

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

DIVISION BENCH:

JUSTICE SHEEL NAGU
&
JUSTICE DEEPAK KUMAR AGARWAL

WP.8613.2020
(Rajendra Singh Vs. State of M.P. & Ors)

Shri Vivek Kumar Mishra, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.8615.2020
(Rajendra Singh Vs. State of M.P. & Ors)

Shri Vivek Kumar Mishra, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.9359/2020
(Anshul Vs. State of M.P. & Ors)

Shri Vivek Kumar Mishra, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.14167.2020
(Rupendra Singh @ Bablu Vs. State of M.P. & Ors)

Shri Sanjay Kumar Sharma, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.14344.2020
(A.K. Construction Comp. Registered Partnership Firm
Thr. Partner Azad Jain Vs. State of M.P. & Ors)

Shri Sanjay Kumar Sharma, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

WP.17270.2020
(Prathvi Raj Vs. State of M.P. & Ors)

Shri Rajmani Bansal, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.6154.2021
(Rajat Singh Rajawat Vs. State of M.P. & Ors)

Shri Vivek Kumar Mishra, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.6158.2021
(Raskendra Singh Bhadoriya Vs. State of M.P. & Ors)

Shri Vivek Kumar Mishra, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.6783.2021
(Maheep Singh Gurjar & Ors. Vs. State of M.P. & Ors)

Shri S.K. Shrivastava, learned counsel for petitioners.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.7159.2021
(Inshad Khan Vs. State of M.P. & Ors)

Shri S.S. Raghuvanshi, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.7385.2021
(Krishnabhan & Ors. Vs. State of M.P. & Ors)

Shri V.S. Chauhan, learned counsel for petitioners.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

WP.8252.2021
(Manoj Rathore Vs. State of M.P. & Ors)

Shri Shyam Sharma, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.8372.2021
(Smt. Kiran Chaurasiya Vs. State of M.P. & Ors)

Shri Shyam Sharma, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.8406.2021
(Ramnarayan Shivhare Vs. State of M.P. & Ors)

Shri K. Kartikeya Sharma, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.9887.2021
(Sunil Kumar Vs. State of M.P. & Ors)

Shri Nitin Agrawal, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.9959.2021
(Himendra Singh Tomar Vs. State of M.P. & Ors)

Shri Sunil Kumar Jain, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.9966.2021
(Devendra Kumar Sharma Vs. State of M.P. & Ors)

Shri Sunil Kumar Jain, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

WP.9971.2021
(Sonu Harijan Vs. State of M.P. & Ors)

Shri Sankalp Sharma, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.10335.2021
(Jagbhan Singh Vs. State of M.P. & Ors)

Shri A.S. Ghuraiya, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.10336.2021
(Ramcharan Singh Vs. State of M.P. & Ors)

Shri A.S. Ghuraiya, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.10567.2021
(Ramveer Singh Vs. State of M.P. & Ors)

Shri Nitin Agrawal, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.10664.2021
(Brij Kishore Singh Vs. State of M.P. & Ors)

Shri Nitin Agrawal, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.10728.2021
(Udal Singh Yadav Vs. State of M.P. & Ors)

Shri S.K. Shrivastava, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

WP.10785.2021
(Abid Khan Vs. State of M.P. & Ors)

Shri S.K. Shrivastava, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.10793.2021
(Randheer Singh Vs. State of M.P. & Ors)

Shri S.K. Shrivastava, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.10855.2021
(Vinod Batham Vs. State of M.P. & Ors)

Shri Nitin Agrawal, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.10988.2021
(Anurag Babu Vs. State of M.P. & Ors)

Shri Nitin Agrawal, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.11098.2021
(Jagat Singh Vs. State of M.P. & Ors)

Shri K. Kartikeya Sharma, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.11100.2021
(Narendra Singh Vs. State of M.P. & Ors)

Shri K. Kartikeya Sharma, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

WP.11102.2021

(Satyabhan Singh Rajawat Vs. State of M.P. & Ors)

Shri K. Kartikeya Sharma, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

&

WP.11105.2021

(Albel Yadav Vs. State of M.P. & Ors)

Shri K. Kartikeya Sharma, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General, for respondent/State.

Whether Approved For Reporting : Yes

Law laid down:

1. The power of confiscation is not available to be exercised by the Collector in cases of illegal transportation of sand registered under the 2019 Sand Rules.
2. The power of confiscation in cases of illegal transportation of sand registered under 2019 Sand Rules, cannot be borrowed from the repealed 1996 Rules, 2006 Rules or 2018 Sand Rules.
3. The expression “Transgress” found in repealing Clause in Rule 27 of 2019 Sand Rules, defined and interpreted to mean that to exercise a power not available in 2019 Sand Rules amounts to transgressing the limit of the sweep of 2019 Sand Rules which is impermissible.

Significant Paras: 08 to 12

Heard & Reserved on : 07.07.2021

Order pronounced on : 03.08.2021

(through video conferencing)

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

ORDER

Sheel Nagu, J.

1. In each of these writ petitions, challenge is to the order of Collector of the concerned district confiscating the vehicle in question seized for commission of mining offence of illegal transportation of sand after issuance of show-cause notice culminating into the order of confiscation.
2. Though against the order of confiscation, remedy of statutory appeal is available but since pure question of law is raised in all these petitions, these matters are heard analogously and are being finally decided by this common order.
3. Undisputed facts attending all the connected cases are that the vehicle in question was seized followed by registration of mining offence of illegal transportation of sand. The seizure was closely followed by issuance of show-cause notice to the respective petitioners. Some of the petitioners submitted their reply, while some did not. The Competent Authority thereafter passed the order of confiscation of the vehicle in question by invoking powers u/R.53 of M.P. Minor Mineral Rules, 1996 [“1996 Rules” for brevity].
4. The legal question raised in all these petitions is as follows:

“Whether the provision of Rule 53 of 1996 Rules can be invoked to confiscate a vehicle involved in illegal transportation of sand, in the face of the 1996 Rules, so far as they concern the minor mineral of sand, having been repealed by the coming into effect of the M.P. Sand

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

[Mining, Transportation, Storage and Trading] Rules, 2019 [“2019 Sand Rules” for brevity] with effect from 30.08.2019 and in these 2019 Sand Rules there being no enabling provision for confiscating vehicle involved in illegal transportation of sand ?

5. Learned counsel for the rival parties are heard through video conferencing.
6. Shri Sameer K. Shrivastava, learned counsel, leading the arguments on behalf of petitioners in all these petitions [with the consent of all other counsel for petitioners], tracing the historical background of 2019 Sand Rules submits that these rules are framed by invoking powers conferred in the State Government u/S.15 and Sec.23C r/w Sec.9B of Mines and Minerals (Development and Regulation) Act, 1957 [“MMDR Act” for brevity]. It is urged by Shri Shrivastava that 2019 Sand Rules is a complete Code on the subject of demarcation, declaration and making group of new sand quarries, fixing estimation of available quantity of sand in quarries, fixing upset price, regulating procedure for pre-tendering *qua* sand quarries, providing for pre-requisites for grant of quarry lease including environmental clearance etc., execution of agreement, commencement of mining operations, cancellation of contract, surrender of group, stipulating disposal of sand on private land, storage of sand, laying down penal provisions to deal with illegal mining, transportation and storage of sand, mode of appropriation of the amount received from tendering of sand quarries, providing for appeal and revision, laying down the mode to deal with cases during transition period and last but not the least the repealing clause.

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

As such Shri Shrivastava, learned counsel, points out that on coming into effect of 2019 Sand Rules [from 30.08.2019], the 1996 Rules stand eclipsed *in toto* as regards all subjects *qua* minor mineral of sand.

6.1 Before proceeding ahead, Shri Shrivastava, learned counsel, drew attention of this Court to various relevant provisions of 1996 Rules and as well as 2019 Sand Rules which are reproduced below for ready reference and convenience:

“Rule 53 of 1996 Rules:

53. (1) Penalty for un-authorized extraction and transportation.

-Whenever any person is found extracting or transporting minerals or on whose behalf such extraction or transportation is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal mining/transportation, then the Collector or any officer authorized by him not below the rank of Deputy Collector shall after giving an opportunity of being heard determines that such person has extracted/transported the minerals in contravention of the provisions of these rules, then he shall impose the penalty in the following manner, namely :-

(a) on first time contravention, a penalty of minimum 30 times of the royalty of illegally extracted/ transported minerals, shall be imposed but it shall not be less than ten thousand rupees.

(b) on second time contravention a penalty of minimum 40 times of the royalty of illegally extracted/transported minerals, shall be imposed but it shall not be less than twenty thousand rupees.

(c) on third time contravention, a penalty of minimum 50 times of the royalty of illegally extracted/transported minerals shall be imposed but it shall not be less than thirty thousand rupees.

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

(d) on third time or subsequent contravention, a penalty of minimum 70 times of the royalty of illegally extracted/transported minerals, shall be imposed but it shall not be less than fifty thousand rupees.

(2) Forfeiture of minerals in cases of illegal excretion and transportation. - *In respect of the Forfeiture/discharge of the mineral extracted/transported illegally the Collector or any other officer authorized by him not below the rank of the Deputy Collector shall take an appropriate decision. Provided that seized minerals shall not be discharged till the penalty imposed as above is not paid. In case of forfeiture, the seized mineral shall be disposed of through a transparent auction/ tender procedure as prescribed by the State Government.*

(3) Forfeiture/Discharge of the seized tools, machines and vehicles etc. and disposal of forfeited material through Auction/Tender. -

(a) In case of illegal extraction, the Collector or any other officer not below the rank of a Deputy Collector, authorized by him shall take an appropriate decision in respect of forfeiture/discharge of tools, machines and vehicles used. Provided that the tools, machines, vehicles and other material so seized shall not be discharged till the penalty imposed as above is not paid. In case of forfeiture, the seized materials shall be disposed of through a transparent auction/tender procedure as prescribed by the State Government.

(b) In respect of Forfeiture/Discharge of vehicle carrying mineral extracted/transported without any transit pass the Collector or any other officer not below the rank of Deputy Collector authorized by him shall take an appropriate decision. Provided that tools, machines, vehicles and other materials shall not be discharged till the penalty imposed as above is not paid.

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

In case of forfeiture the seized material shall be disposed off through a transparent auction/tender procedure as prescribed by the State Government:

Provided that the vehicle carrying minerals in excess as mentioned in transit pass, shall not be forfeited on doing so for first three times but the vehicle shall only be discharged on payment of penalty as imposed above. On repetition for the fourth time vehicle shall be liable to be forfeited.

(4) Action and compounding cases of un-authorized extraction/transportation. - *Whenever any person is found involved extracting/transporting of the minerals in contravention of provisions of these rules, the Collector/ Additional Collector/Deputy Collector/Chief Executive Officer of Zila Panchayat/Chief Executive Officer of Janpad Panchayat/Deputy Director (Mineral Administration)/Officer in charge (Mining section)/Assistant Mining Officer/Mining Inspector/officer in charge (Flying Squad)/Sub Divisional Officer (Revenue)/Tehsildar/Naib Tehsildar and any other officer not below the rank of Class-III executive authorized by the Collector from time to time shall proceed to act in the following manner:-*

(a) to initiate case of un-authorized extraction/transportation by preparing Panchnama on spot;

(b) to collect necessary evidences (including video-graphy) relevant to un-authorized extraction/transportation;

(c) to seize all tools, devices, vehicles and other materials used in excavation of miner mineral in such contravention and to handover all material so seized to the persons or lessee or any other person from whose possession such material was seized on executing an undertaking up to the satisfaction of the officer

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

seizing such material, to this effect that he shall forthwith produce such material as and when may be required to do so :

Provided that where the report is submitted under sub-rule (3) above to the Collector or any other officer not below the rank of a Deputy Collector authorized by him, the seized property shall only be discharged by the order of the Collector or the officer authorized by him.

(d) officer as mentioned above shall inform the Collector or any other officer not below the rank of Deputy Collector, authorised by him about the incident within 48 hours of coming in to notice of the same.

(e) officers as mentioned above shall make a request in writing to the concerning police station/seeking police assistance, if necessary and police officer shall provide such assistance as may to be necessary to prevent unlawful excavation/transportation of the mineral.

(5) Rights and powers of the investigating officer. - *During the investigation of the cases of illegal extraction/transportation of the minerals, in contravention of these rules, the investigation officer shall have the following rights and powers, namely :-*

(a) to call for person concern to record statements;

(b) to seize record and other material related to the case;

(c) to enter into place concern and to inspect the same;

(d) all powers as are vested in an in-charge of a police station while investigation any cognizable offence under Code of Criminal Procedure; and

(e) all other powers as are vested under Code of Civil Procedure

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

to compel any person to appear or to be examined on oath or to produce any document.

(6) Submitting application by illegal extractor/transporter to compound and its disposal. - *Before initiating or during the operation of the case, if the extractor/transporter is agree to compound the case, he shall have to submit an application of his intention to do so before the Collector/Additional Collector/Deputy Collector/Sub Divisional Officer (Revenue)/Deputy Director (Mineral Administration)/Mining Officer/Officer-in-charge (Mining section)/Assistant Mining Officer/Officer in charge (Flying Squad) and he shall proceed to compound in the case. Provided that to avail the benefit of compounding the violator shall have to deposit the amount as determined here under as fine, namely :-*

(a) For the first time violation 25 time of royalty of unlawfully excavated/transported minerals or rupees 10,000/- (Ten Thousand) whichever is more,

(b) For the Second time violation 35 time of royalty of unlawfully excavated/transported minerals or rupees 20,000/- (Twenty thousand) whichever is more.

(c) For the third time violation 45 time of royalty of unlawfully excavated/transported minerals or rupees 30,000/- (Thirty Thousand) whichever is more, and

(d) for the fourth time or subsequent violation minimum 65 time of royalty of unlawfully extracted/transported. Provided that it should not be less than rupees 50,000/- (Fifty thousand).

on being compounded, the seized mineral, tools machinery/ and other materials shall be discharged.

(7) Action against contravention of conditions of extract trade

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

quarry/quarry lease/permit or the provisions of this rule. - If during the enquiry of any illegal extraction/transportation a fact comes into the knowledge that any lease holder/contractor/permit holder, in order to evade the royalty from any sanctioned quarry lease/trade quarry/permit area is involved in dispatching/selling of minerals in excess quantity by showing less quantity of minerals in transit pass/defective transit permit/blank transit permit, then the Collector of the concerned district may suspend the quarrying operation in such quarry lease/trade quarry permit by issuing show cause notice for violating the conditions of the agreement and after providing an opportunity of being heard may cancel the such lease/ trade quarry/permit. The additional royalty may be recovered after making the assessment of the quantity dispatched or sold in order to evade the royalty :

Provided that during the inspection if it is found that illegal minerals transporter by securing the transit pass from the lease holder in order to evade the royalty has made overwriting or tempered the pass then the officer of the minerals department/Mineral Inspector may registered a case against the person concerned.]

Rule 20 of 2019 Sand Rules :

“20. Penalty and Compounding of cases of Illegal Mining.-

(1) On receipt of information about illegal mining, the Collector or Officer authorised for this purpose, shall seize mineral, vehicle, machine, tools etc. and case shall be submitted, before the Collector. During the pendency or before taking final decision of the registered case, if any application for compounding the case is received, the Collector may dispose of the case after applicant depositing an amount equal to 25 times of royalty of the excavated mineral. During this period, if application/consent is not received, Collector shall impose penalty, 50

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

times of the royalty of mineral excavated. On deposit of compounding amount or penalty amount, the seized mineral, vehicle, machines, tools, may be released: Provided that if penalty amount imposed is not deposited by the illegal extractor, then Collector or Officer authorised for this purpose may confiscate and auction the seized mineral, vehicle, machines and tools.

(2) Penalty and compounding of cases of illegal transportation- *In case of registered cases of illegal transportation, transportation without valid e-tp and transportation with quantity more than the quantity entered in e-tp, the Collector may dispose off cases after deposit of compounding fees or amount of penalty by the illegal extractor, as under:-*

No.	Type of Vehicle	Transportation without valid Transit Pass		Transport with Transit Pass but quantity is more than quantity entered in Transit Pass	
		Compounding Fees	Amount of Penalty	Compounding Fees	Amount of Penalty
1.	Tractor-trolley	10,000/-	25,000/-	5,000/-	10,000/-
2	Two axle (6 wheeler vehicle)	25,000/-	50,000/-	10,000/-	20,000/-
3	Dumper (hydraulic 6 wheeler vehicle)	50,000/-	1,00,000/-	25,000/-	50,000/-
4	3 axle (10wheeler vehicle)	1,00,000/-	2,00,000/-	50,000/-	1,00,000/-
5	4-6 axle (More than 10 wheeler vehicle)	2,00,000/-	4,00,000/-	1,00,000/-	2,00,000/-

Provided, compounding fees or amount of penalty in case of transportation of mineral by 4 wheeler vehicle (Matador, 407, 608 etc) carrying mineral more than the quantity of tractor-trolley, shall not be

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

less than 1.5 times of the amount fixed for tractor-trolley.

(3) Compounding and Penalty in cases of Illegal Storage-

The Collector, for disposal of registered cases of illegal storage of sand upon receipt of any application/consent from the date of registration of the case, during the pendency of the case or before taking the final decision, may compound the case after depositing amount equivalent to 25 times of royalty of the stored mineral. If during this period any application/consent is not received then the Collector may impose penalty of amount 50 times of the royalty of the mineral stored:

Provided, no such order shall be passed against the person interested, unless the opportunity of being heard is given to him.”

Rule 27 of 2019 Sand Rules

27. Repeal.- *The provisions related to mineral sand contained in Madhya Pradesh Minor Mineral Rules, 1996, Madhya Pradesh (Prevention of Illegal mining, Transportation and Storage) Rules, 2006 and Madhya Pradesh Sand Rules, 2018 are repealed to the extent where it does not transgress to these rules.”*

6.2 It is further pointed out by learned counsel for petitioners by referring to Rule 20 of 2019 Sand Rules that the said rule is sub-divided into three clauses; first pertains to penalty and compounding in cases of illegal mining of sand; the second relates to the same subject but in respect of cases of illegal transportation of sand; while the third too is on the same subject but relates to cases of illegal storage of sand. Shri Shrivastava has read over Rule 20(2) to urge that in cases of illegal transportation the power of penalty and compounding are alternatively and concurrently available to the Collector but not of confiscation of vehicle, which is

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

available only in case of illegal mining of sand.

6.3 In the aforesaid backdrop, it is submitted that the rule making authority has consciously excluded the penalty of confiscation of vehicle in cases of illegal transportation of sand and therefore the power of confiscation is not available to the competent authority to be exercised in law.

6.4 It is further submitted by Shri Shrivastava, that provisions of 1996 Rules which otherwise provide for the power to confiscate even in cases of illegal transportation of sand, after having been repealed, render the Competent Authority bereft of the power to confiscate w.e.f. 30.08.2019 when the 2019 Sand Rules came into effect.

6.5 In the aforesaid background, it is submitted that the impugned orders of confiscation passed by the Collector have admittedly been passed after coming into effect of 2019 Sand Rules, and are thus devoid of any legal authority. Moreso, it is urged that Collector while confiscating the vehicle for the offence of illegal transportation of sand, could not have invoked the repealed provision of Rule 53 [*qua* sand] of 1996 Rules.

6.6 It is also submitted by learned counsel for petitioners that 2019 Sand Rules (dealing exclusively with minor mineral of sand) is a special law which would prevail upon the general law i.e. 1996 Rules (dealing with all minor minerals except sand w.e.f. 30.08.2019).

6.7 Learned counsel for petitioners in continuation submits that in certain cases the power of confiscation of vehicle has been exercised in purported compliance

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

of an interim order dated 18.09.2020 passed in PIL WP.7695/2015. In this regard, it is pointed out that the said interim order in PIL was passed in ignorance of the fact of 2019 Sand Rules having come into effect on 30.08.2019 and thus this interim order passed in PIL is passed *per incuriam* and thus is of no avail to the Collector.

6.8 It is also submitted that borrowing of 1996 Rules for the purpose of confiscation would lead to incongruous results where the competent authority in a given case would choose the extreme step of confiscation under the repealed 1996 Rules but in another may take a lenient view by imposing penalty or compounding the mining offence under 2019 Sand Rules. If this incongruous situation, it is urged, is permitted then there are all the chances of competent authority misusing its power which is even otherwise not available.

6.9 It is further submitted that the subject matter of confiscation causes adverse consequences of civil nature and is akin to penalty and since penal laws deserve strict interpretation, taking a course in variance to the Scheme of 2019 Sand Rules, would be unlawful.

6.10 In support of the aforesaid contentions, learned counsel for petitioners has relied upon “Raj Kumar Sahu Vs. State of M.P. [2019 (2) MPLJ 438], A.B. Abdul Kadir & Ors. Vs. State of Kerala & Anr. [AIR 1962 SC 922 (para 11)], Municipal Board, Bareilly Vs. Bharat Oil Company & Ors [(1990) 1 SCC 311 (Para 14)], Union of India & Anr. Vs. Hansoli Devi & Ors. [(2002) 7 SCC 273 (para 9)], The Labour Contract Co-operative Society, Palikur, Kurnool Distt. Rep.

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

by its Secretary Vs. Director of Mines and Geology, Hyderabad & Ors. [AIR 1993 SC 147], Dharangadhara Chemical Works Vs. Dharangadhara Municipality & Anr. [AIR 1985 SC 1729 (09)], Saverbhai Amaidas Vs. State of Bombay [AIR 1954 SC 752 (11)].

6.11 In supplement, learned counsel for petitioner Shri Sunil Kumar Jain, in WP.9959.2021 & WP.9966.2021, while adopting the arguments of Shri Shrivastava, learned counsel, has placed reliance on State of M.P. Vs. Centre For Environment Protection Research & Development and Ors. [(2020) 9 SCC 781 (para 50)]. Similarly, Shri Vivek Mishra, learned counsel in WP.8613.2020, WP.8615.2020, WP.9359.2020, WP.6154.2021 & WP.6158/2021, has placed reliance on the order dated 10.06.2020 passed in WP.7941/2020 [Pankaj Kumar Tiwari Vs. State of M.P. & Ors.].

7. On the other hand, learned Additional Advocate General Shri Ankur Mody, defending the impugned orders, submits on behalf of the State that in amended Rule 53(3) of 1996 Rules the Competent Authority even in cases of illegal transportation of minor mineral [including sand] was empowered to exercise the power of discharge by compounding or confiscation of the vehicle involved in illegal transportation of minor mineral (including sand) and both these powers could be exercised concurrently as held by the Larger Bench comprising of five Hon'ble Judges of this Court by order dated 28.03.2019 in **WP.20831/2018 [Rajkumar Sahu Vs. State of M.P. And Ors.]** partly overruling the earlier Full Bench Decision of this Court in **Nitesh Rathore and another Vs. State of M.P.**

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

and others [2018 (4) M.P.L.J. 193]. In furtherance to the above, Shri Mody submits that the power of confiscation available under 1996 Rules continues to be available to be exercised by the competent authority even while dealing with cases of illegal transportation of sand under 2019 Sand Rules. In support of this argument, Shri Mody urges that 2019 Sand Rules do not expressly prohibit confiscation of vehicles. Moreover, it is submitted that such course of action would be in line with the object behind 2019 Sand Rules which are framed for regulating the process of mining, transportation, storage and trading in sand with the ultimate object of preventing the menace of widespread illegal mining of sand from basins of different rivers in the State of Madhya Pradesh. In this factual background, it is submitted by Shri Mody that the prime object of 2019 Sand Rules is to put in place a complete Code for mining, transportation, storage and trading of sand so that the adverse effect of damage to ecology caused by rampant illegal mining of sand can be minimized if not prevented. Shri Mody thus submits that if looked at from this angle, the adoption of the course of confiscation is not inconsistent with the object of 2019 Sand Rules.

7.1 Shri Mody also submits by referring to the repealing & saving clause in Rule 27 of 2019 Sand Rules (supra) that bare reading thereof makes it vivid that the repealing of 1996 Rules is only to the extent it comes in conflict with or transgresses the 2019 Sand Rules. It is therefore urged that since adoption of the extreme course of confiscation is in conformity with the object behind 2019 Sand Rules, it cannot be said that power of confiscation cannot be exercised despite

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

having not been expressly provided in 2019 Sand Rules.

7.2 Learned counsel for the State lastly refers to the erstwhile M.P. Sand Rules, 2018 which were prevailing prior to coming into existence of 2019 Sand Rules. The attention of this Court is invited to repealing clause contained in Rule 28 of 2018 Sand Rules which for ready reference and convenience is reproduced below:

“28. Repeal.- The provisions pertaining to the mineral sand in Madhya Pradesh Minor Mineral Rule, 1996 and Madhya Pradesh (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 shall be applicable to the extent where it does not transgress to these rules.”

7.3 In the face of the aforesaid Rule 28, the State contends that the earlier 1996 Rules and as well as Madhya Pradesh Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 [hereinafter referred to as “2006 Rules”], were allowed to prevail to the extent they do not transgress the 2018 Sand Rules. In this backdrop, it is submitted that the tenor of the repealing provision u/R.28 of 2018 Sand Rules is permissive in nature rather than prohibitory.

7.4 Learned counsel for the State in support of the argument of reading down a statutory provision places reliance on “**State of Punjab Vs. Kailash Nath [AIR 1989 SC 558]**”.

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

Findings:

8. After hearing learned counsel for the rival parties, to ascertain the object behind 2019 Sand Rules and the need to bring them into force, it is apt to go down the history lane starting from MMDR Act.

8.1 The MMDR Act was promulgated in 1957 and was brought into force from 01.06.1958 with the object to provide for development and regulation of mines and minerals other than petroleum which earlier was a composite part along with other minerals in the erstwhile Mines and Minerals (Regulation and Development) Act, 1948.

8.2 The MMDR Act deals with all the minerals except mineral "Oils", including minor minerals i.e. stones, gravel, ordinary clay, ordinary sand etc. which the Central Government may by notification in the official gazette declare to be minor mineral. Section 15 of MMDR Act empowers the State Governments to make rules in respect of minor minerals pursuant to which 1996 Rules were framed and brought into effect from 01.04.1996 which define "Minor Minerals" in Section 2(xxi) as the minerals specified in Schedule I and II appended to these rules and any other mineral which the Government of India may notify in the official gazette. Schedule II in Item No.1 to 1996 Rules includes "Ordinary Sand".

8.3 The 1996 Rules not only regulate the mining operations of minor minerals but also lay down the powers and limitation to grant quarry lease and trade quarry. Besides prescribing for protection of environment which may be

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

adversely affected due to indiscriminate quarrying operations, it further provided method of assessment of royalty and penalty for unauthorized extraction and transportation. Lastly, the remedies of appeal, review and revision are also made available to the persons aggrieved by any order passed under 1996 Rules.

8.4 The mining and quarrying operations all over the country after coming into effect of the MMDR Act and after the State Governments framing rules, continued to be undertaken at very large scale to meet the rapid expansion of infrastructural development in the country, which in turn led to indiscriminate and even excessive quarrying and mining operations of all kinds of minerals. Resultant damage to the ecology started assuming alarming proportions. Need was thus felt to bring in more stringent provisions to curb the adverse effect of indiscriminate and illegal mining operations. Accordingly, on 18.12.1999, Section 23C was inducted into the MMDR Act vesting power to the State Government to make rules for preventing illegal mining, transportation and storage of minerals.

8.5 Invoking the power vested u/S.23C of MMDR Act, State of M.P. framed Madhya Pradesh Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006.

8.6 Pertinently, 2006 Rules were made with the hope of curbing the malady of rampant and indiscriminate mining of minor minerals. However, this hope failed to turn into reality since the demand, particularly of sand, increased in geometric progression to keep up to the requirements of ever expanding civil construction

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

sector. Thus, the need was felt by the State Government to regulate mining, transportation & storage of minor mineral of sand, which led to framing of 2018 Sand Rules. These rules provided for various aspects as regards grant, regulation, prohibition and termination of mining lease for sand and also remedies of appeal and revision to an aggrieved person.

9. 2018 Sand Rules in Rule 23(1) empowered the Competent Authority to confiscate the vehicle used in mining offence only when the mining offence is a repeat offence and when the illegal extractor is finally found guilty in the case. In case of first mining offence, the extreme step of confiscation was optional but not mandatory.

9.1 The State very soon realized that 2018 Sand Rules lacked enough deterrent provisions. Accordingly, the State framed 2019 Sand Rules which were more stringent as compared to 2018 Sand Rules, *inter alia*, on the aspect of penalty and compounding of cases of illegal mining.

9.2 Rule 20 of 2019 Rules is divided into three sub-rules. Sub-Rule (1) deals with penalty and compounding of cases of illegal mining of sand where the illegal extractor had the option to opt for compounding on deposit of 25 times of royalty of the extracted mineral failing which the Competent Authority was empowered to impose penalty equal to 50 times of royalty of mineral extracted. In case, the compounding fee or the penalty as the case may be is deposited by the illegal extractor then the vehicle in question could be released, failing which the Competent Authority was empowered to confiscate the vehicle.

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

9.3 Sub-Rule (2) of Rule 20 relates to penalty and compounding of cases of illegal transportation of sand. Illegal transportation, it seems as per the intent of the government, is a lesser offence as compared to illegal mining and therefore the Competent Authority had no option to confiscate the vehicle but merely to impose compounding fee or penalty as provided in the table appended thereto.

9.4 Sub-Rule (3) of Rule 20 relates to compounding and penalty in case of illegal storage where the Competent Authority again did not have any power to confiscate the vehicle but merely to charge compounding fee if opted for by the accused, failing which the penalty double the amount of compounding fee was prescribed to be charged.

10. The State replaced 2018 Sand Rules with 2019 Sand Rules with the ostensible intent to ensure prevention of illegal mining, transportation and storage of sand which was indiscriminately prevalent all over the State. However, this intent does not seem to be reflected from the penal provision of Rule 20 of 2019 Sand Rules which gave comparatively less teeth to the Competent Authority to deal with the menace of illegal transportation and storage. The 2018 Sand Rules vested discretion upon the Competent Authority to adopt extreme course of confiscation at the time of final disposal of the cases when the accused was found guilty of the offence of illegal mining and as well as illegal storage. Whereas in 2019 Sand Rules the power of confiscation is available to the Competent Authority only in cases of illegal extraction and not illegal transportation or illegal storage.

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

10.1 Be that as it may, it appears that the State made available the power of confiscation only in cases of illegal mining of sand to curb the menace which is the foundational cause of degradation of ecology. A person involved in illegal transportation or storage was presumed to be transporting or storing sand which was lawfully mined and therefore understandably the power of confiscation of vehicle was available only in cases of illegal mining.

11. Reverting to the factual matrix in the instant case and the question of law framed in para 4 (supra), it is seen that in all the cases at hand, the minor mineral involved is of sand and the offence is of illegal transportation of sand. The impugned orders challenged herein are all issued by the Collectors of the concerned districts by invoking Rule 53 of 1996 Rules, when the 2019 Sand Rules were in place.

11.1 Indisputably, the 1996 Rules so far as they relate to minor mineral of sand were repealed by the prevailing 2019 Sand Rules as is evident from the repealing clause Rule 27 which for ready reference and convenience is reproduced below:

“27. Repeal.- The provisions related to mineral sand contained in Madhya Pradesh Minor Mineral Rules, 1996, Madhya Pradesh (Prevention of Illegal mining, Transportation and Storage) Rules, 2006 and Madhya Pradesh Sand Rules, 2018 are repealed to the extent where it does not transgress to these rules.”

11.2 It is pertinent to mention that the State does not dispute that the expression “.....does not.....” found in the last line of Rule 27 is a typographical error for which the State has made a move to delete the said expression so as to bring the

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

language employed in Rule 27 in conformity with the object behind the said Rule.

11.3 The said repealing provision in Rule 27 repeals the earlier 1996 Rules, 2006 Rules & 2018 Sand Rules to the extent these rules transgress the 2019 Sand Rules as regards the minor mineral of sand.

11.4 Whether the subject matter of confiscation expressly available in the 1996 Rules can be borrowed and used in a case of mining offence registered under 2019 Sand Rules would depend upon the correct interpretation of expression “transgress” found in Rule 27 of 2019 Sand Rules.

(a) Expression “transgress” defined in different dictionaries of English language is as follows:

Oxford Advanced Learner's Dictionary (New Eighth Edition):

Transgress /verb ~ sth (formal) to go beyond the limit of what is morally or legally acceptable.

Collins Cobuild Advanced Illustrated Dictionary:

Transgress/ Verb-If someone transgresses, they break a moral law or a rule of behaviour.

New Webster's Dictionary And Thesaurus:

Transgress v.t. to overstep a limit; to violate law or commandment; v.i. to offend by violating a law; to sin.

Chambers 21st Century Dictionary (Revised Edition) :

Transgress/ Verb 1. to break, breach or violate (divine law, a rule, etc.) 2. to go beyond or overstep (a limit or boundary).

(b) Meaning of “transgress” is to overstep the limit prescribed. The limit in the present case is the one which is prescribed by the 2019 Sand Rules

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

which does not vest any power of confiscation in the hands of Competent Authority in cases of illegal transportation of sand. Therefore, to exercise the power of confiscation the Competent Authority will have to travel beyond the statutory limits of 2019 Sand Rules and borrow the said power from the repealed Rules i.e. 1996 Rules or the 2006 Rules or the 2018 Sand Rules. This crossing over into a territory foreign to the 2019 Sand Rules would squarely fall within the expression “transgression”.

11.5 More so, the repealing clause u/R.27 of 2019 Sand Rules eclipses 1996 Rules, 2006 Rules & 2018 Sand Rules *qua* minor mineral of sand and therefore an eclipsed provision is obviously not available to be borrowed. This Court thus agrees with the contention of learned counsel for the petitioners that after repealing 1996 Rules, 2006 Rules & 2018 Sand Rules, the Competent Authority under 2019 Sand Rules cannot assume upon itself the power of confiscation which is expressly not provided under 2019 Sand Rules. Doing so would lead to transgression of the statutory limits prescribed by 2019 Sand Rules and this course is expressly prohibited by the repealing clause u/R.27 of 2019 Sand Rules.

11.6 The other submission of learned counsel for the State that to ensure preservation of ecology which is in jeopardy due to rampant and indiscriminate mining, transportation and storage of sand, the repealing clause u/R.27 ought to be read down to permit the Competent Authority to exercise power of confiscation even in cases of illegal transportation of sand, does not impress this Court. It is too far-fetched an argument which if allowed would lead to vesting

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

the Competent Authority with penal provisions of confiscation in the absence of any enabling provision under the 2019 Sand Rules *qua* cases of illegal transportation of sand. This obviously would result in an incongruous situation where the cases registered under the 2019 Sand Rules would be governed by procedure under the repealed 1996 Rules, 2006 Rules & 2018 Sand Rules.

11.7 More so, this Court further agrees with the submission of learned counsel for the petitioners that confiscation entails serious adverse consequences of penal nature, power in regard to which cannot be assumed by the Competent Authority by implication or reading down of a provision, unless such power is expressly provided in the relevant Statute.

12. Moreover, the 2019 Sand Rules is a special law and therefore takes precedence over the said two rules 1996 Rules & 2006 Rules which fall in the category of general law since both these rules relate to all kinds of minor minerals whereas 2019 Sand Rules relate exclusively to minor mineral of sand.

13. Learned counsel for the petitioners have referred to various decisions which need not be gone into in view of the above discussion.

Conclusion:

14. Consequent upon the aforesaid, this Court has no manner of doubt that the orders of confiscation impugned in all the writ petitions passed by invoking repealed provisions of 1996 Rules are untenable in the eyes of law and therefore have to fall.

15. Consequently, the impugned orders in all the writ petitions under

WP.8613.20, WP.8615.20, WP.9359.20, WP.14167.20, WP.14344.20, WP.17270.20, WP.6154.21, WP.6158.21, WP.6783.21, WP.7159.21, WP.7385.21, WP.8252.21, WP.8372.21, WP.8406.21, WP.9887.21, WP.9959.21, WP.9966.21, WP.9971.21, WP.10335.21, WP.10336.21, WP.10567.21, WP.10664.21, WP.10728.21, WP.10785.21, WP.10793.21, WP.10855.21, WP.10988.21, WP.11098.21, WP.11100.21, WP.11102.21, WP.11105.21

consideration are quashed.

15.1 If the petitioners are in possession of the vehicles in question then they shall retain the possession and if any security/surety had been furnished earlier for retaining the possession of vehicles then the same stands discharged.

15.2 In case, in any of these writ petitions, if the possession of the vehicle is with the respondents then the same shall be released forthwith in favour of the petitioners. However, release of vehicle shall remain subject to criminal case pending before the court of competent criminal jurisdiction.

16. No cost.

(Sheel Nagu)
Judge
(03.08.2021)

(Deepak Kumar Agarwal)
Judge
(03.08.2021)

pd