submits that when an executive instruction is issued in conflict with a statutory provision or any Rule having force of law, it would be the latter which would prevail. He places reliance upon the view taken by another coordinate bench of this Court of which one of us was part, in the case of *Rashtriya Shikshan Sangh and others Vs. State of Maharashtra and others in Writ Petition No.10347/2012 decided on 26th February 2022*.

9. The argument so advanced on behalf of the petitioner in Writ Petition No.2153/2022 is adopted by the learned counsel appearing for the petitioners in Writ

Petition Nos.2163/2022 and 2731/2022. Shri Bhandarkar, learned counsel for the petitioner in Writ Petition No.2163/2022 has added that in case of traditional occupation of work of sand by Vanjara and Oads, the Central Government has granted exemption from submission of any environmental clearance certificate for grant of mining lease, vide its notification dated 28.3.2020.

10. The learned AGP for the State Government submits that the impugned communication has been issued by respondent no.6 only to give effect to the directions of the National Green Tribunal but, the stand of the Government as stated in paragraph 5 of its reply is that as per the policy of the Government wherever any short term temporary permits for extraction of minor minerals are to be issued, there would be no requirement of submission of any prior environmental clearance certificate and the policy has remained as it is. He also does not dispute the fact that the interim direction given by the Apex Court in the case of *Deepak Kumar* (supra) was there only till the time the rules were framed under Section 15 of the Act, 1957 by the State Governments and the Union Territories and in this case rules have been framed, and the direction of submission of prior environmental clearance certificate for operation of lease

of minor minerals has also been incorporated in the Rules, 2013. He further submits that the quarry permit not being the same as quarry lease, there would be no requirement of prior submission of environmental clearance certificate for its grant.

11. In order to answer the question framed earlier, the arguments submitted on behalf of both sides would have to be considered by examining the background of Rules, 2013 and the nature of the provisions made therein, insofar as they govern the issue involved in the present cases.

12. In the case of *Deepak Kumar* (supra) the validity of the auction notice dated 3.6.2011 proposing to auction the extraction of minor minerals, boulders, gravel and sand quarries of an area not exceeding 4.5 hectares in the district of Panchkula, and auction notices dated 8.8.2011 for extraction of minor minerals in the districts of Panchakula, Ambala and Yamnuna Nagar exceeding five hectares was in question. One of the auction notices, which referred to mining leases of less than five hectares stated that the area envisaged under mining leases being of five hectares, no environmental clearance was required to be obtained as per MoEF Notification dated 14.9.2006. The Apex Court while

deciding the question, took into consideration recommendations made by the Ministry of Environment and Forest (MoEF) and stated in its report. One of the recommendations dealt with depth of mining and emphasised on the need for preparing a detailed hydrogeological report while stating that from the point of view of mineral conservation, it may not be desirable to impose blanket ban on mining operation below groundwater table. The recommendation was to the effect that it was only after a detailed hydrogeological report was prepared in respect of any mining operation for minor minerals that a decision regarding restrictions to be placed as regards depth of mining of any area, based upon the findings of study, should be taken on case to case basis.

13. Taking into consideration various recommendations made in the report of MoEF, the Supreme Court observed that operation of mines of minor minerals needs to be subjected to strict regulatory measures and that it was also felt necessary to have a relook at the definition of, “minor minerals” per se. It was further observed that there was necessity of preparation of “comprehensive mines plan” for contiguous stretches of mineral deposits by the respective State Governments and they may also be

encouraged to make inclusion of the plan by its appropriate incorporation in the Mineral Concession Rules, 1960 framed by the Ministry of Mines.

14. With the above referred observations, the Supreme Court issued a direction to the Central Government to take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest and further directed the State Governments and Union Territories to take immediate steps to frame necessary rules under Section 15 of the Act, 1957 taking into consideration the recommendations of MoEF given in its report of March 2010 and model guidelines framed by the Ministry of Mines, Government of India. It further directed that in the meanwhile, leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting Environmental Clearance from MoEF. These directions have appeared in para 28 and 29 of the judgment, which are reproduced for the sake of convenience, as follows:

“28. The Central Government also should take steps to bring into force the Minor minerals Conservation and Development Rules, 2010 at the earliest. The State

Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Government of India. Communicate the copy of this order to MoEF, Secretary, Ministry of Mines, New Delhi; Ministry of Water Resources, Central Government Water Authority; the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the Departments concerned”.

“29. We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF. Ordered accordingly.”

15. It would be clear from the above referred directions that the State of Maharashtra, which is one of the States covered by the directions given in paragraph

28, was required to take immediate steps to frame necessary Rules by exercising its powers under Section 15 of the Act of 1957. It would be further clear from the directions contained in paragraph 29 that no lease of minor minerals including the renewal of lease granted for an area of less than five hectares shall be granted without prior submission of environmental clearance obtained from MoEF till the rules were framed, which is evident from the words, “We, “*in the meanwhile*” and “*leases of minor minerals*”.

16. The Rules 2013, as stated earlier, have been framed by issuing Notification dated 18th July, 2013 in compliance with the directions contained in paragraph 28 of the Judgment of *Deepak Kumar* (supra). These Rules have been framed in exercise of powers conferred upon the State Government under Section 15 of the Act, 1957. Now, the incidental question is whether Rules, 2013 give effect to the interim direction of the Apex Court regarding granting of lease of minor minerals and renewal of such a lease for an area of less than five hectares only upon submission of environmental clearance certificate obtained from MoEF or not.

17. The answer to the said question lies in the provisions made in Chapter II of the Rules, 2013.

Chapter II of the Rules, 2013 deals with the procedure for grant of quarry lease. Rule 11 provides for application of quarry lease and the requirements to be fulfilled while making the application. It prescribes various requirements including requirement of submission of documents. The documents which are required to be submitted are enumerated in sub-rule (5) of Rule 11 of the Rules, which reads as under:

“11.Application of quarry lease.

11(1)....

11(2)....

11(3)...

11(4)....

11(5) Every application for grant or renewal of quarry lease shall be in addition to the documents mentioned above shall be accompanied with,

(a)Mining dues clearances certificate.

(b)Record of rights of the area applied for.

(c)A map showing the location of the area.

(d)Approved Mining plan and progressive mine closure plan for the area in case of renewal.

(e) Solvency Certificate of the applicant issued from a revenue officer not below the rank of Tahsildar.

(f) Environment Clearance Certificate issued from the appropriate authority in case of renewal, if environment clearance period expires for the period requested for extraction”.

18. It would be clear from the list of documents prescribed in the above referred Rule that an application for grant of quarry lease must be accompanied by all these documents and one of them is the document of environment clearance certificate issued by the appropriate authority (Clause f). That means that no quarry lease can be granted as per Rule 11 (5), unless all the documents listed therein including the environmental clearance certificate, are submitted along with the application for grant of quarry lease. This Rule, thus, incorporates the interim direction given by the Apex Court regarding necessity of prior submission of environmental clearance certificate for grant of lease of minor minerals irrespective of the size of the area leased. Therefore, the incidental question posed by us earlier has to be answered as in the affirmative and we do so.

19. The next incidental question that arises is - as to by which regimen now the issue of exploitation and extraction of minor minerals is governed? Considering the fact that there was a direction issued by the Apex Court to all the State Governments and Union Territories to frame necessary rules under Section 15 of the Act, 1957, the fact that the interim direction was issued to cover the period of interregnum till the necessary rules were framed and also the fact that now the rules, which are Rules, 2013 for the State of Maharashtra, have been indeed framed as per Notification dated 13th July, 2018, the issue of exploitation and extraction of minor minerals would be governed by the regulatory mechanism prescribed in the Rules, 2013. We, therefore, answer the next incidental question accordingly.

20. After having found out the regimen by which the issue of exploitation and extraction of minor minerals is governed, we think that now, it would be easier for us to make an attempt to answer the question framed by us at the beginning of the judgment and which is the cause of the common grievance raised in these petitions. For this purpose, let us look into the relevant provisions of Rules, 2013.

21. Upon consideration of the relevant provisions of Rules, 2013, we find that these Rules contemplate two kinds of regulatory measures for exploitation and extraction of minor minerals. One is that of “quarry lease” and the other is of “quarry permit”. Both these measures are defined in Rule 2 (r) and Rule 2 (t) respectively. Their definitions read as under:

“Rule 2 (r) “Quarry lease” means a lease to mine, quarry, bore, dig, search for, win, work and transport or carry away any minor mineral specified therein;”

“Rule 2 (t) “Quarry permit” means a permit granted under Chapter-IV of these rules to extract and remove any minor mineral in specified quantities and specified time”.

22. It would be clear from the above definitions that under the Rules, 2013 distinction has been made between ‘quarry lease’ which is not granted under Chapter IV and ‘quarry permit’ which is granted under Chapter IV of the Rules, 2013. It would also be clear that a “quarry lease” is about full exploitation of a minor mineral right from searching for it through it’s excavation and mining to it’s transportation and includes

such operations as, mining, quarrying, boring, digging, searching for, winning and transporting; while a “quarry permit” is about obtaining a mined minor mineral and includes only limited operations like extraction and removal of the minor mineral.

23. A further consideration of the relevant provisions made in Rule, 2013 shows that the subject of grant of ‘quarry lease’ has been dealt with in Chapter II of the Rules, 2013 and the relevant provision for the purpose of these petitions is to be found in Clause (f) of Rule 11 (5) about which, we have already made detailed discussion in the earlier paragraph. Considering the requirements stated in Rule 11, in particular the one prescribed in clause (f) of sub-rule (5) of Rule 11, we find that prior submission of environmental clearance certificate along with the application made for grant of ‘quarry lease’ is a *sine qua non* of the grant of a quarry lease. Without submission of this certificate and so also the other documents listed in Rule 11 (5), no quarry lease can be granted by the Government to the interested person. Chapter II, however, nowhere refers to grant of a quarry permit as defined in Rule 2 (t). In fact, the definition of quarry permit itself indicates that it is something which is granted for limited operations under Chapter IV of Rules, 2013. This would necessitate us to

examine the relevant Rules enabling the State Government to grant a quarry permit. The Rules as contained in Rules 59 and 61 being relevant are reproduced as under:

“Rule 59 :Grant of Short term permits for minor minerals:

*(1) Notwithstanding anything contained in the foregoing rules, the Competent Officer, on an application made to him may grant a quarry permit to any person to extract or remove from any specified land within the limits of his jurisdiction any minor mineral not exceeding in quantity as mentioned under any one permit on payment of advance royalties * [at the rate specified in Schedule I] and on such rents and fees accessible for such extraction;*

Provided that, no permits shall be granted in case of any specified minor mineral without prior approval of the Director.

(2) The Competent Officer shall grant permit for specific time and specific volume.

(3)The Competent Officer may refuse to grant such permit for reasons to be recorded in writing.

Substituted for the words “calculated at the rate specified by the Government, from time to time, by

*Notification No.Gaukhani.10/1012/C.R.603/kh,
dated 11.05.2015”.*

“Rule 61 : Application for quarry permits.

(1) An application for quarry permits shall be made in Form-P to the Competent Officer and shall contain the following particulars,

(a) Name, address, profession, nationality of the applicant.

(b) Name and quantity of the minor mineral for which the permit is required.

(c) Description of land, such as location, survey number from which the minor mineral is to be extracted.

(2) Every application for quarry permit shall be accompanied by the certified true copies of relevant extracts of the record of rights in respect of lands from where the applicant proposes to extract the mineral.

(3) The application shall be accompanied with the consent letter from the occupant of land in case land is belonging to individual.

(4) Every such application shall be affixed with court-fee stamp of rupees ten”.

24. It can be seen from the above referred Rules that there is no stipulation made therein regarding prior submission of environmental clearance certificate issued by the competent authority. They also show that the permit granted for extraction and removal of minor minerals is of short term and is restricted to the specified land with ceiling put on the quantity of minerals to be extracted and removed and is also confined to specific time and volume. It can be further seen that unlike Rule 11 (5), Rule 61, which is about the manner in which the application for quarry permit is to be made and the documents to be submitted along with the application, does not specify the requirement of submission of environmental clearance certificate along with application made in terms of Rule 61.

25. Thus, the discussion so far made would show that the rule making authority has made a distinction between “quarry lease” and “quarry permit” and the distinction shows that while “quarry lease” is for a longer period time, with wider scope of operations, the “quarry permit” is for a very short and temporary period of time, is confined to limited operations and is intended to achieve the object of urgent and immediate need of minor minerals for various developmental works by striking a balance between the need of protection of

environment and the need for undertaking developmental works which are in larger public interest. For grant of “quarry permit” under Rule 59, there is another distinguishing feature from that of “quarry lease” granted under Chapter II of the Rules, 2013, and it is that there is no requirement of prior submission of environmental clearance certificate. This distinguishing feature of “quarry permit” in particular, we must say, has rational and proximate relation with the purpose for which a “quarry permit” is granted, the purpose of obtaining an already mined mineral and serves the object of meeting an urgent and immediate need of the minor mineral for various developmental works. When an already mined mineral is to be extracted and removed from a limited area and in specific volume and for specific time, the rationale behind no requirement of prior submission of environmental clearance certificate would be one of sustainable development where environment and development both go hand in hand. This conclusion answers the main question involved here and, we do answer accordingly.

26. Coming back to the Rules, 2013, we may add here that the Rules, 2013 which have been framed in compliance with the directions of the Apex Court in the case of *Deepak Kumar* (supra) have not been questioned

for their vires and validity so far. That means, the Rules, 2013 govern the subject of exploitation, extraction and removal of minor minerals by providing a detailed regulatory mechanism. These Rules being in the nature of subordinate legislation have the force of law and would prevail upon any executive instruction, which is contrary to any of the provisions made in the Rules. It also means that by an executive diktat, the State Government or any of its officers cannot make any attempt to supersede these Rules. The only permissible act that can be done by the State Government is that of filling up of the gaps left in the subordinate Legislation by issuing necessary executive instructions. A coordinate bench of this Court in the case of *Rashtriya Shikshan Sangh* (supra) has held that the power of the State Government to issue executive directions is confined to filling up of the gaps or covering the area which otherwise has not been covered by existing statutory Rules and such instructions or orders must be subservient to the statutory Rules. The view so expressed follows the law settled in this regard by the Supreme Court in the cases of *R.N. Nagarajan Vs. State of Mysore*, AIR 1966 SC 1942 and *Ram Javva Kapoor Vs. State of Punjab*, AIR 1955 SC 549. The relevant observations made in the case of *Rashtriya Shikshan*

Sangh (*supra*), as they appear in paragraph 14, are reproduced thus:

“14. The power of the State Government to issue executive directions is confined to filling up the gaps or covering the area which otherwise has not been covered by the existing statutory Rules, and such instructions or orders must be subservient to the statutory Rules. The executive power of the State under Article 162 of the Constitution of India is co-extensive with the legislative power, and when the field of law is occupied by a Legislative Act, the exercise of executive power is not available. The Government cannot supersede statutory Rules by administrative instructions. Still, if the Rules are silent on any particular point, the Government can fill the gaps by framing Rules and issuing instructions not inconsistent with the already - framed Rules. In *R.N.Nagarajan v. State of Mysore*, AIR 1966 SC 1942 the Supreme Court has observed that it is necessary to mention that if there is a statutory rule or an Act on the matter, the executive must abide by that Act or Rule and it cannot in exercise of the executive power under Article 162 the Constitution ignore or act contrary to that Rule. A Constitution Bench of the Supreme

Court in *Ram Javva Kapoor v. State of Punjab*, AIR 1955 SC 549, held :

“The State in exercise of its executive powers is charged with the responsibility and duty of carrying on the general administration of the State so long as the State Government does not go against the provisions of the Constitution or any law the width and amplitude of its executive powers cannot be circumscribed. If there is no enactment covering a particular aspect certainly the Government can carry on the administration by issuing administrative directions or instructions until the Legislature makes a law in that behalf”.

27. In the cases before us, there was a communication issued by the State of Maharashtra on 12.12.2013 which stated that in case of grant of short term quarry permits under Chapter IV of Rules, 2013, there would be no need for prior submission of environmental clearance certificate. This communication was not inconsistent with or contrary to Rules 59 and 61 of the Rules, 2013, rather, it was clarificatory in nature. However, this is not so in case of communication dated 24th March,

2022, which is impugned in all these petitions. By this communication issued by respondent no.6, it is directed that no quarry permit referred to in the communication dated 12.12.2013 be issued without prior submission of environmental clearance certificate in view of the directions given by the National Green Tribunal in the case of *Shri Rajiv Babasaheb Waman and others Vs. Ministry of Environment, Forest and Climate Change and others in OA 68/2020*. The direction so given afresh by an executive instruction contained in this communication, in our considered view, cannot and would not prevail over the Rules 59 and 61 of the Rules, 2013, for the reasons stated in the ensuing paragraphs.

28. We have already seen that there is no requirement of Rules 59 and 61 that environmental clearance certificate be submitted along with the application made for grant of a quarry permit and, therefore, the direction given through an executive order that for grant of a quarry permit, environmental clearance certificate be submitted, clearly runs contrary to the provisions made in Rules 59 and 61. Further, we have already seen that Rules, 2013 govern the subject of “quarry leases” and “quarry permits” prescribing different requirements for their grants. When these provisions of Rules, 2013 govern the field, there can be no executive clarification or communication issued,

which is inconsistent with or contrary to these Rules, as noted in the case of *Rashtriya Shikshan Sangh* (supra). Then, in the case of *Shri Rajiv Babasaheb Waman* (supra), it appears, the application of the Rules, 2013 to the subject of “quarry leases” and “quarry permits” was not brought to the notice of the National Green Tribunal and what was brought to its notice was only the office communication dated 12.12.2013. This communication being in the nature of executive instruction and not having any force of law was found foul of the directions contained in the case of *Deepak Kumar* (supra), by the NGT, and not without any reasons. The NGT was not aware of Rules, 2013 having been framed and governing the field. Had the fact of framing of Rules, 2013 been brought to the notice of the NGT, perhaps the things would have been different. Anyway, the judgment of the NGT has now been stayed in relation to appellants therein by the Supreme Court. But, the fact remains that what was not considered by National Green Tribunal was that there was in place a new regulatory mechanism governing the subjects of quarry leases and quarry permits, which did not require, for, granting a quarry permit, any environmental clearance certificate though it required one for granting a quarry lease under the Rules, 2013. The office communication dated 12.12.2013, we must say, only clarifies what is already prescribed in Rules 59 and 61 of the Rules, 2013 governing the subject of grant of quarry permits and,

therefore, it continues to hold the field. These facts were not noticed by the National Green Tribunal and that was the reason why following observations came in paragraph 8 of its judgment in the case of *Shri Rajiv Babasaheb Waman* (supra) which read thus:

“8.....It is duty of the State of Maharashtra to issue clarification in view of the fact that its circular is rusting in defiance of judgment of the Hon’ble Supreme Court to the detriment of environment and rule of law. The Chief Secretary, Maharashtra may ensure further remedial action in this regard”.

29. It is obvious that the direction so given by the National Green Tribunal was only in the context of the office communication dated 12.12.2013 and not upon consideration of the requirements of relevant Rules i.e. Rules 59 and 61 governing the subject of quarry permits. This direction, therefore, would not come in the way of authorities considering the issue of grant of quarry permits in terms of Rule 59 read with Rule 61 of the Rules, 2013. Even otherwise, if the direction given by the National Green Tribunal was to be implemented by the Chief Secretary, he ought to have considered the real impact of the relevant words which required him to

ensure “*further remedial action in the matter*”. It would then mean that doing something which was in the nature of suitably amending the Rules 59 and 61 of Rules, 2013 was required, if thought fit, which was not done.

30. The above discussion would lead us to find that no executive instruction which is contrary to the requirements of Rules 59 and 61 of Rules, 2013 could have been issued by the State Government, as it has done vide its impugned communication dated 24th March, 2022, in the name of issuing of a clarification. If any clarification was to be issued, it must have been by following the well settled principles of law stated in the judgment of the coordinate Division Bench of this Court in the case of *Rashtriya Shikshan Sangh* (supra) and by suitably amending Rules 59 and 61 of Rules, 2013, if thought fit. The direction issued by National Green Tribunal appears to have been misconstrued by the State Government and the result is of issuance of the impugned communication in the name of *clarification* which is contrary to the Rules of 59 and 61 of Rules, 2013 and which violates the settled principles of law. Such a communication, therefore, cannot stand the scrutiny of law and is required to be quashed and set aside as being illegal.

31. Shri Bhandarkar, learned counsel has referred to the Notification dated 20th March, 2020 in order to support his contention that the short term permits for extraction of minor minerals have been exempted from the requirement of submission of environmental clearance certificate. He has placed reliance upon Item VIII in Appendix IV to the Notification dated 20th March, 2020. Item VIII relates to traditional occupational work of sand by Vanjara and Oads in Gujarat. It is, therefore, clear that this notification does not support the argument that even in the notification dated 20th March, 2020 issued by the Ministry of Environment of Forest and Climate Change, there is an exemption granted to a quarry permit from the requirement of submission of prior environmental clearance. Be that as it may, we have already found that the impugned communication dated 24th March, 2022 is bad in law, for the reasons stated earlier.

32. We thus find that there is substance in these petitions and they deserve to be allowed.

33. The petitions are allowed and the impugned communication dated 24th March, 2022 is hereby quashed and set aside.

34. Rule is made absolute in the above terms.

No costs.

(ANIL L. PANSARE, J.)

(SUNIL B. SHUKRE, J.)

Ambulkar, PS