

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2078/2021

M/s Shree Rajesh Pathak,
a proprietary concern through its proprietor
Rajesh Ramlal Pathak, aged about 65 years,
Occ. Business, R/o 15, Baihar Road, Balaghat,
Madhya Pradesh.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
Department of Revenue and Forest,
through its Principal Secretary, Mantralaya, Mumbai.
2. Collector, Bhandara,
having its office at Nagpur – Bhandara – Rajnandgaon -
Raipur Highway, MSEB Colony, Bhandara.
3. District Mining Officer, Bhandara,
having its office at Collectorate compound, Bhandara.
4. District Mineral Foundation for the
District of Bhandara, through its governing council,
having its office at Collectorate compound, Bhandara.

RESPONDENTS

**WITH
WRIT PETITION NO. 2086/2021**

M/s Sharma G Enterprises,
a proprietary concern through its proprietor
Vijendra S/o Jogendra Sharma, aged about 34 years,
Occupation Business, Office at Shop No.37, Maa
Umiya Transport City and Industrial Estate,
Kapsi, Nagpur.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
Department of Revenue and Forest,
through its Principal Secretary, Mantralaya, Mumbai.
2. The Collector, Bhandara,
having its office at Nagpur – Bhandara – Rajnandgaon -
Raipur Highway, MSEB Colony, Bhandara.
3. District Mining Officer, Bhandara,
having its office at Collectorate compound, Bhandara.
4. District Mineral Foundation for the
District of Bhandara, through its Governing Council,
having its office at Collectorate compound, Bhandara.

RESPONDENTS

WITH
WRIT PETITION NO. 172/2022

M/s D.R. Wagh Enterprises,
Through its Proprietor, Devidas Rangnath Wagh
aged 53 years, Occupation Business, R/o Shankar
Nagar, Bye-pass Road, Chandrapur.
Tah. & District Chandrapur.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
In the Ministry of Revenue and Forest,
Mantralaya, Mumbai -32. Through its Secretary.
2. The Additional District Collector, Chandrapur,
Tah. and District Chandrapur.
3. District Mining Officer, Collectorate Compound,
Chandrapur, Tah. and District Chandrapur.
4. District Mineral Foundation for District
Chandrapur, Through its Governing Council,
having its office at Collectorate Compound
Chandrapur, Tah. and District Chandrapur.

RESPONDENTS

WITH
WRIT PETITION NO. 173/2022

M/s D.R. Wagh Enterprises,
Through its Proprietor, Devidas Rangnath Wagh
aged 53 years, Occupation Business, R/o Shankar
Nagar, Bye-pass Road, Chandrapur.
Tah. & District Chandrapur.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
In the Ministry of Revenue and Forest,
Mantralaya, Mumbai -32. Through its Secretary.
2. The Additional District Collector, Chandrapur,
Tah. and District Chandrapur.
3. District Mining Officer, Collectorate Compound,
Chandrapur, Tah. and District Chandrapur.
4. District Mineral Foundation for District
Chandrapur, Through its Governing Council,
having its office at Collectorate Compound
Chandrapur, Tah. and District Chandrapur.

RESPONDENTS

Correction carried
out in the cause
title as per Hon'ble
Court's order dated
17.06.2022.

Shri Devendra V. Chauhan with Shri Chaitanya J. Dhruv, counsel for the petitioner in WP Nos.2078 & 2086/2021.

Shri Vishwas S. Kukday, counsel for the petitioner in WP Nos.172 & 173/2022.
Shri Amit A. Madiwale, Assistant Government Pleader for the respondents in both the writ petitions.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 02ND MARCH, 2022.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 07TH APRIL, 2022.

JUDGMENT : (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The competence of the State Government to require an exporter of minor minerals into the State of Maharashtra to pay an amount equivalent to 10% of royalty amount to the District Mineral Foundation constituted under Section 9-B of the Mines and Minerals (Development and Regulation) Act, 1957 is questioned in these writ petitions. A similar challenge is also raised by inter-State transporters of such minor minerals as the State of Maharashtra requires payment of 10% of the royalty amount to the District Mineral Foundation on entering the State borders which according to them results in imposing restrictions on inter-State trade.

3. In Writ Petition Nos.2078 of 2021 and 2086 of 2021, the petitioners claim to be engaged in the business of excavation and sale of sand in the State of Madhya Pradesh. The petitioners are lease holders under valid lease-deeds executed in their favour by the State of Madhya Pradesh. The petitioners sell sand that is excavated within the State of Madhya Pradesh and also export the same in the State of Maharashtra. By Circular dated 05.02.2021 the State Government through its Revenue and Forest Department required payment of an amount equivalent to 10% of the royalty amount to the District Mineral Foundation (for short, 'the DMF'). It is this Circular that is challenged by the petitioners who are the exporters of sand into the State of Maharashtra. The petitioners have also sought a declaration that the State Government has no authority under the Mines and Minerals (Development and Regulation) Act, 1957 (for short, 'the Act of 1957') to regulate the entry of lawfully excavated minerals from another State nor is it competent to direct the deposit of such amount with the DMF in the State of Maharashtra.

4. Writ Petition Nos.172 of 2022 and 173 of 2022 have been filed by transporters of minor minerals challenging the imposition of an amount equivalent to 10% of royalty amount under Circular dated 05.02.2021. It is the case of the petitioners that they are in the business of transporting excavated minor minerals which includes such transport from other States into the State of Maharashtra. While transporting sand on the strength of a

valid transit pass, the trucks of the petitioners were intercepted on the ground that 10% of the royalty amount under Circular dated 05.02.2021 was not paid to the DMF and hence their trucks came to be seized. This has given cause of action to the petitioners to challenge the Circular dated 05.02.2021 on the ground that such levy is not supported by any statutory provision under the Act of 1957, the Maharashtra District Mineral Foundation (Trust) Rules, 2016 (for short, 'the State DMF Rules, 2016') or the Maharashtra Minor Minerals (Contribution to District Mineral Foundation) Rules, 2017 (for short, 'the Rules of 2017').

5. Shri Devendra Chauhan, learned counsel for the petitioners who were exporters of sand in the State of Maharashtra after its excavation from the State of Madhya Pradesh referred to various provisions of the Act of 1957 and submitted that the object behind constituting the DMF was to establish a Trust as a non-profit body that would work for the interest and benefit of persons and areas that were affected by mining related operations. The exporters of sand were required to pay royalty in the State of Madhya Pradesh while undertaking its excavation. The area where such excavation was carried out would be the area affected by mining related operations. Inviting attention to Sections 2, 9-B, 15, 15-A and 23-C of the Act of 1957 it was submitted that the Act of 1957 did not confer any authority on the State Government to require any exporter of minor minerals in the State of Maharashtra to contribute to the DMF. The State

Government was empowered to make rules in terms of Section 15(1) of the Act of 1957 for regulating the grant of quarry leases, mining leases and could also provide for the matters mentioned in sub-Section (1-A) of Section 15 of the Act of 1957. Further under Section 23-C, the State Government could make rules to prevent illegal mining, transportation and storage of minerals and such power was not conferred to make any payment to the DMF. He then submitted that the State Government had framed the State DMF Rules, 2016 and as per Rule 2(b) an affected area was meant to be an area affected by mining or mining related operations from a mine or cluster of mines within the district. As per Rule 2(g), contribution could be collected from the holders of a mining lease or a composite license as well as from holders of a quarry lease or quarry permit in the case of minor minerals in the district. Under Rule 3 the object of the DMF was again to work for the interest, benefit and sustainable development of persons and areas affected by mining or mining related operations in the district. Similarly, under the Rules of 2017 it was clear from a perusal of Rule 2 that it was only the holder of a mining lease who was required to pay in addition to royalty amount, an amount equivalent to 10% of royalty to the DMF of the district in which the mining operations were carried out. By the said Circular, two dissimilar entities, namely leaseholders in the State and exporters/transporters of excavated minor minerals were clubbed together thus violating Article 14 of the Constitution of India. It was submitted that neither under the Act of 1957, the State

DMF Rules, 2016 or the Rules of 2017 was there any power conferred on the State Government to require an exporter of minor minerals to pay 10% of the amount of royalty to the DMF. Hence, that which could not be done directly could not be achieved indirectly as held in *Institution of Mechanical Engineers Versus State of Punjab* [(2019) 16 SCC 95].

6. The learned counsel submitted that a similar issue arose before the Karnataka High Court in the context of collection of entry fee from a person transporting minor minerals from other States with a valid transit permit into the State of Karnataka. By the judgment dated 07.01.2021 the Division Bench in *Sri. Sai Keshava Enterprises Versus State of Karnataka & Others* [2021(2) Kant LJ 418] had held that the State Government was not authorized under the Act of 1957 to make any rules concerning minor minerals lawfully excavated from other States. The State Government therefore not being competent to issue Circular dated 05.02.2021, the collection of such amounts from the petitioner was without any authority of law and thus violative of Article 265 of the Constitution of India. In addition, such collection also fell foul of the provisions of Article 301 of the Constitution of India since it imposed an unnecessary restriction in inter-State trade and movement of goods. Reference was also made to the decisions in *State of T.N. Versus M.P.P. Kavery Chetty* [(1995) 2 SCC 402], *State of Gujarat & Others Versus Jayeshbhai Kanjibhai Kalathiya & Others* [(2019) 16 SCC 513] and *Federation of Indian Mineral Industries &*

Others Versus Union of India & Another [(2017) 16 SCC 186] in that regard. Since it was not permissible under the Act of 1957 or the State DMF Rules, 2016 to demand such amount the same could not be done indirectly through issuance of executive directions in the form of Circular dated 05.02.2021. The learned counsel referred to the decisions in *Ranjana Granites (P) Ltd. Versus State of A.P. & Others* [(1996) 3 ALT 121] and *Joint Action Committee of Air Line Pilots' Association of India (ALPAI) & Others Versus Director General of Civil Aviation & Others* [(2011) 5 SCC 435] in that regard. Thus in absence of any source of power with the State Government, the direction to pay 10% of the amount of royalty to the DMF was unsustainable. It was thus submitted that the Circular dated 05.02.2021 was liable to be set aside.

7. Shri Amit Madiwale, learned Assistant Government Pleader for the respondents opposed the aforesaid submissions and relied upon the affidavit-in-reply filed by the Joint Secretary, Revenue and Forest Department, Mantralaya, Mumbai. In paragraph 3 of the affidavit dated 23.02.2022 it has been stated as under:

“3. I say and submit that in exercise of the powers conferred by Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), and of all other powers enabling it in that behalf, the Government of Maharashtra has made the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013. I further say and submit that the field Officers of the Government of Maharashtra are repeatedly asking

about procedure for transport, storage, resell of sand transported from other States to Maharashtra State. Considering this fact and also considering damages caused to the roads and infrastructures of the Maharashtra State, the Government of Maharashtra has purposefully instructed to the field Officers to levy 10% charges on the Royalty amounts as a District Mining Fund, so that this fund can be used to for the maintenance of roads and infrastructures.”

It is further stated that the State Government had framed the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013 (for short, ‘the Rules of 2013’). The said Rules were framed in view of the powers conferred by Section 15 of the Act of 1957 and with a view to provide instructions to the affected parties, the Circular dated 05.02.2021 was issued. Since it was the responsibility of the DMF to utilize the funds in the areas that were directly affected by mining operations and also for the welfare of the people residing therein, the State Government had decided to collect such amount from the exporters who sought to transport sand from other States in the State of Maharashtra. The learned Assistant Government Pleader referred to the provisions of Section 15-A and 23-C of the Act of 1957 to substantiate his contention. Since mining related operations would include transportation, the State Government was competent to issue the Circular dated 05.02.2021 demanding an amount equivalent to 10% of royalty from such exporters. He referred to the judgment of the Hon’ble Supreme Court in *Federation of*

the Indian Mineral Industries & Others (supra) in that regard. It was thus submitted that the Circular dated 05.02.2021 was not violative of Article 301 of the Constitution of India since there was no restriction on the import of sand from other States and what was being sought was only payment of an amount equivalent to 10% of the amount of royalty to the DMF. It was thus submitted that the challenge as raised by the petitioners was without any merit and the same was liable to be turned down.

8. Shri V.S. Kukday, learned counsel for the petitioners who were transporters of sand into the State of Maharashtra after its excavation from outside the State of Maharashtra adopted the arguments of the learned counsel for the exporters of sand. According to him transportation of sand after its excavation from another State would not amount to undertaking a mining related operation. He also relied upon the decisions in *M.P.P. Kavery Chetty* and *Jayeshbhai Kanjibhai Kalathiya* (supra) and submitted that the Circular dated 05.02.2021 was liable to be set aside.

The learned Assistant Government Pleader reiterated his contentions while opposing the aforesaid submissions.

9. We have heard the learned counsel for the parties at length and with their assistance we have also perused the relevant statutory provisions under the Act of 1957 as well as the State DMF Rules, 2016 and the Rules of 2017. Since the principal challenge to the issuance of Circular dated

05.02.2021 is that the same has been issued by the State Government without any such power being conferred on it by the Act of 1957, it would be necessary to first consider the relevant provisions of the Act of 1957. As per the provisions of Section 2 of the Act of 1957, it has been declared in public interest that the Union should take under its control the regulation of mines and development of minerals to the extent provided. Section 3(d) defines “mining operations” to mean any operations undertaken for the purposes of winning any mineral. By amending the Act of 1957 through Act No.X of 2015, the provisions of Section 9-B have been inserted. The said Section reads as under:-

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

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

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

Provided that the Central Government may give directions regarding composition and utilisation of fund by the District Mineral Foundation.

(4) The State Government while making rules under sub-sections (2) and (3) shall be guided by the provisions contained in Article 244 read with Fifty and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas

and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007).

(5) The holder of a mining lease or a prospecting licence-cum-mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, other than those covered under the provisions of sub-section (2) of section 10A, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.

(6) The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, and those covered under the provisions of sub-section (2) of section 10A, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the categorisation of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government.”

10. By virtue of the provisions of Section 15(1) the State Government is empowered to make rules for regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals. Under sub-Section (1-A) of Section 15, the State Government can make rules to provide for the matters stated therein. Section 15(1-A) (g) which is relevant for the present purpose reads as under:-

“15(1). *Power of State Governments to make rules in respect of minor minerals. – (1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of [quarry leases, mining leases or other mineral concessions] in respect of minor minerals and for purposes connected therewith.*

(1-A) *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)*
- (b)*
- (c)*
- (d)*
- (e)*
- (f)*

(g) *the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;”*

Section 15 sub-Section (3) reads as under:

“15(3). *The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent, whichever is more, in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:*

Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years.”

Section 15(4)(a) and (c) reads as under:-

“15(4). *Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely:-*

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

(b) *.....*

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

Under Section 15-A the State Government is empowered to collect funds for DMF in respect of minor minerals and the said provision reads as under:-

“15-A. *Power of State Government to collect funds for District Mineral Foundation in case of minor minerals. – The State Government may prescribe the payment by all holders of concessions related to minor minerals of amounts to the District Mineral Foundation of the district in which the mining operations are carried on.”*

Section 23-C(1) empowers the State Government to make rules to prevent illegal mining, transportation and storage of minerals and the said provision reads as under:-

“23-C. *Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals. – (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.”

11. Thus, from the aforesaid provisions it becomes clear that the State Government on establishment of the Trust to be called as District Mineral Foundation (DMF) can prescribe the manner in which the Foundation would work for the interest and benefit of persons and areas affected by mining related operations. The power to make rules under Section 15(1) is with regard to regulating the grant of quarry leases, mining leases and other mineral concessions and in that regard fixing and collecting rent, royalty, fees etc. The State Government is also empowered to make rules with regard to the manner in which the DMF would work in the interest and benefit of persons and areas affected by mining under Section 9-B(2) of the Act of 1957. Section 15-A requires holders of concessions related to minor minerals to pay amount as prescribed by the State Government to the DMF of the district in which mining related operations are being carried out. Section 3(ae) of the Act of 1957 defines “mineral concession” to mean either a reconnaissance permit, prospecting licence, mining lease, composite licence or a combination of any of these and the expression “concession” has to be construed accordingly. Section 23-C empowers the State Government to make rules for preventing illegal mining, transportation and storage of minerals.

Thus, under the Act of 1957, there is no provision empowering the State Government to require either an exporter of minor minerals or a transporter of such exported minor minerals to make any payment to the DMF of the district where no excavation has taken place. The object of the DMF is clear that it has to work for the interest and benefit of persons and areas affected by mining related operations and therefore under Section 15-A the State Government can prescribe the payment to be made by holders of concessions related to minor minerals of amounts to the DMF of the district where the mining related operations are being carried out. An exporter or transporter of minor minerals is not included in the term “mineral concession” as defined by Section 2(ae) of the Act of 1957. This is also clear from the provisions of the Mineral Concession Rules, 1960. The scheme of the aforesaid provisions is thus clear that it is only the holder of a concession who is required to make payment of the prescribed amount to the DMF of the district in which mining related operations are being carried out. In other words, the activity of export and subsequent transportation of mining minerals to a district where neither any excavation or mining related operation for such minor minerals has been undertaken is not sought to be brought within the purview of the DMF of such district merely for the reason that minor minerals are brought into that district.

12. It would also be necessary to refer the State DMF Rules, 2016 that have been notified on 01.09.2016. These rules have been framed in exercise of powers conferred by Section 9-B, Section 15(4) and Section 15-A of the Act of 1957 as well as in pursuance of the directions issued by the Government of India under Section 20A to incorporate the provisions of the Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY). Rule 2(b) defines affected areas and the said definition reads thus:-

“2(b). “Affected Areas” means areas affected by mining or mining related operations from a mine or cluster of mines within the District as may be specified by the Collector including the areas beyond the District as may be specified by the State Government from time to time, and also includes the directly affected areas and indirectly affected areas covered under the Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY).”

Rule 2(g) defines ‘contribution’ and the same reads as under:-

“2(g). “Contribution” means contribution to be collected in the Trust, –

(i) from the holders of a mining lease or a composite license (prospecting license-cum-mining lease) in case of major minerals at such percentage of the royalty to be paid in terms of the Second Schedule of the Act as may be prescribed by the Central Government from time to time, under sub-sections (5) and (6) of section 9B of the said Act;

(ii) from the holders of a mining lease or a quarry lease or a quarry permit in the case of minor minerals in the District at such percentage of royalty to be paid in the case of minor minerals as may be prescribed by the State Government from time to time under section 15A of the said Act;”

Rule 3 indicates the object of the DMF Trust and that rule reads thus:-

“3. *Object of District Mineral Foundation Trust. –*
(i) The object of the District Mineral Foundation is to work for the interests, benefits and sustainable development of persons and areas affected by mining or mining related operations in the district; and
(ii) to utilise the funds accumulated in the District Mineral Foundation in an effective, transparent and accountable manner.”

Rule 13(1) and (2) reads as under:

“13. *Expenditure from Trust Fund. – The funds available with the Trust shall be used as per the directions issued by the Government of India to carry out the following purposes mentioned in the Pradhan Mantri Khanij Kshetra Kalyan Yojna (PMKKKY):-*

(1). *The overall development of the area affected by mining or mining related operations in accordance with the Annual Action Plan prepared by the Managing Committee and approved by the Governing Council of the Trust for the purpose;*

(2). *At least 2/3 amount shall be utilized in the directly affected areas and rest maximum 1/3 amount shall be utilized indirectly affected areas. (Directly affected mine area shall be an area within 20 k.m. radius from mine/dump.”*

13. From the aforesaid provisions, it is clear that under Rule 2(g) the contribution to be collected by the DMF Trust is from holders of a mining lease or composite license in case of major minerals and also from holders of a mining lease, a quarry lease or a quarry permit in the case of minor minerals. The expenditure that is required to be made from the

fund of the DMF Trust is again in the context of the areas affected by mining or mining related operations. There thus does not appear any rule under the State DMF Rules, 2016 by which an exporter of minor minerals into the State of Maharashtra or a transporter who transports such excavated minor mineral from another State into the State of Maharashtra can be required to contribute to the DMF Trust of the district where neither any excavation or mining related operations have taken place. This is for the reason that such contribution has to be made by the holders of a mining lease, a quarry lease or a quarry permit in the case of minor minerals. In the district where such excavated minor mineral is being transported there are no mining operations or mining related operations carried out so as to render such area to be an affected area as defined by Rule 1(b) of the State DMF Rules, 2016 in the context of the activity of transport.

14. The preamble of the Rules of 2017 is material and the same reads as under:-

***“PREAMBLE :** In exercise of the power conferred by section 15-A of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), in its application to the State of Maharashtra, the Governing of Maharashtra, hereby makes the following rules to prescribe payment by all holders of concessions related to minor minerals, in addition to the royalty, to the District Mineral Foundation Trust established in each revenue District (except Mumbai District which doesn't have mining areas), in which the mining operations are carried on, namely.”*

As per Rule 2 of the Rules of 2017 it is only the holder of a mining lease in respect of minor minerals who is required to pay in addition to the amount of royalty, a further amount equivalent to 10% of royalty to the DMF of the district in which mining or mining related operations are being carried out. Rule 2 of the Rules of 2017 reads thus:-

“2. Amount of contribution to be made to District Mineral Foundation. –

Every holder of a mining lease in respect of minor minerals shall pay, in addition to the royalty, an amount at the rate of ten percent of the royalty to the District Mineral Foundation of the district in which the mining operations are carried on.”

The Rules of 2017 also do not provide for charging an amount equivalent to 10% of royalty from an exporter of excavated minor mineral from another State into the State of Maharashtra or from a transporter of such excavated minor mineral when it is brought into the State of Maharashtra. It is only the holder of a mining lease, a quarry lease or a quarry permit who is required by Rule 2 to pay the additional 10% amount equivalent to royalty.

15. The question as regards imposition of restrictions on the transport or sale of excavated minerals outside a State was considered by the Hon’ble Supreme Court in *Jayeshbhai Kanjibhai Kalathiya & Others* (supra). By virtue of Rule 44-BB in the Gujarat Minor Mineral Rules, 1966

movement of sand beyond the borders of the State of Gujarat was prohibited. Transportation of sand to a neighbouring State on the basis of an authorized royalty pass or delivery challan was also to be treated as violation of the Act of 1957 and the Rules made thereunder. The same was the subject matter of challenge before the Gujarat High Court which struck down Rule 44-BB as being *ultra vires* on the ground that the State Government was not empowered to make rules directly prohibiting movement of minerals so as to infringe upon the freedom guaranteed by Article 301 of the Constitution of India. The said judgment was challenged by the State of Gujarat. After considering the provisions of Section 15 and Section 23-C of the Act of 1957, it was held by the Hon'ble Supreme Court that the prohibition on the transport or sale of already mined minerals outside the State had no direct nexus with the object and purpose of the Act of 1957 which was concerned with conservation and prudent exploitation of minerals. Even Section 23-C did not confer any power to make rules for regulating transportation of legally excavated minerals. The Hon'ble Supreme Court after referring to its earlier decision in *M.P.P. Kavery Chetty* (supra) observed that the power of the State Government under Section 15 of the Act of 1957 did not include control over minor minerals after they were excavated. The appeal preferred by the State of Gujarat was dismissed and the judgment of the Gujarat High Court was maintained.

16. In *Federation of Indian Mineral Industries & Others* (supra), the Hon'ble Supreme Court considered two questions firstly, whether the DMF could be established with effect from 12.01.2015 and secondly whether contributions that were required to be made to the DMF were required to be made at the rate mentioned in the Rules with effect from 12.01.2015. It was held that the DMF was not established retrospectively though the notifications establishing it from a date anterior to the date of notification had been published. The validity of such notification was saved by holding the DMF to operate from the date of publication of the notification. In paragraph 52.5 of the said decision it was observed that contribution to the DMF was required to be made by the holder of a mining lease or a prospecting licence cum mining lease in the case of coal, lignite and sand for stowing with effect from 20.10.2015 when the rates were prescribed by the Central Government or from the date when the DMF established by the State Government by a notification whichever was later.

17. A somewhat similar question as regards competence of the State Legislature to enact a rule authorizing collection of entry fee from a person transporting minor minerals from other States with a valid transit permit into the State of Karnataka was considered in *Sri.Sai Kesava Enterprises* (supra). Rule 42(7) of the Karnataka Minor Mineral Concession Rules, 1994 as amended prescribed for an amount of Rs.70/- per metric tonne to be collected from the person who transported minor

minerals from other States with a valid permit. That rule was challenged on the ground that the State Government was not empowered under the Act of 1957 to frame rules for imposing levy of fees for movement of licenced goods from other States. The decision in *Jayeshbhai Kanjibhai Kalathiya & Others* (supra) was referred to. A.S. Oka, C.J. (as His Lordship then was) held that neither did the provisions of Section 15(1) or Section 23-C authorize the State Government to make Rules for regulating minerals lawfully excavated in other States. It was held that the State Government had no legislative competence to make rules for levy of transportation fee or charge on minerals lawfully excavated in other States. The Karnataka High Court thus struck down Rule 42(7) of the Karnataka Minor Mineral Concession Rules, 1994.

In our view, the aforesaid decision supports the contentions raised by the petitioners that the State Government is not empowered to demand an amount equivalent to 10% of royalty from an exporter of minor minerals who has excavated such minor minerals in another State after the same is brought into the State of Maharashtra for being paid to the DMF of the District where such minor mineral is carried. Same is the case of such demand being made from Inter-State transporters.

18. Thus from a conjoint reading of the Act of 1957 and especially Sections 2, 9-B, 14, 15-A and 23-C of the Act of 1957 there is no authority conferred on the State Government to require payment of an amount

equivalent to 10% of royalty to the DMF of the district where such excavated minor mineral from another State is brought. This position is further clear in view of Rule 2(9) and Rule 3 of the State DMF Rules, 2016 as well as Rule 2 of the Rules of 2017. In the State DMF Rules, 2016 Rule 2(d) defines affected areas to include directly as well as indirectly affected areas covered under PMKKKY. Under the PMKKKY indirectly affected areas have been identified as areas where local population is adversely affected on account of economic, social and environmental consequences due to mining related operations and reference has been made to transportation of minerals. The same would thus not include transportation of minor minerals after being excavated in another State into the State of Maharashtra. This is for the reason that Rule 2(1)(g) of the State DMF Rules, 2016 clearly indicates as to from whom contribution is to be collected in the Trust. An exporter of minor minerals and the consequent transporter of such minor minerals after its excavation in another State have not been included as persons from whom contribution can be demanded under that provision.

19. In the light of this position when Clause 5 of Circular dated 05.02.2021 is seen it becomes clear that it requires an amount equivalent to 10% of royalty to be paid to the DMF of the district where any minor mineral excavated in another State is brought into the limits of such district in the State of Maharashtra either by road or by rail. Clause 5 of the Circular dated 05.02.2021 when translated reads thus:

“5. The concerned is required to deposit 10% amount of royalty rate per Brass prescribed by the State Government from time to time with the Collector Office in that district in the State of Maharashtra where sand enters the boundary of that district by road or by waterway from another State and with the District Mineral Foundation in the district where the sand is going to be unloaded at the Railway Station in that district.”

Only after such amount is paid to the DMF would the further process of issuing zero royalty pass be undertaken. Clause 5 of the Circular dated 05.02.2021 seeks to achieve indirectly that what is not permissible under the aforesaid statutory provisions. The principle that what cannot be done directly cannot be sought to be achieved indirectly as referred to in *Institution of Mechanical Engineers* (supra) is clearly attracted. Thus, Clause 5 of the Circular dated 05.02.2021 in the absence of any statutory support cannot create a liability by requiring an exporter of minor minerals as well a transporter of such minor minerals excavated from another State to pay 10% of the amount of royalty to the DMF of the district where neither any excavation nor any mining operations have been undertaken. We may usefully refer to the decision in *Kunj Beharilal Butail Versus State of Himachal Pradesh* [(2000) 3 SCC 40] wherein it has been held that a delegated power to legislate by making rules “for carrying out the purposes of the Act” is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights, obligations or disabilities not contemplated by the provisions of the Act itself.

20. Accordingly, it is held that the State Government is not empowered under the Act of 1957 or the Rules framed thereunder to require an exporter of minor minerals into the State of Maharashtra to pay 10% of the amount of royalty to the DMF constituted under Section 9-B of the Act of 1957. Similarly, such demand of contribution from inter-State transporters of minor minerals excavated in another State and brought into the State of Maharashtra would not be liable to make such contribution to the DMF constituted under Section 9-B of the Act of 1957. Clause 5 of the Circular dated 05.02.2021 seeks to prescribe making of contribution to the DMF without any statutory support.

21. Having found the demand of contribution to the DMF from an exporter of minor minerals excavated outside the State of Maharashtra when brought into the State of Maharashtra not being permissible under the Act of 1957, the prayer for refund of the amount paid to the DMF by the petitioner in Writ Petition Nos.2078 of 2021 and 2086 of 2021 deserves to be considered. In that regard, reliance was placed on the judgment of the Hon'ble Supreme Court in *Salonah Tea Co. Ltd. & Others Versus Superintendent of Taxes, Nowgong & Others* [(1988) 1 SCC 401] and it was submitted that since the demand of contribution from the petitioners has been found to be bad, the petitioners would be entitled to refund of the amount of contribution paid by them. In *Salonah Tea Co. Ltd. & Others* (supra) it was held that in a case where tax or money has

been realized without the authority of law the same is liable to be refunded and in an application under Article 226 of the Constitution of India, the Court has power to direct such refund unless there are avoidable laches on the part of the petitioner which could indicate either the abandonment of his claim or which is of such nature for which there is no probable explanation or which will cause any injury either to the respondent or any third party. We find that the ratio of the aforesaid decision squarely applies to the writ petitions preferred by the exporters. In Writ Petition No.2078 of 2021 an amount of Rs.2,82,600/- has been recovered from the petitioner as per demand notices dated 04.03.2021 and 10.03.2021. Though refund of an amount of Rs.2,82,600/- has been sought, the amount actually paid towards contribution to the DMF is Rs.2,00,000/- (Rupees Two Lakhs). In Writ Petition No.2086 of 2021, the petitioner has sought refund of an amount of Rs.11,304/- recovered under demand note dated 03.03.2021. Though an amount of Rs.11,304/- has been claimed towards refund, actual amount paid to the DMF is Rs.8,300/-. The aforesaid payments having been made shortly prior to filing of the writ petitions, we find that the petitioners would be entitled to the relief of refund of the aforesaid amounts in view of the law as laid down in *Salonah Tea Co. Ltd. & Others* (supra).

22. As a sequel to the aforesaid discussion, the following order is passed:-

- (I) It is held that the State Government is not competent to demand an amount equivalent to 10% of royalty from an exporter of minor minerals who has excavated such minor minerals in another State and seeks to import such minor minerals into the State of Maharashtra since such power to demand contribution to be made to the DMF where such minor mineral is being brought has not been conferred on the State Government under the Act of 1957.
- (II) It is held that the State Government is not competent to demand an amount equivalent to 10% of royalty from a transporter of minor minerals who seeks to transport such minor minerals excavated in another State to the DMF of the district while entering the State of Maharashtra since such power has not been conferred on the State Government under the Act of 1957.
- (III) The petitioner in Writ Petition Nos.2078 of 2021 and 2086 of 2021 would be entitled to refund of an amount of Rs.2,00,000/- and Rs.8,300/- respectively being the amount paid by them to the DMF. Such refund be made within a period of eight weeks from today.
- (IV) It is held that Clause 5 of Circular dated 05.02.2021 issued by the Ministry of Revenue and forest, Mantralaya, Mumbai is bad in law since the State Government has not been conferred with any authority or power to demand contribution to the DMF of the district on the entry and consequent transport of minor minerals within the State of Maharashtra. Clause 5 of the said Circular dated 05.02.2021 shall not operate being excessive and travelling beyond the rule making power of the

State of Maharashtra. Circular dated 05.02.2021 shall operate excluding Clause 5 as aforesaid.

(V) The order dated 07.12.2021 impugned in Writ Petition Nos.2078 of 2021, 2086 of 2021, 172 of 2022 and 173 of 2022 calling upon the petitioners to pay an amount equivalent to 10% of amount of royalty to the DMF is set aside.

(VI) It is clarified that the respondents are free to act under the provisions of Section 48 of the Maharashtra Land Revenue Code, 1966 in accordance with law.

23. Rule is made absolute in aforesaid terms with no order as to costs.

(SMT. M.S. JAWALKAR, J.)

(A.S. CHANDURKAR, J.)

APTE