IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP-5320-2024
Reserved on: 13.03.2024
Pronounced on: 19.03.2024

SULTAN STONE CRUSHER AND OTHERS .....Petitioners

Versus

STATE OF PUNJAB AND ORS. ....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Vivek Salathia, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

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SURESHWAR THAKUR, J.

1. Through the instant writ petition, a challenge is made to the impugned notice Annexure P-4, issued by respondent No. 3. A reading of Annexure P-4 discloses that the petitioners vehicles respectively bearing No. PB07-AS-9824 make TATA and bearing No.PB02-DF-2800 make Ashok Leyland became seized, on account of the thereins carried minor mineral concerned, thus becoming transported without its drivers at the border post manned by the personnel of the Government of Punjab, thus holding the documents, as required under Sub Rule (2) of Rule 74 of the Punjab Minor Mineral Rules, 2013 (hereinafter for short called as 'the Punjab Rules of 2013').

2. Annexure P-4 is a show cause notice issued upon the present petitioners to produce those documents as contemplated in Sub

Rule (2) of Rule 74 of 'the Punjab Rules of 2013'.

3. Annexure P-4 also displays that in case the said documents are not produced by the present petitioners, thereupon, the competent authority reserving liberty to impose the relevant compounding fees vis-a-vis the petitioners respective vehicles, thus in terms of Rule 75 (i) of 'the Punjab Rules of 2013', besides theretos Annexure P-4 makes a further speaking that the petitioners shall also become amenable for becoming prosecuted under Rule 76 of 'the Punjab Rules of 2013'.

Submissions of the learned counsel for the petitioners.

4. The learned counsel for the petitioners submits that, the contents of the impugned show cause notice, as carried in Annexure P-4 are utterly false as all the relevant documents including sale invoices, delivery challan, invoices with GST etc. as embodied in Annexures P-1 and P-2, were at the relevant time in the custody and possession of the respective drivers of the vehicles, and the said also became produced before the officers of the Mining Department of the Government of Himachal Pradesh, who were manning the inter State border inter-se Punjab and Himachal Pradesh. However, he submits that the relevant Form 'X' therebys endowing permission to the vehicles concerned, to travel into the territory of Punjab, thus was not in possession of the respective drivers, of the impounded vehicles, but he submits that when for non possessing of the transit pass or Form 'X', rather the officials of the Mining Department of the Government of Himachal Pradesh, who were manning the inter State border post inter-se Punjab and Himachal Pradesh, thus challaned the apposite vehicles and also imposed composition fees in terms of the Himachal Pradesh Minor Minerals (Concession) and Minerals (Prevention of Illegal Mining

Transportation and Storage) Rules, 2015 (hereinafter for short called as 'the Himachal Rules of 2015') as formulated by the State of Himachal Pradesh.

5. Therefore, the counsel submits that on the tendering of the composition fees as evident from a perusal of Annexure P-3, thereby, the issuance of the impugned show cause notice (Annexure P-4) and also the impounding of the petitioners vehicles by the officials of the Government of Punjab rather is a completely illegal act.

6. In making the above submission, the counsel for the petitioners has drawn the attention of this Court to Section 23 A of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter for short called as the 'Act of 1957'), provisions whereof become extracted hereinafter, wherefrom he submits, that since Sub Section (2) of Section 23 A of the 'Act of 1957', places an embargo on the launching of further proceedings, in respect of offences which have been earlier compounded, through, recourse being made to the provisions of Sub Section (1) of the 'Act of 1957'. Therefore, the counsel for the petitioners submits, that once the mining officials who were manning the inter State border inter-se Himachal Pradesh and Punjab, thus compounded the offence(s) which arose from the respective drivers of the vehicles concerned not at the relevant time possessing the relevant transit form or Form 'X', for therebys the vehicles validly entering the territory of Punjab. Resultantly the mining officers of the State of Punjab were barred to issue the impugned show cause notice (Annexure P-4) besides were barred to impound the apposite vehicles, as therebys breach has been done to the provisions (supra), which bar the launching of further proceedings in respect of an

offence which has been earlier compounded.

> ***Compounding of offences***.
>
> *23A. (1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify:*
>
> *Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.*
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> *(2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith.*

7. In making the said submission, the learned counsel for the petitioners has made dependence(s) upon a judgment made by the Hon'ble Apex Court in case titled as ***'Jayant Vs. State of Madhya Pradesh, 2021 AIR (SC) 496.*** The relevant para no. 13 (v) thereof stands extracted hereinafter.

> *v) in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section 1 of Section 23A, considering sub-section 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded."*

8. The counsel for the petitioners further submits that when the Federal Units in the Republic of India derive power from the 'Act of 1957' to make the respective Rules relating to the regulation of

extractions of minor minerals, imposition of royalty, cesses and transportation of the minor minerals, therebys the respectively made Rules by the Federal Units in the Republic of India but are to be in alignment to the parent 'Act of 1957', especially when in the thereunders, thus Sub Section (2) of Section 23A of the 'Act of 1957', there is a statutory bar against re-compounding of offences which became earlier compounded under Sub Section (1) of Section 23A of the 'Act of 1957'.

9. In making the said submission, the learned counsel for the petitioners had made dependence upon a judgment made by the Hon'ble Apex Court in case titled as ***'Kerala State Electricity Board and Others Vs. Thomas Joseph @ Thomas M.J. and Others' reported in (2023) AIR (SC) 126.*** The relevant para whereof stands extracted hereinafter.

> *"65. Delegated legislation has come to stay as a necessary component of the modern administrative process. Therefore, the question today is not whether there ought to be delegated legislation or not, but that it should operate under proper controls so that it may be ensured that the power given to the Administration is exercised properly; the benefits of the institution may be utilised, but its disadvantages minimised. The doctrine of ultra vires envisages that a rule making body must function within the purview of the rule making authority conferred on it by the parent Act. As the body making rules or regulations has no inherent power of its own to make rules, but derives such power only from the statute, it has to necessarily function within the purview of the statute.* ***Delegated legislation should not travel beyond the purview of the parent Act. If it does, it is ultra vires and cannot be given any effect.*** *Ultra vires may arise in several ways; there may be simple*

> *excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act or statute law or the general law; there may be non- compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.*

10. Further, dependence has been made upon a judgment made by the Hon'ble Apex Court in case titled as ***'Sukhdev Singh and Others Vs. Bhagatram Sardar Singh Raghuvanshi and Another' reported in (1975) 1 SCC 421.*** The relevant para whereof stands extracted hereinafter.

> *"18.......These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature. Rules and regulations made by reason of the specific power conferred on the statute to make rules and regulations establish the pattern of conduct to be followed......"*

Submissions of the learned State counsel.

11. On the other hand, the learned State counsel submits that, the impugned notice (Annexure P-4) has been issued upon the petitioners impounded vehicles, in terms of Rules 74 and 75 of the 'Punjab Rules of 2013', whereins, a necessity becomes cast upon the respective drivers of the impounded vehicles to at the relevant border post, thus produce documents rather to substantiate the valid sourcing of the minor minerals as becomes transported in the impounded vehicles.

12. The learned State counsel submits that the valid source, of the minor minerals transported in the impounded vehicles, was discernable, only when the respective drivers of the impounded

vehicles produced before the officers manning the border post concerned, thus the transit form issued in Form 'X', wherebys alone the impounded vehicles rather could enter into the territories of the State of Punjab. He submits that the imperative necessity of possessing of the said transit form in Form 'X' becomes contemplated in Rule 79 of 'the Himachal Rules of 2015', provisions whereof, become extracted hereinafter.

> *"**79. Transportation of minerals**.-*
> *(1) No person shall transport or cause to be transported any mineral otherwise than in accordance with the provisions of these rules.*
> *(2) The holder of a mining lease or contract or permit or permission or store or a person authorized by him in this behalf shall issue a transit pass in Form- 'W' or Supplementary Pass in Form-'X' as the case may be duly countersigned by the concerned Mining Officer or any other Officer authorized by him in this behalf to every person carrying a consignment of minor mineral by a vehicle, animal or any other mode of transport.*
> *(3) For transportation of any mineral to any place, the dealer or holder of mining lease or contract or permit or permission shall make an application to the authorized officer for issue of transit pass.*
> *(4) The transit pass shall be in triplicate. Two copies of which shall be issued to the consignor while third shall remain with the dealer or holder of mining lease or contract or permit or permission and shall be produced before authorized officer as and when demanded by him. One copy of transit pass shall be retained by Inspecting Officer/In-charge of Check Post who shall endorse the second copy, which shall remain with the carrier during transportation and shall hand over the same to dealer or buyer, as the case may be:*

Provided that if mineral is being carried from other State, then the consignor should have proper document of that State, indicating the place and address of firm or supplier who happened to be supplier of that mineral.

(5) Every person carrying any minor mineral shall on demand at any place including check post/barrier by any Officer of the State Government authorized in this behalf show the said Transit Pass in Form-'W' or Supplementary Pass in Form-'X' to such Officer and allow him to verify the correctness of the particulars of the Transit Pass Form-'W' or Supplementary Pass in Form-'X' with reference to the quantity of the minor mineral.

(6) Every dealer shall provide all reasonable facilities to the authorized officer in this behalf to inspect verify and check the stocks and accounts of mineral and any other documents pertaining thereto."

13. The learned State counsel to validate the impugned show cause notice has relied upon an order made by this Court on 20.10.2023 in case CWP-23960-2023 titled as '***Jai Durga Stone Crusher Vs. State of Punjab and Others.*** The relevant part of the said order is extracted hereinafter.

1. Notice of motion.

2. Mr.Gurminder Singh, Advocate General, Punjab with Mr.Maninder Singh, DAG, Punjab, waive service of notice on behalf of the respondents.

3. The learned Advocate General, Punjab is sensitized about the spurrings of ill effects, through the impugned Annexure(s) being yet ensured to be executed, inasmuch as, thereby there would be an impermissible composition of breaches by the errant(s) concerned, vis-a-vis, the mandatory provisions of the relevant Rules, besides would result in impermissible composition(s) of offence(s) at the instance of the personnel of the department concerned of the Government of Punjab, who are deployed at the Inter State

Border concerned.

4. The learned Advocate General is also sensitized that the jurisdictional competence to deal with the relevant breaches, as made by the errant(s) concerned, is completely vested in the Government concerned, within whose jurisdiction, the mining minerals are located. Therefore, the learned Advocate General is also sensitized, that if so, through the impugned Circular, the said jurisdictional competence would be untenably snatched, leading to a prima facie conclusion, that thereby the impugned Annexure(s) is prima facie smacking of the vices of arbitrariness, and, non application of mind at the instance of the authority concerned.

5. Therefore, as prayed for by the learned Advocate General, he is permitted to seek the relevant instructions and place them before this Court, on the subsequent date of hearing.

6. The Advocate General has assured, that he shall make a circumspect study of the deliberation(s) (supra) and shall also on the subsequent date of hearing, make intimations to this Court, that the State Government is also sensitized. In addition, the Advocate General has also assured, that in the wake of the impugned Annexure(s), the illegal excavations of mining minerals, which take place within the State of Punjab, are not ensured by the errant(s) to be carried to the border posts, so that there, the impugned Annexures are implemented, thus leading to composition of the offences, which become committed by the errant(s) concerned within the territorial limits of the State of Punjab.

7. The above is also an issue, which relates to monitoring, surveillance and detections of the above misfeasance(s), which occur at the border post.

8. The Advocate General has also assured, that on the subsequent date of hearing, he shall intimate this Court, that the machinery which is required to be deployed for ensuring, that the above manner of abuse of the impugned Annexure(s) is not employed by the miners, who make illegal excavations *from the mines located in the State of Punjab.*

14. Consequently, the learned State counsel submits, that with the makings of valid excavations of the minor minerals transported in the impounded vehicles, rather was discernable only from the respective drivers of the said vehicles at the relevant time rather possessing the transit form issued in Form 'X', whereas, the said transit form not being produced at the border post manned by the officers of the State of Punjab. Consequently, the composition of the offences at the relevant border post by the officers of the Himachal Pradesh neither precluded nor pre-empted the officers of the Government of Punjab to recourse the provisions (supra) as embodied in Rule 79 of the 'Himachal Rules of 2015' nor precluded the officers of the Punjab Government to seek production of documents rather revealing the well sourcing of the minor minerals, as, transported in the impounded vehicles, as the said production, was a dire necessity in terms of Rules 74 and 75 of the 'Punjab Rules of 2013'. The relevant provisions whereof are extracted hereinafter.

> ***74. Check-post, barrier, weighment and inspection of minerals in transit****. - (1) If the Government considers it necessary to do so with a view to checking the transportation and storage of minerals raised without lawful authority, it may set up check-posts at any place in the State of Punjab.*
> *(2) Any authorised officer may check any carrier at any place, whether it is a check post or not, and the person in-charge of the carrier shall furnish weighment slip in Form 'T' and other particulars such as bill or receipt or delivery note on demand by him.*
> *(3) At every check-post set up under sub-rule(1), when so required by an authorised officer concerned, the person in-charge of the carrier shall stop for examination of the mineral in transit and inspection of all records and documents relating to the mineral in his possession. The person in charge of the carrier shall, if so required by an official, furnish his name and address and also that of the Mineral Concession Holder and the name and address of the consignor and the consignee. The authorised official after checking the mineral and carrier shall put his signatures on the weighment slip.*
> *(4) The authorised official shall seize the mineral alongwith the carrier in transit, if it is not mentioned in a valid weighment slip or if the description or quantity is clearly at variance with the weighment slip.*
> *(5) The authorised official shall give a receipt of such mineral and carrier seized by him to the person from whom the mineral and the carrier has been seized.*

(6) In case the person in-charge of the carrier carrying the mineral not covered by weighment slip has been intercepted at any place other than a check post, then authorised officer/official shall direct the person in charge of the carrier to carry the mineral to the nearest police station or check-posts as the case may be:
Provided that if the person in charge of the carrier refuses to carry the mineral and the carrier to the nearest police station or check-post, the authorised officer/official may seize the mineral and the carrier and take the same in his possession and transport it at the risk and cost of the carrier to the nearest police station or check post.
(7) The person in-charge of any carrier entering the State limits or passing through the State and bound for any place outside the State shall furnish proof to the effect that the minor minerals have been raised in some other State. In case he fails to furnish proof to that effect, action shall be taken for unlawful transportation of minor minerals as per the provisions of the Act and these rules.
(8) Where the authorised officer has reason to believe that the weight recorded in the weighment slip is not correct, he may direct the person in charge of the carrier to take such carrier to the nearest electronic weigh bridge and take recourse to action for under-weighment.
(9) Where any person is found transporting any mineral and/or mineral products in contravention of the provision of these rules, any authorised officer may seize the mineral or its products alongwith any tool, equipment, carrier or any other things used in committing such offence and the person in-charge and/ or the owner of the carrier shall be liable for action under these rules.
(10) An authorised officer seizing illegally extracted, transported or stored mineral or its products, tools, equipments and carrier under these rules shall give a receipt of the same to the person from whose possession such things are seized.
(11) If the amount of fine and other sum imposed under these rules are not paid within the specified time, all properties seized shall be liable to be confiscated by an order of the court trying the offence.
***75. Un-authorised Transportation of Minerals.** - Wherever a carrier is found being used for transporting any mineral in whatever form, without a valid weighment slip as required under sub-rule (2) of rule 74 or any excavation equipment is found being used or is found having been used for excavating any mineral in an unauthorised way, the same would be dealt with as under, -*
(i) where the carrier/excavation equipment is involved in violation of these rules for the first time, the said mineral would be liable to be seized alongwith the impounding of the carrier/excavation equipment which may be released by the authorised officer only upon realization of payment from the owner or person incharge or person in possession of the carrier/excavation equipment, of applicable royalty as well as compounding fee at a rate specified in the schedule. In case of failure to deposit such compounding fee by the owner or person in-charge or person in possession of carrier, action shall be taken under sub-section (1) of section 21 and section 22 of the Act; and
(ii) wherever a carrier/excavation equipment is involved in violation of these rules subsequently, the authorised officer shall take action as per sub-section (1) of section 21 and section 22 of the Act..”

15. Moreover, when this Court in judgment (supra) has permitted seizure of the vehicle rather for lack of possession of the relevant documents, thus as required by Rules 74 and 75 of the 'Punjab Rules of

2013', thereby also irrespective of the composition of offences being made by the officers of the Himachal Pradesh at the border post concerned, the impounded vehicles were required to thereafter return to Himachal Pradesh, so that, their owners ensure the procurings of a valid transit form from the Mining Department of the Government of Himachal Pradesh, for therebys the vehicles concerned making a permissible ingress into the territories of the State of Punjab.

16. Resultantly, the learned State counsel argues that as such the impounding of the vehicles by the officers of the State of Punjab, neither ill foists any double jeopardy upon the vehicle owners i.e. the present petitioners nor also the statutory embargo placed by Sub Section (2) of Section 23A of the 'Act of 1957' becomes attracted to the impugned show cause notice (Annexure P-4).

Analysis of the submissions of the learned counsel for the parties and reasons for rejecting the submissions made by the learned counsel for the petitioners and for accepting the submissions made by the learned State counsel.

17. The counsel for the petitioners as stated (supra) made dependence upon the provisions cast in Sub Section (2) of Section 23A of the 'Act of 1957' for his making a submission, that the impugned show cause notice (Annexure P-4) and the impounding of the petitioners vehicles rather attracts theretos, the statutory bar against the petitioners vehicles becoming doubly jeopardized despite earlier thereto the relevant breach becoming compounded by the officers of the Mining Department.

18. Though the learned counsel for the petitioners has also relied upon the judgment rendered by the Hon'ble Apex Court in case titled as ***Jayant Vs. State of Madhya Pradesh (supra),*** besides has made a vociferous submission, that the rules as made respectively by the State of Punjab and the State of Himachal Pradesh, rather owe their parentage to

the 'Act of 1957', therebys the issuance of show cause notice (Annexure P-4) by the Government of Punjab in terms of Rule 79 of 'the Himachal Rules of 2015', rather making open detractions or digressions from the statutory mandate enclosed in Sub Section (2) of Section 23A of the 'Act of 1957'.

19. Though, the counsel for the petitioners also submits, that the dependence made by the State of Punjab in the reply furnished to the instant writ petition upon Rule 79 of 'the Himachal Rules of 2015' whereins become envisaged the necessity of possessing of transit pass, thus by the respective drivers of the relevant vehicles, for therebys theirs making a valid ingress into the territories of the State of Punjab, thus also is a mis-placed reliance thereons. He submits that since the said breach became compounded, as such, the mining officials of the Punjab Government were required to permit the impounded vehicles to enter into the territory of the State of Punjab. Resultantly, the counsel for the petitioners submits that therebys the petitioners have been doubly jeopardized besides he submits that the fundamental right of freedom of trade and profession endowed upon the present petitioners has been untenably infringed.

<u>Reasons for rejecting the submissions made by the counsel for the petitioners.</u>

20. For the reasons to be assigned hereinafter, this Court does not find favour with the above made submissions.

21. Primarily for the reason that even if the mining officers of the Himachal Pradesh Government manning the inter State border inter-se Punjab and Himachal Pradesh, had stopped, the relevant vehicles and had for lack of the respective drivers of the vehicles concerned, thus not possessing the transit form, rather compounded the said breach, through

the makings of Annexure P-3. However, the levying of the composition fees arising from the said breach, became limited only for therebys the impounded vehicles concerned, subsequent to the said composition taking place, thus becoming facilitated to travel back into the territories of the State of Himachal Pradesh, rather than theirs entering into the territories of the State of Punjab.

A grave and incisive analysis of Rule 79 of 'the Himachal Rules of 2015' enjoins a necessity upon the driver of the vehicle, whereons becomes transported the minor mineral concerned, to possess and produce the relevant transit form before the officers of the Punjab Government who were manning the inter State border inter-se Punjab and Himachal Pradesh. The said transit form was evidently not possessed by the respective drivers of the impounded vehicles at the relevant time. Therefore, though the officers of the Himachal Pradesh Government manning the inter State border inter-se Punjab and Himachal Pradesh, did compound the said offences but as stated (supra) the vehicles were to re-enter Himachal Pradesh, so that, subsequently, the owners of the vehicles procure a valid transit pass from the Mining Department of Himachal Pradesh, thus for facilitating the respective drivers of the impounded vehicles, to well transport the thereins carried minor minerals concerned, onto the territory of the State of Punjab. On the contrary, irrespective of the composition of offences (supra) being done by the officers of the Government of Himachal Pradesh, the respective drivers of the impounded vehicles, than theirs returning to Himachal Pradesh, rather drove the said vehicles into the territories of the State of Punjab, and that too, without theirs possessing the transit pass, thus thereby they committed breach to the mandate (supra) as recorded by this Court in case **CWP No.**

23960 of 2023 titled as **Jai Durga Stone Crusher Vs. State of Punjab and Others**.

22. Moreover, also the respective drivers of the impounded vehicles in their driving the impounded vehicles into the territory of State of Punjab, and that too, without their possessing the relevant transit pass, as became issued by the Mining Department of the Government of Himachal Pradesh, thus made an illegal entry into thereins. Resultantly therebys the issuance of show cause notice (Annexure P-4) in terms of Rules 74 and 75 of the 'Punjab Rules of 2013' was a validly drawn action against the petitioners.

23. Though the learned counsel for the petitioners has much emphasized upon the statutory embargo envisaged in Sub Section (2) of Section 23 A of the 'Act of 1957' for therebys, his invalidating the issuance of the impugned show cause notice (Annexure P-4), on the premise that the said has doubly jeopardized the present petitioners, especially when the earlier thereto relevant breach became compounded.

24. However, the dependence made upon the said provision is a mis-placed dependence. The reason being that he has remained oblivious to the factum that the said bar would become attracted only when the mining officers of the Government of Himachal Pradesh rather had despite compounding the relevant breach, thus had made a fresh compounding thereof. However, the said provision does not become attracted when another federal unit of the Republic of India, on account of stark/blatant breach being done to the statutory provisions, thus necessitating the driver of the vehicle, possessing the relevant transit pass, rather proceeded to impound the petitioners vehicles. Resultantly when the said statutory necessity became breached, inasmuch as, the respective drivers of the

impounded vehicles without possessing the transit pass, thus entered into the territories of the State of Punjab, thereby but obviously the relevant Rules 74 and 75 of the 'Punjab Rules of 2013' became attracted qua their impermissible ingress into the territory of the State of Punjab and thereby action in terms thereof was required to be drawn against the vehicles owned by the petitioners.

25. In other words, the relevant breach is a continuing breach, thereupon, the earlier undoing of breach by one Federal Unit, does not estop, the other Federal Unit to pre-empt the entry of the relevant vehicles into its territories, especially when the entry of the relevant vehicles into the territories of another Federal Unit, requires that the relevant transit form, is possessed by the driver of the vehicle concerned. Therefore, the composition, thus of a continuing offence by one Federal Unit, does not estop the other Federal Unit, in whose territories rather the offence further continues, to re-compound the said offence nor the statutory embargo (supra) is foisted against it, thus to issue a show cause notice (Annexure P-4) upon the petitioners vehicles, as arose from lack of possession of the transit pass nor therebys there is any fetter on the fundamental rights of trade and profession as invested in the petitioners.

26. The counsel for the petitioners has also made dependence upon the factum that the Rules (supra) as became depended upon by the State of Punjab, to validate the issuance of a impugned show cause notice (Annexure P-4), are in detraction of Sub Section (2) of Section 23 A of the 'Act of 1957', especially when the said Rules owe their origin to the said Act or the said Act being the parent Act. Resultantly though he argues that the Rules respectively framed by the State of Punjab and the State of Himachal Pradesh are beyond the permissible limits of delegated

legislation invested in the mining authorities respectively functioning in the States of Himachal Pradesh and the State of Punjab. Therefore, he argues that yet the play of Sub Section (2) of Section 23A of the 'Act of 1957' remains intact, thereby there is a complete statutory functional foreclosure against the issuance of a impugned show cause notice by the State of Punjab.

27. However, yet the above argument is a mis-founded argument as inter State trade or inter State commerce is to be done in terms of such regulations as are embodied in Article 304 of the Constitution of India, provisions whereof are extracted hereinafter.

> ***"304. Restrictions on trade, commerce and intercourse among States -*** *Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law-*
>
> *(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and*
>
> *(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:*
>
> *Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."*

28. Therefore, when in terms of the said Article, carried in the Constitution of India, the State of Punjab and the State of Himachal Pradesh, have respectively formulated the apposite mineral concession Rules. Furthermore, when the making of the said respective mineral concession Rules, are deemed to be made in terms of the Article 304 of the Constitution of India. Resultantly, the respectively formulated mineral concession Rules thus respectively by the State of Punjab and by the State

of Himachal Pradesh, are deemed to impose reasonable restriction(s) upon the freedom of trade, commerce or intercourse within or outside the State concerned, as purportedly invested in the petitioners.

29. Moreover, therebys the issuance of show cause notice (Annexure P-4) as arose from breach being caused to the relevant provisions (supra) is deemed to be a validly issued show cause notice besides the argument of the present petitioners vehicles becoming doubly jeopardized is also a mis-placed submission.

30. In other words, for regulating inter State commerce or trade within the federal units in the Republic of India, the respective Rules become formulated by the State of Punjab and by the State of Himachal Pradesh. The said Rules formulated in the exercise of delegated legislation endowed upon the said federal units, through the parent 'Act of 1957', is to facilitate and regulate inter State commerce, and/or, are required to well regulate rather than ensure nourishment of ill tradings or ill transportings of the relevant items from one federal unit to the other federal unit within the Republic of India.

31. If so, the set of Rules respectively formulated by the State of Punjab and State of Himachal Pradesh, thus to regulate inter State commerce, in respect of the minor minerals concerned, are to be so aligned so as to pre-empt the smuggling of goods or minor minerals from one federal unit to the other. In the above spirit, the Rules have to be understood and if so, the necessity of a valid transit pass is of utmost importance, as its want would make the transported item into another federal unit or into the State of Punjab to be a not well made transport. Resultantly in the above spirit, the composition of the offences by the mining officers of the State of Himachal Pradesh at the border post inter-

se Himachal Pradesh and Punjab but was limited only to the vehicles subsequently entering into the territory of Himachal Pradesh and did not thus facilitate the respective drivers of the impounded vehicles to without the transit pass enter into the territories of the State of Punjab. If they intended to do so, they were required to be procuring the requisite transit pass from the Mining Department of the Government of Himachal Pradesh and which they did not do so rather they illegally entered into the State of Punjab. Resultantly, they caused breach to the provisions of Rule 79 of 'the Himachal Rules of 2015' and also to the provisions of Rules 74 and 75 of the 'Punjab Rules of 2013'.

Final Order of this Court.

32. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned Annexure P-4 is maintained and affirmed.

33. No order as to costs.

34. Since the main cases itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

19.03.2024

kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No