HIGH COURT OF MADHYA PRADESH : JABALPUR

(LARGER BENCH)

W.P. No. 7798/2017

M/s Pankaj Kumar Rai …..Petitioner

Versus

State of Madhya Pradesh & Others ….Respondents

WITH

W.P. No. 11608/2017

M/s Gurmail Singh …..Petitioner

Versus

State of Madhya Pradesh & Others ….Respondents

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Coram:

Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice H.P. Singh, J.
Hon'ble Shri Justice Rajeev Kumar Dubey, J.
Hon'ble Shri Justice Vijay Kumar Shukla, J.
Hon'ble Shri Justice Subodh Abhyankar, J.

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Shri Vivek Dalal, Shri Mukesh Kumar Agarwal, Shri Shekhar Sharma, Shri Utkarsh Agrawal and Shri Amit Singh, Advocates for the petitioners.

Shri P.K. Kaurav, Advocate General with Shri Amit Seth, Government Advocate for the respondents/State.

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Whether approved for reporting: Yes

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Law Laid down:

In the light of series of decisions of the Supreme Court, it is well settled that the provisos of the Statutes have to be read as a whole by giving harmonious construction to all the provisions of the law so that none of the provision is rendered redundant. Keeping in view the principle of harmonious construction, the third proviso to Rule 68(1) of M.P. Minor Mineral Rules, 1996 is additional relaxation to Rule 4 and 68(1) of the said Rules.

Further, in the light of scheme of Statute and the purpose of M.P. Minor Mineral Rules, 1996 that there should not be any illegal extraction of minerals and all minerals should be royalty paid, we find that third proviso to Rule 68(1) is neither illegal nor enlarges the scope of proviso to than that of Rule 68 or any other provision of the Rules.

The Order of a Full Bench of this Court in WP No.4547/2016 (*M/s Phaloudi Constructions vs. State of M.P.)* passed on 10.5.2016 is overruled.

Significant Paragraphs: 12, 14, 15, 16, 17, 18, 19, 20 & 24 to 29

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Reserved On : 05.10.2017

O R D E R

(Passed on this 12th day of October, 2017)

Per: Hemant Gupta, Chief Justice:

The present Writ Petition No.7798/2017 was earlier referred to larger Bench vide order dated 16.8.2017 whereby a Division Bench of this Court *prima facie* found that the view taken by the Full Bench of this Court in W.P. No.4547/2016 (M/s ***Phaloudi Constructions and Infrastructure Pvt. Ltd. vs. State of Madhya Pradesh***) and other connected matters decided on 10.5.2016 requires reconsideration. Thus, following two questions were referred for consideration to the Larger Bench:-

> (i) Whether the purchase of minor minerals from open market in terms of 3rd proviso to rule 68(1) excludes the obtaining of "No Mining Dues" certificate from Mining Department as the open market may include illegally extracted minor minerals as well?
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> (ii) Whether the judgment in Phaloudi Constructions and Infrastructure Pvt. Ltd. lays down good law, in view of the fact that the amendment carried out in Rules on 23rd March, 2013 and later on 2.7.2013 was not brought to the notice of the Bench, when the Rule 68(1) was substituted?

2. Later, a Full Bench of three Judges hearing the petition found that the second question does not arise for consideration, but, finding that the view in ***Phaloudi Constructions and Infrastructure Pvt. Ltd.***'s case (**supra**) does not seem to be correct, therefore, the petition was ordered to be placed before the larger Bench. It is how; this Bench is seized of the petition.

3. The brief facts leading the abovesaid question, in short, are that the petitioner herein is a registered contractor with Public Works Department and has been awarded work order for construction work. In terms of the agreement, the petitioner is being paid periodically but in every bill deduction of royalty amount is made in spite of submitting purchase bills of the minor minerals of the authorized dealers. The grievance of the petitioners is that deductions of amount of royalty are being made without issuing any notice to the petitioners and the entire payments are not being paid to the petitioners. It is pointed out that there is no express provision of law to pay royalty to the Department of Mines as the royalty is to be paid by the contractor, who undertakes mining operation. The material is purchased by the petitioners from the trader who pays royalty as the payment of royalty is mentioned in the invoices raised and given to the petitioners. The petitioners seek support from the Full Bench judgment of this Court reported as **2016 (2) MPLJ 704** (**Phaloudi Constructions and Infrastructure Pvt. Ltd. vs. State of M.P.**) wherein the Court has concluded as under:-

> "25. Thus, whether it is under clause (i) or clause (ii) of sub-rule (1) of Rule 68 of 1996 Rules, the fact remains that the same relates to contractor engaged in Government work of the nature stipulated therein and are given permission for extraction, removal

and transportation of any minor mineral and not the contractors who though engaged in the work of any department and undertaking but purchases the minor mineral from open market. This aspect gets clarified from the definition of “Contractor” as contained under clause (xvi-b) of Rule 2 of 1996 Rules, which means a person who holds a “trade quarry”. Accordingly, quarry permit holder/contractor engaged in construction as find mention in Third Proviso is the contractor, who has been so permitted under clause (i) and (ii), as the case may be. Though this proviso contains an expression “or used by purchasing from open market”; however, since no such class of contractor engaged in work of any department and undertaking, who is not authorised under clause (i) or (ii) of sub-rule (1) of Rule 68, completes such work by purchasing minor mineral from open market, is created under these clauses, we decline to accept the contentions on behalf of the respondent that Third Proviso creates a substantive class of contractors engaged in works of Govt. department and undertaking. In view whereof, the regime of *M/s Tomar Construction Company (supra) and M/s Chandrama Construction Company (supra)* does not get obliterated, even with insertion of Third Proviso to sub rule (1) of Rule 68 of 1996 Rules.

26. Even if for the sake of argument if the contentions of State Government Counsel is accepted that the contractor, which find mentions in Third Proviso, would include the contractor engaged in work of Government department and undertaking who purchase minor minerals from open market to complete such work, no provision in the Act of 1956 or the Rules and Regulations made thereunder including the Rules of 1996 and 2006 has been commended at, having control over such retails traders operating in open market. There being no such provision regulating open market it is beyond comprehension that, the Mining Officer/ Officer-in-Charge, Mining Sector will have any document available with him for verification. On the contrary, the discretion given to the Competent Authority vide orders in *M/s Tomar*

> *Constructions (supra), M/s Chandrama Construction, Prashant Singh Bhadoriya (supra) and M/s Trishul Construction (supra)* to shift the onus on the contractor engaged in the works of the Government and undertaking who claims refund of royalty on the ground of having purchased from the open market to establish the source. In case, if he fails, the Government not only can deny the refund; simultaneously, can take action against such contractor under law, as in such cases, it can legally be inferred that the minor mineral is obtained through illegal source. These powers would be in addition to the statutory powers**.”**

4. Before this Bench, the argument of the learned counsel for the petitioners is that the third proviso to Rule 68(1) of the M.P. Minor Mineral Rules, 1996 (in short “the Rules”) does not include the purchase of the minerals from the traders. The construction work undertaken by the petitioners is excluded from the scope and preview of the third proviso. A contractor, as defined under the Rules alone is required to obtain ‘No Mining Dues’ certificate and/or a quarry permit holder and not the contractor who is executing separate construction contract on behalf of the State. Therefore, ‘No Mining Dues’ certificate is not required to be submitted by the petitioners as the petitioners in the writ petitions are the purchasers of the mineral from the open market. It is argued that keeping in view the law of interpretation, this Court will not add any words to the Statute, therefore, in view the plain language of the third proviso, the petitioner is not liable to furnish ‘No Mining Dues’ certificate for use of mineral in the construction work being undertaken by the petitioner. It is argued that the judgment in **Phaloudi Constructions (supra)** does not require reconsideration as the same has considered various aspects of the provisions and the law applicable

thereto.

5. Some of the learned counsel for the petitioners have submitted that 'No Mining Dues' certificate is not issued for years together, therefore, the requirement of 'No Mining Dues' certificate interferes with the right of business run by the petitioners. It is also argued that the invoices through which the petitioners purchase the minor mineral have the endorsement of payment of royalty. It is for the State to verify whether the royalty has been paid or not but the petitioners, the petty contractors engaged in construction work, cannot ensure that the traders from whom they have purchased the minor mineral on the basis of invoices raised to verify as to whether the royalty has been paid or not. Therefore, the third proviso which mandates the petitioners to obtain 'No Mining Dues' certificate is not applicable to the petitioners and, in any case, it is not practically possible.

6. Shri Vivek Dalal, learned counsel for the petitioners relies upon the decision of the Supreme Court reported as (**1976) 1 SCC 128 (Dwarka Prasad vs. Dwarka Das Saraf**) to contend that if the principal provision is clear, a proviso cannot expand or limit the substantive provision. It is argued that the interpretation being given by the State enlarges the scope of proviso which is not permissible. Reliance has also been placed upon the Supreme Court decision reported as (**1996) 4 SCC 596 (S. Gopal Reddy vs. State of Andhra Pradesh)**.

7. Shri Shekhar Sharma, learned counsel appearing for the petitioner in W.P. No.11608/2017 relies upon the Supreme Court judgment reported as

(2004) 6 SCC 672 (Maulavi Hussein Haji Abraham Umarji vs. State of Gujarat and another) to contend that the Court cannot read anything in a statutory provision when the language is plain and unambiguous. Shri Amit Singh, learned counsel appearing for the petitioners in some cases argued that royalty payable is different from no mining dues being claimed from the petitioners. Royalty is payable as per Form X, XI and XII appended with the Rules for which monthly, half-yearly and annual return is to be filed whereas the petitioners are being called upon to obtain 'No Mining Dues' certificate which is not dealt with in the Rules.

8. On the other hand, learned Advocate General submitted that the words "contractor engaged in construction work" appearing in the proviso to Rule 68(1) of the Rules, is not a "Contractor" as defined in Rule 2(xvi-b) of the Rules. It is also submitted that the "Quarry permit" holder as mentioned in third proviso is defined in Clause 2(xxiii) of the Rules, which is different from the "Quarry lease" defined in Rule 2(xxv) of the Rules. It is argued that Rule 4 prohibits mining operation without the trade quarry or a quarry permit or a quarry lease. The Rule 6 deals with the grant of quarry lease whereas Rule 7 deals with trade quarry that is the lease by auction only in respect of quarries of minerals specified in Serial No.5 of Schedule-I and Serial No.1 and 3 of Schedule-II of the Rules. As such there is absolute prohibition of the extraction of mineral without allotment or auction, therefore, Rule 68 is an exception to Rule 4. Rule 68 grants permission for extraction, removal and transportation of any minor mineral from any specified quarry, if it is required for the works of any department and undertaking of Central or the

State Government. Said permission can be granted to the concerned Departmental Authorities or its authorized contractor on furnishing proof of award of contract as envisaged in Rule 68(1)(i) of the Rules. Clause (ii) of Rule 68(1) permits the Executive Engineer to permit the use of *murrum* and ordinary clay for construction of roads under the Public Sector Authority, Board or local body.

9. It is argued that "Quarry permit" holder as mentioned in third proviso, defined in Rule 2(xxiii), is a permission granted to extract and remove any minor mineral for any specified period. Thus, the quarry permit is different and given for a limited period as against "Trade quarry" as defined in Rule 2(xvi-a) or "'Quarry lease" as defined in Rule 2(xxv) of the Rules. Therefore, proviso is an exception to prohibition of extraction of minor mineral other than by allotment or auction to a person who is granted quarry permit. Such quarry permit holder is to deposit advance royalty in terms of Sub-Rule (3) whereas in respect of contractor engaged in construction work, such contractor has to produce 'No Mining Dues' certificate to ensure that only legally extracted minor minerals are used in construction activity rather than illegally extracted minerals without payment of royalty. Reliance is placed upon the Supreme Court judgment reported as **2016 (6) SCC 120** (**State of Rajasthan and another vs. Deep Jyoti Company and another**).

10. It is argued that in the judgment in **Phaloudi Construction** (**supra**), the expression "contractor engaged in construction work" has been misinterpreted to mean "Contractor" as defined in Rule 2(xvi-b) of the Rules whereas such proviso is applicable to a contractor who has been granted

Trade quarry.

11. The M.P. Minor Mineral Rules, 1996 have been framed under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (No.67 of 1957) (hereinafter referred to in short as "the Act"). Section 15 of the Act empowers the State Government to frame Rules to provide for all or any of the following matters, namely,

> "(a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;
>
> xxx xxx xxx"

12. In terms of such statutory provision, the Rules have been framed and the relevant extract of the Rules is reproduced as under:-

> "2. **Definitions**. - In these rules, unless the context otherwise requires, -
>
> xxx xxx xxx
>
> (xvi-a) "Trade quarry" means a quarry for which the right to work is auctioned:
>
> (xvi-b) "Contractor" means a person who holds a "trade quarry".
>
> xxx xxx xxx
>
> (xxiii) "Quarry permit" means a permission granted under these rules to extract and remove any minor mineral in any specified period;
>
> (xxv) "Quarry Lease" means a mining lease for minor minerals as mentioned in Section 15 of the Act;"
>
> xxx xxx xxx
>
> **4. Prohibition of mining operation without a trade quarry or quarry permit or quarry lease-** (1) No person shall undertake any mining operation in any area except under and in accordance with the terms and conditions of a trade quarry or quarry lease granted

under these rules:

Provided that nothing in this sub-rule shall affect any mining or quarrying operation undertaken in any area in accordance with the terms and conditions of permit, a quarry lease, trade quarry or royalty quarry granted before the commencement of these rules which is in force at the time of such commencement.

(2) No trade quarry or quarry lease shall be granted other than in accordance with the provisions of these rules.

xxx xxx xxx

6. Powers to grant quarry lease. - Quarry lease in respect of minerals specified in Schedule-I and II shall be granted and renewed by the authority mentioned in column (2) for the minerals specified in column (3) subject to the extent as specified in the corresponding entry in column (4) thereof of the Table below:-

xxx xxx xxx

7. Power to grant trade quarry. - (1) The quarries of Minerals, specified in serial number 5 of Schedule I and serial numbers 1, 3 of Schedule II, situated in government land, shall be allotted only by auction:

Provided that quarry lease of minerals specified in serial number 1 of Schedule II may be granted in favour of the Madhya Pradesh State Mining Corporation Limited (Government of Madhya Pradesh Undertaking).

(2) The period of quarry of minerals specified in serial number 5 of schedule I and mineral specified in serial number 1 and 3 of schedule II shall be upto the end of fifth financial year from the financial year, fixed for auction:

xxx xxx xxx

9. Application for quarry lease. - An application for the grant or renewal of a quarry lease shall be made in Form I in triplicate for the minerals specified in Schedule I and II. The application shall be affixed with a court fee stamp of the value of five rupees and shall

contain the following particulars together with documents in support of the statements made therein:-

xxx xxx xxx

18. Disposal of applications for the grant or renewal of quarry lease. - (1) On receipt of an application for the grant or renewal of a quarry lease, its details shall be first circulated for display on the notice board of the Zila Panchayat, Janpad Panchayat and Gram Sabha concerned of the district and collectorate of the district concerned.

(1-A) Addition to in sub-rule (1), the details of quarry lease application, received for any area shall be published in leading daily Hindi newspaper in the form of notice for general information within fifteen days from the date of receipt of application.

xxx xxx xxx

36. Auction of quarries. - (1) The quarries of minerals, specified in serial number 5 of Schedule I and minerals specified in serial number 1 and 3 of Schedule II situated in Government land, shall be allotted only by auction:

Provided that quarry lease of mineral specified in serial number 1 of Schedule II may be granted in favour of the Mahdya Pradesh State Mining Corporation Limited (Government of Madhya Pradesh Undertaking).

(2) Notice of auction shall be published in Form XV atleast 15 days before the auction at the notice board or any conspicuous place by way of fixing the copy of such notice thereon in the office of the concerned Gram Panchayat, Janpad Panchayat, Zila Panchayat, Development Block, Tahsil and Collectorate and the village where the quarries are situated:

Provided that auction of the quarry shall also be made by the process of e-auction as per the conditions prescribed.

(3) Every bidder shall execute an agreement in Form XVI before he/she participates in the auction.

68. **Quarry permit and transport permit for renewal of minor minerals.-** (1) (i) The concerning Officer Incharge, Mining Section shall grant permission for extraction, removal and transportation of any minor mineral from any specified quarry or land which may be required for the works of any department and undertaking of the Central Government or State Government. Such permission shall only be granted to either the concerned departmental authority or its authorized contractor on furnishing proof of award of contract.

(ii) Notwithstanding anything contained in clause (i) above, in case of roads under construction or to be constructed under the public sector, authority, board, local body of State Government or Government department of the State, the permits of murrum and ordinary clay shall be given by the Executive Engineer or officer equivalent to Executive Engineer of the concerned public sector, authority, board local body of State Government or Government department of the State to the authorised contractor and prior to issuing of such permit no objection from Mining, Revenue and Forest Department shall be obtained by them and copy of the permit issued shall be endorsed to these departments. The Executive Engineer or officer equivalent to Executive Engineer of concerned public sector, authority, board, local body of State Government or Government departments of the State shall obtain Transit Pass Book in advance from office of the Collector and he shall issue the transit pass to contractors and quantity of the minor mineral excavated shall be informed, in every three months, to the concerned Collector.]

Provided that information of in-principle sanction of permit shall be given to the applicant. Applicant shall furnish permission from the District level environment committee, within one month maximum, from the date of receipt of such information:

Provided further that if in-principle sanction is for five hectare or more area, then applicant from the date of receipt of such information, shall submit environment permission obtained under notification dated 14.09.2006 of Ministry of Environment and Forest within period of six months. After completion of all

formalities sanctioning authority shall issue sanction order of quarry permit. Sanctioning authority may permit to enhance the time period, if all formalities are not completed in prescribed time period, on the basis of satisfactory reasons:

Provided also that quarry permit holder/contractor engaged in construction work shall obtain certificate of no mining dues to ensure payment of royalty for the mineral used in construction work, for the mineral excavated from quarry permit area or used by purchasing from open market. Certificate of no mining dues shall be issued by Mining officer/officer in-charge mining section, after verification of documents submitted by contractor/quarry permit holder engaged in construction work.

(2) Such permission shall not exceed the quantity of minerals required for construction work and the period shall not exceed the period of construction work.

(3) Such permission shall only be granted on payment in advance of royalty calculated at the rates specified in Schedule III. The transit pass in Form IX then shall be issued.

Provided that royalty on ordinary clay and murrum shall not be payable for all construction works carried out or to be carried out under public sector, authority, board, local body of the State Government or Government department of the State.

(4) The permit shall be governed by the following conditions:-

(a) The permit holder shall maintain complete and correct account of the mineral removed and transported from the area.

(b) The permit holder shall allow any officer authorised by the Zila/ Janpad/Gram Panchayat in respect of the permission given by the Collector/Additional Collector to the Collector/Additional Collector/Deputy Director/Mining Officer/Assistant Mining Officer/Mining Inspector, to inspect quarrying operations and verify the accounts.

(c) No sooner the permitted quantity is transported within the time period of Construction work or earlier, duplicates of all transit pass, such unused transit passes together with a complete statement of the quantities duly certified by the

Officer of the concerned department shall be furnished to the Sanctioning Authority.]"

[emphasis supplied]

The third proviso as reproduced above cannot be said to be satisfactory translation of the authorized notification published in Hindi in Madhya Pradesh Gazette (Extraordinary) dated 23.03.2013. The Gazette Notification containing third proviso, in Hindi, read as under**:-**

"परन्तु यह भी कि उत्खनन अनुज्ञाधारी/ठेकेदार जो निर्माण कार्य में लगे हो, निर्माण कार्य में उपयोग में लाए गए खनिज उत्खनन अनुज्ञा क्षेत्र से निकाले गये खनिज अथवा खुले बाजार से क्रय किए जाकर उपयोग में लाए गए खनिज के लिए रायल्टी के भुगतान को सुनिश्चित करने के लिए नो माइनिंग ड्यूज अभिप्राप्त करेंगे. नो माइनिंग ड्यूज प्रमाण–पत्र, खनि अधिकारी/प्रभारी अधिकारी खनन शाखा द्वारा निर्माण कार्य में लगे हुए ठेकेदार/उत्खनन अनुज्ञाधारी द्वारा प्रस्तुत किए गए दस्तावेजों का सत्यापन करने के पश्चात् जारी किया जाएगा'."

13. We have heard learned counsel for the parties and find that the "Quarry Permit" mentioned in Rule 68 third proviso is distinct from a "Trade quarry" granted under Rule 7 read with Rule 36 or a "Quarry lease" granted under Rule 6 read with Rule 18 of the Rules. The grant of "Quarry permit" as defined in Rule 2 (xxiii) of the Rules is dealt with only in third proviso of Rule 68 as a permit to extract minor mineral for a specified period of the contract. Such a specified period of contract is granted on payment of advance royalty in terms of Sub-Rule (3) of Rule 68 of the Rules as against the royalty in case of quarry lease or a trade quarry, which is payable after the extraction of mineral in certain situations. For the purpose of Quarry permit, Rule 68 is the complete Code; specifying the period, payment of royalty and the conditions attached to it. The "Contractor" has been defined to mean the person who holds the trade quarry. The "trade quarry" is the one

for which right to work is auctioned in terms of Rule 7 read with Rule 36 as contained in Chapter VI of the Rules. The quarry lease is allotted under Rule 6. Thus, the quarry lease is granted by allotment whereas the trade quarry is allotted by auction whereas the quarry permit is granted for a specified period for the purposes of specific contract in terms of third proviso to Rule 68. The "Contractor" defined under Rule 2(xvi-b) of the Rules is a person who holds a trade quarry. The third proviso to Rule 68 is not applicable to a contractor who has been given a trade quarry but a contractor who is engaged in construction work. The definitions given in Rule 2 are "*unless the context otherwise requires*". Since the expression "Contractor" in third proviso is followed by the expression "engaged in construction work" therefore, the contractor in third proviso is not a contractor, who has been given a trade quarry but a contractor engaged in construction work of the Central or the State Government.

14. In **Phaloudi Construction** (**supra**), the Full Bench examining the definition of a "Contractor" under Clause (xvi-b) of Rule 2 held that the contractors engaged in the work of any Department and Undertaking to purchase the minor mineral from open market are not covered by the said definition. The Court held that there is no such contractor engaged in work of the department or undertaking who purchases from open market, therefore, it does not create a substantive class of the contractor engaged in works of Government department and Undertaking. We find that the conclusions drawn by the Full Bench are not in tune with the statutory provision, which deals separately with trade quarry or quarry lease and

quarry permit. The third proviso deals with quarry permit holder as provided under Rule 4 in contradiction to allotment of quarry lease and auction of trade quarry. Such definitions have not been examined properly by the Full Bench in **Phaloudi Construction (supra**).

15. We are unable to agree with the argument of the learned counsel for the petitioners that the proviso is enlarging the scope of Rule 68 of the Rules. In fact, Rule 68 itself is proviso to Rules 4, 6 and 7 of the Rules. Rule 6 deals with grant of quarry lease by allotment and trade quarry by auction. Rule 68 confers power on the State or the Central Government to extract remove or transport any minor mineral from a specified quarry in terms of sub-clause (i) of Rule 68(1) of the Rules without trade quarry or quarry lease. In fact, third proviso deals with two situations i.e. (1) extraction of minor mineral by a quarry permit holder, who is required to pay royalty in advance and (2) a contractor engaged in construction work who has to obtain certificate of 'No Mining Dues' to ensure payment of royalty for the mineral used in construction work. We find that the translation of third proviso is shoddy but since the issue being examined is: purchase of minor minerals by the contractor engaged in construction work, therefore, if the proviso is read by striking of the words *quarry permit,* the provision would read as under:-

> "Provided also that ~~quarry permit holder/~~contractor engaged in construction work shall obtain certificate of no mining dues to ensure payment of royalty for the mineral used in construction work, for the mineral excavated from quarry permit area or used by purchasing from open market. Certificate of no mining dues shall be issued by Mining officer/officer in-charge mining section, after

> verification of documents submitted by contractor~~/quarry permit holder~~ engaged in construction work."

16. In fact, the argument raised by the learned counsel for the petitioners that proviso is enlarging the main substantive provision, is wholly misplaced. Firstly, the proviso is a part of the Rule, which itself is a proviso to Rule 4, which prohibits that no person shall undertake any mining operation in any area except by way of trade quarry or a quarry lease. Rule 68 deals with neither a trade quarry or a quarry lease but it deals with a situation where the Central or the State Government or a contractor engaged by it are given permission for extraction, removal and transportation of any minor mineral from any specified quarry. Third proviso is a further exception to Sub-clause (1) of Rule 68 when a quarry permit holder or a contractor engaged in construction work are permitted to use the excavated mineral on payment of royalty or on payment of proof of royalty. Therefore, third proviso is not an enlargement of Sub-Rule (1) of Rule 68 but is an additional exception to Rule 4 containing absolute prohibition.

17. In **Dwarka Prasad's** case (**supra**), the Supreme Court held that the golden rule of interpretation is to read the whole section inclusive of proviso in such manner that they mutually throw light and result in harmonious construction. Relevant extracts from the said decision read as under-

> "18. …......... If the rule of construction is that prima facie a proviso should be limited in its operation to the subject matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered

in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

The proper course is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail. (**Maxwell on Interpretation of Statutes** 10th Edn. P. 162)

19. We now move on to `dominant intent' as the governing rule. In our view, the dominant intent is found in leading decision of this Court. Indeed, some State Legislatures, accepting the position that where the dominant intention of the lease is the enjoyment of a cinema, as distinguished from the building, have deliberately amended the definition by suitable changes (e.g. Kerala and Andhra Pradesh) while other Legislatures, on the opposite policy decision, have expressly excluded the rent control enactment (e.g., the later Act)."

18. Shri Vivek Dalal, learned counsel for the petitioners relied upon the judgment reported as **(2000) 2 SCC 451 (Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad and another vs. P.S. Rao)** to contend that the word contractor cannot be given any other meaning than one as defined under the Rules, is again not tenable. Opening line of the Rule 2 is "*Unless the context otherwise requires*". Contractor as defined in Rule 2(xvi-b) is a contractor who is granted trade quarry. The petitioners are not the one who have been granted trade quarry. In fact, the petitioners are the

contractors engaged in Government contracts and that the expression contractor in third proviso is clarified by the words "*engaged in construction work"*. The words "contractor engaged in construction work" have to be read together and not disjunctively and therefore, the judgment in **Special Officers & Competent Authority's** case (**supra**) is not applicable to the facts of the present case as the context in which contractor has been defined is materially different than the expression contractor engaged in execution of the contract appearing in third proviso.

19. In **AIR 1985 SC 582 (S. Sundaram Pillai etc. vs. V.R. Pattabiraman**) the Court culled down four different purposes which a proviso serves. The relevant extract from the said judgment is reproduced as under:-

> "42. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:
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> (1) qualifying or excepting certain provisions from the main enactment;
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> (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
>
> (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
>
> (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

20. In **Maulavi Hussein Haji Abraham (supra**), the Supreme Court has

held that the Court cannot read anything into a statutory provision which is plain and unambiguous statute. The language employed in a statute is the determinative factor of legislative intent. The question is not what may be supposed and has been intended but what has been said. The relevant paras from the said decision read as under:-

> "18. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co. v. Yensavage, 218 FR 547*). The view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama, (1990) 1 SCC 277 (SCC p. 284, para 16)*.
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> 19. In *Dr. R. Venkatchalam v. Dy. Transport Commissioner, (1977) 2 SC 273*, it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.
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> 20. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See CST v. *Popular Trading Co., (*2000) *5 SCC 511*. The legislative casus omissus cannot be supplied by judicial interpretative process.
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> 21. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily

> inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said *Danackwerts, L.J. in Artemiou v. Procopiou, [1966] 1 QB 878*, "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (*Per Lord Reid in Luke v. IRC, 1963 AC 557* where at p. 577 he also observed: (All ER p. 664 I) "This is not a new problem, though our standard of drafting is such that it rarely emerges.")."

21. The Supreme Court while examining the Karnataka Minor Mineral Concession Rules, 1969 in a judgment reported as **Premium Granites and another vs. State of T.N. and others, (1994) 2 SCC 691**, held that for bringing harmonious construction, reading down a provision in the statute, is an accepted principle. The Court said as under:-

> "55. In various statutes, the provision of relaxation or exemption finds place and it has been indicated that such provisions of relaxation and exemption have been noticed and upheld by this Court in some of the statutes. In the MMRD Act itself, there is such provision for relaxation, being Section 31. Such provision of relaxation in Karnataka Minor Mineral Concession Rules, 1969 is contained in Rule 66. It has been rightly contended that where in respect of prohibited categories, the law carves out restriction or relaxation, the purpose is to take out certain exceptions from the

prohibited area and keeping certain categories outside the purview of restrictions imposed under other provisions in the statute. In such circumstances, it will not be appropriate to hold that the exception militates with other provisions and hence should not be permitted. In our view, in interpreting the validity of a provision containing relaxation or exemption of another provision of a statute, the purpose of such relaxation and the scope and the effect of the same in the context of the purpose of the statute should be taken into consideration and if it appears that such exemption or relaxation basically and intrinsically does not violate the purpose of the statute rendering it unworkable but it is consistent with the purpose of the statute, there will be no occasion to hold that such provision of relaxation or exemption is illegal or the same ultra vires other provisions of the statute. The question of exemption or relaxation ex hypothesi indicates the existence of some provisions in the statute in respect of which exemption or relaxation is intended for some obvious purpose.

56**.** There is no manner of doubt that for bringing harmonious construction, reading down a provision in the statute, is an accepted principle and such exercise has been made by this Court in a number of decisions, reference to which has already been made. But we do not think that in the facts and circumstances of the case, and the purpose sought to be achieved by Rule 39, such reading down is necessary so as to limit the application of Rule 39 only for varying some terms and conditions of a lease. If the State Government has an authority to follow a particular policy in the matter of quarrying of granite and it can change the provisions in the Mineral Concession Rules from time to time either by incorporating a particular rule or amending the same according to its perception of the exigencies, it will not be correct to hold that on each and every occasion when such perception requires a change in the matter of policy of quarrying a minor mineral in the State, particular provision of the Mineral Concession Rules has got to be amended. On the contrary, if a suitable provision empowering exemption or relaxation of other provisions in the Mineral Concession Rules is

> made by confining its exercise in an objective manner consistent with the MMRD Act and in furtherance of the cause of mineral development and in public interest, by giving proper guidelines, such provision containing relaxation or exemption cannot be held to be unjustified or untenable on the score of violating the other provisions of the Mineral Concession Rules."

22. In another Judgment reported as **Kailash Chandra and another vs. Mukundi Lal and others, (2002) 2 SCC 678**, the Court held that a provision in the statute is not to be read in isolation. It has to be read with other related provisions in the Act itself, more particularly, when the subject-matter dealt with in different sections or parts of the same statute is the same or similar in nature. The relevant extract from the Judgment read as under:-

> "11. A provision in the statute is not to be read in isolation. It has to be read with other related provisions in the Act itself, more particularly, when the subject-matter dealt with in different sections or parts of the same statute is the same or similar in nature. As in the case in hand, we find that the matter relates to liability of the tenant to pay rent to the landlord and the consequences on failure to do so as provided under Section 20(2)(*a*) of the Act. Sub-section (4) of Section 20 deals with payment of arrears of rent etc. at the first hearing of the suit which in that event provides protection from eviction. Section 30 deals with the two circumstances in which for one reason or the other, the rent is deposited in the court instead of payment to the landlord. As noted earlier the effect of deposit of rent is provided under sub-section (6) of Section 30. Therefore, all the related provisions have to be read together for the purposes of proper and harmonious construction. It is not only permissible but much desirable for proper understanding of the contents and meaning of the provisions under consideration. In *R.S. Raghunath* v. *State of Karnataka (1992) 1 SCC 335* it has been observed: "No part of a statute and no word of a statute can be construed in

> isolation. Statutes have to be construed so that every word has a place and everything is in its place." In *M. Pentiah* v. *Muddala Veeramallappa AIR 1961 SC 1107,* a reference was made to the observations made by Lord Davey in *Canada Sugar Refining Co.* v. *R. 1898 AC 735*, it reads as follows:
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> > "Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

23. In another judgment reported as **State of Andhra Pradesh *through Inspector General, National Investigation Agency* vs. Mohd. Hussain alias Saleem, (2014) 1 SCC 258,** the Court held that it is a well-settled canon of interpretation that when it comes to construction of a section, it is to be read in its entirety, and its sub-sections are to be read in relation to each other, and not disjunctively. Besides, the text of a section has to be read in the context of the statute. The Court held as under:-

> "**19.** We cannot ignore that it is a well-settled canon of interpretation that when it comes to construction of a section, it is to be read in its entirety, and its sub-sections are to be read in relation to each other, and not disjunctively. Besides, the text of a section has to be read in the context of the statute. A few sub-sections of a section cannot be separated from other sub-sections, and read to convey something altogether different from the theme underlying the entire section. That is how a section is required to be read purposively and meaningfully."

24. Thus, in view of the principle of statutory interpretation that no word in statute is superfluous and each word has its meaning, the provisos of the statute have to be read as a whole by giving harmonious construction to all the provisions of the law so that none of the provision is rendered redundant. Keeping in view the principle of harmonious construction, the third proviso

is additional relaxation to Rule 4 of the Rules and 68(1) of the Rules. Therefore, third proviso cannot be said to be illegal in any manner.

25. Thus, from the plain language of Rule 68; Scheme of Statute and the purpose of Rules that there should not be any illegal extraction of minerals and all minerals should be royalty paid, therefore, we find that third proviso is neither illegal nor enlarges the scope of proviso to than that of Rule 68 or any other provision of the Rules.

26. Apart from the plain meaning of the statute, the Supreme Court in the case of **Deep Jyoti Company** (**supra**) was examining somewhat similar situation in Rajasthan whereby short term permit was being granted to a contractor engaged in the government construction work. The present is a case of contractor who is purchasing mineral from an open market and using the same in the Government works. The Supreme Court held that the purpose of the Statute is to ensure that no mineral is excavated and used without payment of royalty. The proviso ensures that the material is purchased by the contractor from the market which is a legal mined and the objective is to see that illegal minor mineral is not purchased by the contractor and used in the construction work which is awarded by the Government. The Supreme Court held, thus:-

> "10. Insofar as the contention that in terms of the circular there is compulsion to obtain short term permit, in our view, as such there is no such compulsion. It is only to ensure that no mineral is excavated and used without payment of royalty. The purpose of short-term permit is to ensure that the material and minerals etc. used by the contractor in the construction work are royalty paid. It only means

that such material is purchased by the contractor from the market which is legally mined and on which due royalty is paid. In other words, the objective is to see that illegally mined mineral/material is not purchased by the contractor and used in the construction work which is awarded by the Government. Not only it is a laudable object, such a stipulation is inserted in order to check illegal mining which unfortunately has assumed serious proportions in the recent past. Otherwise, the respondents herein do not stand to loose anything inasmuch as the moment evidence is produced to the effect that royalty was paid on the minerals by the leaseholder which was used in the construction, the construction contractor like the respondents would be refunded the royalty so paid by it in terms of circular dated 06.10.2008. In terms of clauses (5) and (7) of the said circular, the contractor has to pay royalty at the rates specified in the circular depending upon the nature of work and on production of bills showing payment of royalty, the contractor can get refund of royalty. There is, thus, no financial burden on the respondents of any nature. The purpose which is sought to be achieved, viz., non-royalty paid mineral (which would naturally be illegally mined mineral) is not used in the execution of the Government work and it cannot be treated as unreasonable or arbitrary. In our view, there is a complete justification for providing such a provision.

11. The minor minerals removed from the quarries, admittedly are the property of the government and the same cannot be removed and used without payment of royalty. It is therefore the duty of the government to ensure that only royalty paid minerals are used in the work and the purpose of issuing such circular was to avoid pilferage/leakage of revenue because royalty can be very conveniently evaded by the contractors either by not purchasing the material from the mining leaseholders or obtaining it from unauthorized excavators. In case, if the contractor purchases the material from unauthorized person who has not paid royalty, there would be loss to the public exchequer and the circular was issued to check evasion or loss to the public exchequer. Such condition

cannot be said to be unreasonable and arbitrary and therefore no prejudice could be said to have been caused to the contractors.”

27. Since minor mineral vests in the State and there is absolute prohibition in extraction of mineral other than by a quarry lease or a trade quarry or permit quarry, therefore, contractor who is engaged in construction work is required to prove that such mineral is royalty paid. For such condition, if the State Government insists on ‘No Mining Dues’ certificate, the same cannot be said to be illegal as it is to ensure that all minor minerals used in the construction activity are royalty paid material.

28. An affidavit has been filed on behalf of the State Government that the following documents are required in terms of third proviso:-

(i) Copy of the transit passes issued for transportation of total quantity of minerals used in the government construction work.

(ii) Copy of the bills of total quantity of minerals used in the government construction work.

(iii) Copy of the 'work completion certificate' issued by the Government department/Government functionary in respect of work, in which minor minerals have been used.

(iv) Copy of the valid mineral dealer license for use of mineral in government construction work as per Rule 3(2)(iii) of M.P. Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules 2006.

The affidavit further states that no specific time period for issuing of 'No Mining Dues' certificate is contemplated in the Rules, but, looking to the nature of work, *minimum two months* time is required by the Mining Officer for completion of said exercise for taking appropriate decision/ passing

appropriate orders.

29. We find that the condition No. (iii) that 'No Mining Dues' certificate shall be issued on furnishing of copy of work completion certificate is not reasonable. The contractor, who is engaged in construction work, purchases minor mineral required for construction work. Such running bills require periodical payments as well. The periodical bills raised quarterly, are required to be verified so that the contractor is not deprived of his lawful dues, therefore, instead of obtaining 'No Mining Dues' certificate by the contractor after completion of the work, the Mining Officer shall give 'No Mining Dues' certificate at least quarterly on the basis of running bills submitted by the contractor engaged in the construction work.

30. The third proviso to Rule 68(1) of the Rules provides for issuance of 'No Mining Dues' certificate after verification of the documents submitted by the contractor engaged in construction work. Such documents although are not the part of the Rules but they have been supplemented in the affidavit dated 07.10.2017. The affidavit further states that verification of purchase of mineral from other Districts takes some time, therefore, the State has sought minimum two months time to verify and issue 'No Mining Dues' certificate. We find that to ensure transparency and the digital infrastructure available, the State would be well advised to develop a software, which will give on-line information of extraction of the minerals by the contractors holding trade quarry or quarry lease or quarry permit. Once that data is available, the Mining Officer of the State can verify how a quantity of extracted minor mineral has been disposed of by each of the category of permit holders. It

will create a transparent and also efficient mechanism for issuing certificate of 'No Mining Dues'.

31. In view of the above, we find that the judgment in **Phaloudi Construction (supra)** is not correct enunciation of law and the same is thus, **overruled**. The contractors who are engaged in construction work are required to obtain 'No Mining Dues' certificate on production of the documents in terms of this order. Such 'No Mining Dues' certificate shall be issued expeditiously in a time frame of two months till such time alternative mechanism is developed for the issuance of online 'No Mining Dues' certificates.

32. The principle of law having been settled, the writ petitions be posted for hearing as per Roster on 23.10.2017.

(Hemant Gupta)
Chief Justice

(H.P. Singh)
Judge

(Rajeev Kumar Dubey)
Judge

(Vijay Kumar Shukla)
Judge

(Subodh Abhyankar)
Judge

S/