# HIGH COURT OF MADHYA PRADESH: JABALPUR

**(Full Bench)**

(1) **M.P. No. 1850/2018**
**(Nitesh Rathore & Another v. State of M.P. & others)**

**WITH**

(2) **M.P. No. 1852/2018**
**(Shubham Soni & Another v. State of M.P. & others)**

(3) **M.P. No. 1853/2018**
**(Mohan Malviya v. State of M.P. & others)**

(4) **M.P. No. 1985/2018**
**(M/s J.R.D.C. Construction v. State of M.P. & others)**

(5) **M.P. No. 1987/2018**
**(Suresh Goswami v. State of M.P. & others)**

(6) **M.P. No. 2012/2018**
**(Vinay Yadav v. State of M.P. & others)**

(7) **M.P. No. 2013/2018**
**(Saleem Khan v. State of M.P. & others)**

(8) **M.P. No. 2017/2018**
**(Saleem Khan v. State of M.P. & others)**

(9) **M.P. No. 2020/2018**
**(Gulrej Khan v. State of M.P. & others)**

(10) **M.P. No. 2022/2018**
**(Amjad Sheikh & Another v. State of M.P. & others)**

(11) **M.P. No. 2030/2018**
**(Santosh Baradiya v. State of M.P. & others)**

(12) **W.P. No. 8970/2018**
**(Jaspal Kaur v. State of M.P. & others)**

(13) **M.P. No. 2165/2018**
**(Fateh Singh v. State of M.P. & others)**

(14) **M.P. No. 2408/2018**
**(Mukesh Verma v. State of M.P. & others)**

(15) **M.P. No. 2817/2018**
**(Tularam Kushwaha v. State of M.P. & others)**

(16) **M.P. No. 2819/2018**
**(Tularam Kushwaha v. State of M.P. & others)**

(17) **M.P. No. 2820/2018**
**(Tularam Kushwaha v. State of M.P. & others)**

(18) **M.P. No. 2821/2018**
**(Tularam Kushwaha v. State of M.P. & others)**

(19) **M.P. No. 2856/2018**
**(Himanshu Kumar v. State of M.P. & others)**

(20) **M.P. No. 2941/2018**
**(Tarun Kumar Malvi v. State of M.P. & others)**

(21) **W.P. No. 14225/2018**
**(Parmanand Sad v. State of M.P. & others)**

(22) **W.P. No. 14230/2018**
**(Faisal Hasan v. State of M.P. & others)**

(23) **M.P. No. 3223/2018**
**(Bhupendra Jaat v. State of M.P. & others)**

(24) **M.P. No. 3304/2018**
**(Shri Vishwa Mangal Associate v. State of M.P. & others)**

(25) **M.P. No. 3305/2018**
**(Vinit Modi v. State of M.P. & others)**

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**CORAM**:

**Hon'ble Mr. Justice Hemant Gupta, Chief Justice**
**Hon'ble Mr. Justice Vijay Kumar Shukla, Judge**
**Hon'ble Mr. Justice Sanjay Dwivedi, Judge**

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**Appearance**:

Mr. Naman Nagrath, Senior Advocate with Mr. Shekhar Sharma, Mr. Pradeep Kumar Bhargava, Mr. Ranjeet Dwivedi, Mr. Qasim Ali and Mr. Manish Kumar Verma, Advocates for the respective petitioners.

Mr. Pushpendra Yadav, Deputy Advocate General with Mr. Amit Seth, Government Advocate for the respondents-State.

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**Whether Approved for Reporting** : **Yes**

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**Law Laid Down:**

- The provisions of the two Statutes by the same Legislature have to be harmoniously construed. However, if the harmonious construction is not possible then the later Statute will amount to deemed repeal of the earlier Rules to the extent of inconsistency – ***Relied*** **- AIR 1963 SC 1561 (Municipal Council, Palai through the Commissioner of Municipal Council, Palai etc. v. T.J. Joseph etc.)** and **(1990) 4 SCC 406 (Ashoka Marketing Ltd. and another v. Punjab National Bank and others**)

- The M.P. Minor Mineral Rules, 1996 ("1996 Rules") or the M.P. Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 ("2006 Rules") are the Rules made by the State Government in exercise of the powers vested in the State Government in terms of the Mines and Minerals (Development and Regulation) Act, 1957 ("the Central Act"). Such Rules neither contradict Sub-section (7) of Section 247 of the M.P. Land Revenue Code, 1959 nor suffer from any other vice of illegality. An order dated 12.05.2015 passed by a Division Bench of Indore Bench of this Court in W.P. (PIL) No.2592/2006 (**Bakir Ali v. State of MP. and others)** is not in tune with the provisions of law.

- The penalty relating to royalty amount in terms of Rule 53 of the 1996 Rules is legal and valid till such time it does not exceed four times (as amended by M.P. Act No.42 of 2011 w.e.f. 30.12.2011) of the market value of the minor mineral extracted. The extraction or removal of mineral other than minor mineral to attract penalty in terms of Sub-section (7) of Section 247 of the Code.

- The confiscation of minerals or its products, equipment and carrier consequent to criminal proceedings under the 2006 Rules and confiscation of minerals, tools, machines and vehicles etc. under Rule 53 of the 1996 Rules are distinct provisions. The 1996 Rules do not substitute the trial for an offence as contemplated under Section 21 of the Central Act or under Rule 18 of the 2006 Rules. Though Rule 53 of the 1996 Rules contemplating imposition of penalty cannot be said to be contravening the provisions of the 2006 Rules.

- The benefit to seek compounding has to be exercised before serving a notice of imposition of penalty in terms of Sub-rule (2) of Rule 53 of 1996 Rules or in the event of seizure of tools, machines, vehicles and other material in terms of Sub-rule (3) of Rule 53 of the 1996 Rules. The competent Authority is not required to give any option to the violator to seek compounding of violation of the Rules but the violator himself has to volunteer and seek compounding.

- In the entire Rule 53, the words "tools", "machines", "vehicles" etc. have been used together. Such clause mentions discharge of "other materials". Such expression would include vehicles as well. Therefore, the omission to incorporate the word "vehicles" specifically in the last line of Sub-rule (6) is meaningless and unintentional. Therefore, to give effect to Sub-rule (6) permitting violator to seek compounding of the violation, the last line of Sub-rule (6) shall include "the seized material, tools, vehicles, machinery/and other materials". Such interpretation would be in furtherance of the objective for which the Rule 53 of the 1996 Rules has been framed.

- Without giving an opportunity to the violator to pay penalty in terms of Sub-rule (1) of Rule 53 of the 1996 Rules, the forfeiture cannot be resorted to. Similarly, the forfeiture of seized tools, machines and vehicles etc. in terms of Clause (a) of Sub-rule (3) of Rule 53 can be resorted to only when the penalty in terms of Sub-rule (1) of the Rule 53 is not paid.

- In respect of Clause (b) of Sub-rule (3) of Rule 53, in the case of vehicles, transporting or extracting mineral without any transit pass, the forfeiture can be ordered after three defaults whereas, in case of other situations, the forfeiture can be ordered after four defaults.

- Division Bench order of this Court passed on 25.04.2018 in **W.P. No. 20686/2017 (Nihal Khan v. State of M.P. and others)** is not the correct enunciation of law. The same is ***overruled***.

**Significant Paragraph Nos.**: 3, 4, 10, 12, 15 to 18, 21, 23 to 27, 29 to 36

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# O R D E R

**(Passed on this 20th day of September, 2018)**

**Per: Hemant Gupta, Chief Justice**:

The challenge in the present bunch of petitions is to Rule 53 of the M.P. Minor Mineral Rules, 1996 (for short "the 1996 Rules") as substituted on 18.05.2017.

**2**. On 18.07.2018, the matter was referred to a Larger Bench doubting the correctness of a Division Bench order of this Court passed on 25.04.2018 in **W.P. No. 20686/2017 (Nihal Khan v. State of M.P. and others**). The order dated 18.07.2018 reads as under:-

> "Learned counsel for the petitioners argued that Rule 53 of the M.P. Minor Minerals Rules, 1996 (for short 'the Rules') as substituted on 18.5.2017 contemplates imposition of penalty in respect of illegal mining and transportation in a graded manner in terms of sub-rule (1) of Rule 53 of the Rules.
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> Sub-rule (2) of Rule 53 of the Rules deals with forfeiture of minerals in cases of illegal extraction and transportation. It contemplates that the seized minerals shall not be discharged till the penalty as contemplated in sub-rule (1) is not paid. It is thus argued that the forfeiture will not follow, if the penalty in terms of sub-rule (1) is paid. Only in the event of failure to pay penalty in terms of sub-rule (1), the forfeiture can be affected in terms of sub-rule (1).
>
> Sub-rule (3) of the Rules deals with forfeiture/discharge of the seized machines, tools and vehicles. Sub-rule (3)(a) contemplates that the tools, machines, vehicles and other material so seized shall not be discharged till the penalty imposed in terms of sub-rule (1) is paid. It is only thereafter, forfeiture can be affected. Sub-rule (3)(b) is in respect of mineral extracted or transported without any transit pass, which again has to be dealt with in the same manner i.e. after imposition of the penalty four times in terms of Rule 53(1) of the Rules, there can be forfeiture. Second Proviso in fact permits the vehicles to be forfeited on

fourth default as against the penalty which is payable even on fourth default in terms of sub-rule (1).

It is contended that the forfeiture cannot be resorted to at the first instance without imposition of penalty in terms of sub-rule (1) either in the case of mineral or in the case of machines, tools and vehicles.

It is argued that the order of this Court in Writ Petition No.20686/2017 (Nihal Khan Vs. The State of M.P.) decided on 25.4.2018, has not noticed the Scheme of the Rules in a correct perspective.

On the other hand, Mr. Yadav argued that the Competent Authority has a liberty to either forfeit or to impose penalty. Therefore, on account of illegal extraction and transportation of mineral, there can be forfeiture.

We are doubtful about the arguments by Shri Yadav raised. There cannot be total discretion to the Competent Authority to impose penalty in his choice or to resort to forfeiture as per his discretion.

We find that the view taken by this Court on 25.4.2018 in Nihal Khan's case (supra) requires reconsideration. Therefore, we deem it appropriate to refer these matters to a Larger Bench.

List before the Larger Bench on 8.8.2018.

The State may file reply in the meantime, if chooses so.

Interim order to continue."

**3**. We find that the following questions arise for the opinion of this Court:

(1) Whether the State Government is competent to frame M.P. Minor Mineral Rules, 1996 (for short "the 1996 Rules") in view of the provisions of Sub-section (7) of Section 247 of the M.P. Land Revenue Code, 1959 (for short "the Code")?

(2) Whether the 1996 Rules, as amended on 18.05.2017, are legal and valid in the face of M.P. Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 (for short "the 2006 Rules"), as both have been enacted by the State Government in exercise of the powers conferred on it under the

Mines and Minerals (Development and Regulation) Act, 1957 (No.67 of 1957) (for short "the Central Act")?

(3) Whether the option of compounding is available to the violator during pendency of the proceedings before the Collector and/or in appeal or at any stage in terms of Sub-rule (6) of Rule 53 of the 1996 Rules and whether the competent Authority has to give an option to the violator to compound or it is the violator, who has to seek compounding?

(4) Whether the compounding order leads to discharge of "vehicles" in terms of "mineral, tools, machinery/and other materials" or that the word "vehicles" is unintentional omission and can be deemed to be included in Rule 53(6) of 1996 Rules?

(5) Whether in terms of Sub-rule (2) of Rule 53 of the 1996 Rules, which deals with forfeiture of minerals in cases of illegal extraction and transportation and in terms of Sub-rule (3)(a) and (b) of Rule 53 thereof, which deals with forfeiture/discharge of the seized machines, tools and vehicles, the Competent Authority has a discretion for forfeiture of tools, machines, vehicles and other material so seized, without giving an opportunity to the violator to pay penalty in terms of Sub-rule (1) of Rule 53 of the 1996 Rules?

(6) Whether in view of Sub-rule (3)(b) of Rule 53 of the 1996 Rules in respect of minerals extracted or transported without any transit pass, forfeiture can be ordered in the first instance though penalty is payable in terms of Sub-rule (1) of Rule 53 of the said Rules?

**4**. Since the issue is legal, arising out of the statutory provisions, therefore, we deem it appropriate to extract the relevant provisions of the Statute, which read as under:

**"M.P. LAND REVENUE CODE, 1959**

**247. Government's title to minerals.—** (1) Unless it is otherwise expressly provided by the terms of a grant made by the Government, the right to all minerals, mines and quarters shall vest in the State Government which shall have all powers necessary for the proper enjoyment of such rights.

(2) The right to all mines and quarries includes the right of access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purpose subsidiary thereto, including the erection of offices, workmen's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram-lines, and any other purposes which the State Government may declare to be subsidiary to mining and quarrying.

(3) If the Government has assigned to any person its right over any minerals, mines or quarries, and if for the proper enjoyment of such right, it is necessary that all or any of the powers specified in sub-sections (1) and (2) should be exercised, the Collector may, by an order in writing, subject to such conditions and reservations as he may specify, delegate such powers to the person to whom the right has been assigned:

Provided that no such delegation shall be made until notice has been duly served on all persons having rights in the land affected, and their objections have been heard and considered.

(4) If, in the exercise of the right herein referred to over any land, the rights of any person are infringed by the occupation or disturbance of the surface of such land, the Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Sub-Divisional Officer or, if his award is not accepted, by the Civil Court, as nearly as may be, in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No.30 of 2013).

(5) No assignee of the Government shall enter on or occupy the surface of any land without the previous sanction of the Collector, and unless the compensation has been determined and tendered to the persons whose rights are infringed.

(6) If an assignee of the Government fails to pay compensation as provided in sub-section (4), the Collector may recover such compensation from him on behalf of the persons entitled to it, as if it were an arrear of land revenue.

(7) Any person who without lawful authority extracts or removes minerals from any mine or quarry, the right to which vests in, and has not been assigned by, the Government shall, without prejudice to any other action that may be taken against him be liable, on the order in writing of the Collector, to pay penalty not exceeding a sum calculated at four times the market value of the minerals so extracted or removed*:*

*[Proviso omitted in Madhya Pradesh by M.P. Act 42 of 2011, w.e.f. 30.12.2011 and the words "four times" substituted for the word "double"]*

(8) Without prejudice to the provisions in sub-section (7) the Collector may seize and confiscate any mineral extracted or removed from any mine or quarry the right to which vests in, and has not been assigned by the Government.

**Explanation**.— In this section, "minerals" include any sand or clay which the State Government may declare to have a commercial value or to be required for any public purpose.

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**MINES AND MINERALS (DEVELOPMENT & REGULATION) ACT, 1957**

**3. Definitions**. **—** In this Act, unless the context otherwise requires,**—**

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(aa) "minerals" includes all minerals except mineral oils;

(b) "mineral oils" includes natural gas and petroleum;

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(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;

(ea) "notified minerals" means any mineral specified in the Fourth Schedule;

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4. **Prospecting or mining operations to be under licence or lease. -** (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease

granted before the commencement of this Act which is in force at such commencement:

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(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

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

(1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) 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;

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(j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concession may be transferred;

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(o) any other matter which is to be, or may be, prescribed.

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***23C. Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals**.—(1) The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) establishment of check-posts for checking of minerals under transit;

(b) establishment of weigh-bridges to measure the quantity of mineral being transported;

(c) regulation of mineral being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;

(d) inspection, checking and search of minerals at the place of excavation or storage or during transit;

(e) maintenance of registers and forms for the purposes of these rules;

(f) the period within which and the authority to which applications for revision of any order passed by any authority be preferred under any rule made under this section and the fees to be paid therefor and powers of such authority for disposing of such applications; and

(g) any other matter which is required to be, or may be, prescribed for the purpose of prevention of illegal mining, transportation and storage of minerals.

(*Inserted by Central Act No.38 of 1999 w.e.f. 18.12.1999)

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**M.P. MINOR MINERAL RULES, 1996**

[These Rules have been *in exercise of the powers conferred by Section 15 of the Central Act (No.67 of 1957*) and are applicable to the minor minerals]

2. **Definitions**. - In these rules, unless the context otherwise requires,-

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(ii) "Agreement" means an agreement to quarry and carry away anyone or more minor minerals specified therein;

(iii) “Assessment” means the assessment levied under these rules with reference to the extent of minor minerals extracted;

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(xxi) "Minor Minerals" means the minerals as specified in Schedule I and II appended to these rules and any other mineral which the Government of India may, by notification in the official gazette, declare to be a minor mineral under Section 3(e) of the Act;

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

(d) On fourth (*sic. third by mistake in English version*) 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.

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 Zilla 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 unauthorized 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 minor 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 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, authorized 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 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 statement;

(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 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."}

***** as substituted on 18.5.2017

**M.P. MINERAL (PREVENTION OF ILLEGAL MINING, TRANSPORTATION AND STORAGE) RULES, 2006**

[*Framed in exercise of the powers conferred by Section 23C inserted on 18.12.1999 of the Central Act (No.67 of 1957*)]

2. **Definitions**. - In these rules, unless the context otherwise requires, -

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(c) "Carrier" means any mode by which mineral/minerals or its products are transported from the place of raising or from one place to another by way of mechanised device; excluding railway wagons, aerial ropeway, conveyor belt;

*** *** ***

(k) Words "Mineral", "Reconnaissance Permit", "Prospecting Licence" and "Mining Lease" shall have the same meaning, as assigned to them in the Act;

*** *** ***

**3. Prohibition.** - (1) No person shall transport or cause to be transported any mineral/minerals or/and its products by any carrier from the place of raising or from one place to another without having a valid Transit Pass issued under these rules;

Provided that no such Transit Pass shall be required in case of any mineral/minerals or its products are being transported directly from the lease area by means of a mechanical device viz. Railway wagon or aerial ropeway or conveyor belt.

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**5**. **Transportation Of Minerals and its Products**. - (1) The holder of a quarry lease, quarry permit and trade quarry shall obtain transit pass book from concerning officer and issue a Transit Pass to accompany every carrier for every trip carrying mineral or its product from the lease/quarry area in the manner as prescribed in the Madhya Pradesh Minor Mineral Rules, 1996.

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**18. Penalty for unauthorised Transportation or Storage of Minerals and its Products. -** (1) Whenever any person is found transporting or storing any mineral or its products or on whose behalf such transportation or storage is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal transportation or storage of mineral or its products and every such person shall be punishable with simple imprisonment for a term, which may extend to two years or with fine, which may extend to Rupees Fifty Thousand or with both;

(2) Whenever any person is found transporting or storing any mineral or its products in contravention of the provisions of these rules, the authorised person may seize the mineral or its products together with tools, equipment and carrier used in committing such offence.

*** *** ***

(5) The Authorised Person not below the rank of Collector, Additional Collector of Senior IAS scale, Director, Joint Director, Deputy Director [Sub Divisional Officer (Revenue)] and Officer Incharge (Flying Squad) may before reporting to the Magistrate, compound the offence so committed under sub rule (1) on payment of such fine, which may extend to ten times of [*subs. for the word "double" by Noti. Dated 29-3-2012 (6-4-2012)*] the market value of mineral or its products or Rupees Five Thousand, but in any case it shall not be less than Rupees One Thousand or twenty [*subs. for the word "ten" by Noti. dated 29-3-2012 (6.4.2012*)] times of royalty of minerals so seized, whichever is higher:

> Provided that in case of continuing contravention, the authorized person, not below the rank of Mining Officer in addition to the fine imposed may also recover an amount of Rupees Five Hundred for each day till the contravention continues.
>
> (6) All property seized under sub-rule (2) shall be liable to be confiscated by order of the Magistrate trying the offence, if the amount of the fine and other sum so imposed are not paid within a period of one month from the date of order:
>
> Provided that on payment of such sum within one month of the order, all property so seized, except the mineral or its products shall be released and the mineral or its products so seized under sub-rule (2) shall be confiscated and shall be the property of the State Government;"

**5**. With this background, the argument of learned counsel for the petitioners is that under Sub-section (7) of Section 247 of the Code, the Collector can impose penalty not exceeding a sum calculated at four times of the market value of the mineral so extracted or removed though the provision is without prejudice to any other action but the amount of penalty could not be in excess of the amount contemplated under Sub-section (7) of Section 247 of the Code.

**6**. Mr. Yadav, learned counsel for the respondents-State argued that Section 247 of the Code provides for lease by the Government in respect of minerals and the rights of lessee to enter upon the land of the land owner. Therefore, in terms of the scheme of Section 247, Sub-section (7) is restricted to the extraction or removal of minerals from any mine or quarry which vests with the State and has not been assigned by the State. Sub-section (7) of Section 247 of the Code provides that the Government shall, without prejudice to any other action that may be taken against any person, who without lawful authority extracts or removes mineral, the Collector can

pass an order to pay penalty not exceeding a sum mentioned therein. Therefore, the Government has reserved its right to take action as may be available to it under the Act or under other provisions of law. Thus, Sub-section (7) of Section 247 of the Code does not exhaust the right of the State Government to impose penalty in respect of illegal extraction or removal of minerals.

**7**. Our attention has been drawn to an order passed by a Division Bench of Indore Bench of this Court on 12.05.2015 in **Writ Petition (PIL) No.2592/2006** (**Bakir Ali v. State of M.P. and others**) wherein it has been held that the 1996 Rules will prevail over the Code i.e. the M.P. Land Revenue Code, 1959, as it is the Rule enacted by the Parliament. The question arose before the Bench was whether the Collector can take action under Sub-section (7) of Section 247 of the Code against a person carrying out illegal mining or the action is required to be taken in terms of Rule 53 of the 1996 Rules. We find that the attention of the Court was not drawn to the fact that the 1996 Rules are not framed by the Central Government under the Central Act but by the State Government in exercise of the powers conferred under Section 15 of the Central Act. Still further, the 1996 Rules or the 2006 Rules are not inconsistent or could not be read in harmony with Sub-section (7) of Section 247 of the Code. The imposition of penalty in terms of 1996 Rules on extraction or removal could be framed as the Code gives right to the State that it may take action "without prejudice to any other action". Therefore, we find that the order of this Court rendered in **Bakir Ali**'s case (**supra**) is not in tune with the provisions of law and consequently, is of no legal effect. Thus, in respect of the first question framed, we hold that 1996

Rules do not contradict Sub-section (7) of Section 247 of the Code except to the extent of quantification of penalty as discussed here-in-after in paras 15, 16 and 17 of this judgment.

**8**. The 1996 Rules were framed in exercise of powers conferred under Section 15 of the Central Act, which empowers the State Government to make Rules in respect of minor minerals. The Central Act had no specific provision to prevent illegal mining, transportation and storage of minerals, therefore, Section 23C was inserted by Central Act No.38 of 1999 w.e.f. 18.12.1999. It is in pursuance to such provision; the 2006 Rules and Rule 53 of 1996 Rules have been published. 2006 Rules are applicable to all minerals including minor mineral, whereas the 1996 Rules are only in respect of minor minerals.

**9**. The 2006 Rules were published in the M.P. Gazette (Extraordinary) of the State Government on 15.05.2006 whereas substituted Rule 53 of the 1996 Rules was published on 18.05.2017. The 2006 Rules and the 1996 Rules, as amended on 18.05.2017 are said to be contradictory in respect of confiscation of the tools, equipment and carrier used in transporting or storing of any mineral in contravention of provisions of the Rules including the machinery for confiscation. Under Sub-rule (6) of Rule 18 of the 2006 Rules, the power of confiscation is vested with the Magistrate trying the offence and that the property seized, which includes the tools, equipment and carrier can be confiscated by the Magistrate if the amount of fine and other sum so imposed are not paid within one month from the date of order. On the other hand, Rule 53 contemplates penalty and that too by the Executive and consequent confiscation.

**10**. The well settled rule of interpretation is that the provisions of the two Statutes by the same Legislature have to be harmoniously read and if harmonious reading is not permissible then the later Statute will amount to deemed repeal of the earlier Law. A reference may be made to a judgment of the Supreme Court reported as **AIR 1963 SC 1561 (Municipal Council, Palai**. **v. T.J. Joseph etc.**), wherein, the Court held as under:

> "**9**. It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together. As has been observed by Crawford on Statutory Construction, p. 631, para 311:
>
> > "There must be what is often called 'such a positive repugnancy between the two provisions of the old and the new statutes that they cannot be reconciled and made to stand together'. In other words, they must be absolutely repugnant or irreconcilable. Otherwise, there can be no implied repeal ..... for the intent of the legislature to repeal the old enactment is utterly lacking."
>
> The reason for the rule that an implied repeal will take place in the event of clear inconsistency or repugnancy, is pointed out in Crosby v. Patch, 18 Calif. 438 quoted by Crawford "Statutory Construction" p.633 and is as follows:
>
> > "As laws are presumed to be passed with deliberation, and with full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the Legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is, irreconcilable. Bowen. v. Lease, 5 Hill 226. It is a rule, says Sedgwick, that a general statute without negative words will not repeal the particular provisions of a

> former one, unless the two Acts are irreconcilably inconsistent. 'The reason and philosophy of the rule,' says the author, 'is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the original Act, shall not be considered as intended to effect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter Act such a construction, in order that its words shall have any meaning at all."

For implying a repeal the next thing to be considered is whether the two statutes relate to the same subject matter and have the same purpose. Crawford has stated at p. 634:

> "And, as we have already suggested, it is essential that the new statute cover the entire subject matter of the old; otherwise there is no indication of the intent of the legislature to abrogate the old law. Consequently, the later enactment will be construed as a continuation of the old one".

The third question to be considered is whether the new statute purports to replace the old one in its entirety or only partially. Where replacement of an earlier statute is partial, a question like the one which the court did not choose to answer in the Commissioners of Sewers case (1862) 142 ER 1104 : 31 LJ CP 223 would arise for decision.

**10**. It must be remembered that at the basis of the doctrine of implied repeal is the presumption that the legislature which must be deemed to know the existing law did not intend to create any confusion in the law by retaining conflicting provisions on the statute book and, therefore, when the court applies this doctrine it does no more than give effect to the intention of the legislature ascertained by it in the usual way i.e. by examining the scope and the object of the two enactments, the earlier and the later.

**11**. The further question which is to be considered is whether there is any repugnancy between the old and the new law. In order to ascertain whether there is repugnancy or not this court has laid down the following principles in Deep Chand v. The State of Uttar Pradesh (1959) Supp 2 SCR 8 at p.43 : (AIR 1959 SC 648 at p.665).

1. Whether there is direct contract between the two provisions;

2. Whether the legislature intended to lay down an exhaustive code in respect of the subject matter replacing the earlier law;

3. Whether the two laws occupy the same field.

**12**. Another principle of law which has to be borne in mind is stated thus by Sutherland on Statutory Construction (Vol. I, 3rd edn. p.486)

> "Repeal of special and local statutes by general statutes : The enactment of a general law broad enough in its scope and application to cover the field of operation of a special or local statute will generally not repeal a statute which limits its operation to a particular phase of the subject covered by the general law, or to a particular locality within the jurisdictional scope of the general statute. An implied repeal of prior statutes will be restricted to statutes of the same general nature, since the legislature is presumed to have known of the existence of prior special or particular legislation, and to have contemplated only a general treatment of the subject-matter by the general enactment. Therefore, where the later general statute does not propose an irreconcilable conflict, the prior special statute will be construed as remaining in effect as a qualification of or exception to the general law."

Of course, there is no rule of law to prevent repeal of a special by a later general statute and, therefore, where the provisions of the special statute are wholly repugnant to the general statute, it would be possible to infer that the special statute was repealed by the general enactment. A general statute applies to all persons and localities within its jurisdiction and scope as distinguished from a special one which in its operation is confirmed to a particular locality and, therefore, where it is doubtful whether the special statute was intended to be repealed by the general statute the court should try to give effect to both the enactments as far as possible. For, as has been pointed out at p. 470 of Sutherland on Statutory Construction, Vol. I where the repealing effect of a statute is doubtful, "the statute is to be strictly construed to effectuate its consistent operation with previous legislation."

**11**. The Supreme Court in a judgment reported as **(1990) 4 SCC 406 (Ashoka Marketing Ltd. and another, etc. v. Punjab National Bank and others, etc.)** was examining a question whether a premises in question

would *ex facie* fall within the purview of both under the Delhi Rent Control Act, 1958 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971**.** In these circumstances**,** whether the provisions of the Public Premises Act override the provisions of the Rent Control Act was considered in the light of the principles of statutory interpretation applicable to laws made by the same legislature. The Court held as under:-

> **"50.** One such principle of statutory interpretation which is applied is contained in the latin maxim : *leges posteriores priores conterarias abrogant* (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim : *generalia specialibus non derogant* (a general provision does not derogate from a special one.) This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Bennion, *Statutory Interpretation* pp. 433-34).
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> *** *** ***
>
> **55.** .....…In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Rent Control Act.
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> **56.** We arrive at the same conclusion by applying the principle which is followed for resolving a conflict between the provisions of two special enactments made by the same legislature. We may in this context refer to some of the cases which have come before this Court where the provisions of two enactments made by the same legislature were found to be inconsistent and each enactment was claimed to be a special enactment and had a non-obstante clause giving overriding effect to its provisions.

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**61.** The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. We propose to consider this matter in the light of this principle.

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**64.** It would thus appear that, while the Rent Control Act is intended to deal with the general relationship of landlords and tenants in respect of premises other than government premises, the Public Premises Act is intended to deal with speedy recovery of possession of premises of public nature, i.e. property belonging to the Central Government, or companies in which the Central Government has substantial interest or corporations owned or controlled by the Central Government and certain corporations, institutions, autonomous bodies and local authorities. The effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that buildings belonging to companies, corporations and autonomous bodies referred to in Section 2(*e*) of the Public Premises Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that the Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest. What can be said with regard to government in relation to property belonging to it can also be said with regard to companies, corporations and other statutory bodies mentioned in Section 2(*e*) of the Public Premises Act. In our opinion, therefore, keeping in view the object and purpose underlying both the enactments viz. the Rent Control Act and the Public Premises Act, the provisions of the Public Premises Act have to be construed as overriding the provisions contained in the Rent Control Act.

**65.** As regards the non-obstante clauses contained in Sections 14 and 22 and the provisions contained in Sections 50 and 54 of the Rent Control Act, it may be stated that Parliament was aware of these

> provisions when it enacted the Public Premises Act containing a specific provision in Section 15 barring jurisdiction of all courts (which would include the Rent Controller under the Rent Control Act). This indicates that Parliament intended that the provisions of the Public Premises Act would prevail over the provisions of the Rent Control Act in spite of the abovementioned provisions contained in the Rent Control Act.
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> *** *** ***
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> **70.** For the reasons aforesaid, we are unable to accept the contention of the learned counsel for the petitioners that the provisions contained in the Public Premises Act cannot be applied to premises which fall within the ambit of the Rent Control Act. In our opinion, the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act and a person in unauthorised occupation of public premises under Section 2(*e*) of the Act cannot invoke the protection of the Rent Control Act."

**12.** The legality of Rule 53 of the 1996 Rules, as amended on 18.05.2017 was challenged before a Division Bench of this Court in **W.P. No.18818/2017 (Ramkumar Sahu v. State of M.P. and others)**. The writ petitions were dismissed on 15.02.2018. The Court held that Section 23C of the Central Act specifically empowers the State Government to make Rules for preventing illegal mining, transportation and storage. Therefore, the Rule 53, as substituted, traces its source to Section 23C of the Act. The relevant extracts of the decision in **Ramkumar Sahu**'s case (**supra**) are reproduced, thus:

> **"20.** In Yogendra Kumar Jaiswal and others v. State of Bihar and others, (2016) 3 SCC 183, the Court held that confiscation of the property at pre-trial stage is not a punishment. In State of W.B. v. Gopal Sarkar, (2002) 1 SCC 495, the Supreme Court has held that power of confiscation under the Forest Act is independent of any proceeding of the prosecution for the forest offence committed. Such view has been

again reiterated in State of M.P. v. S.P. Sales Agencies and others, (2004) 4 SCC 448.

Therefore, the penalty as contemplated under Section 21 of the Act is a punishment whereas confiscation under Rule 53 of the Rules cannot be termed to be a punishment. Thus, the prosecution as contemplated under Section 21 of the Act is a separate and distinct offence than confiscation of the extracted minerals and the vehicles which is not punishment, which provisions are with the view to ensure that the vehicles which are frequently put to use of illegally transporting mineral are kept out of circulation.

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**24**. Section 15 of the Act empowers the State Government to make Rules in respect of minor minerals including the terms on which and the conditions subject to which and the authority by which the quarry leases, mining leases or other mineral concessions may be granted or renewed and fixing and collection of rent, royalty, fees, dead rent, fines etc. or any other matter which is to be, or may be prescribed. Section 23C of the Act specifically empowers the State Government to make rules for preventing illegal mining, transportation and storage of minerals. Therefore, Rule 53, as substituted, traces its source to Section 23C of the Act. Such Rule does not substitute the trial for an offence as contemplated under Section 21 of the Act but is in addition to the offence contemplated under Section 21 of the Act to meet the problem of illegal extraction and transportation of minerals.

**25**. All natural resources vest with the State. The State as an owner of the minerals is protecting its property in the best possible manner by imposing penalties in a graded manner so that repeat violators are imposed higher penalty, which ultimately leads to confiscation of the vessels and tools. The object of such confiscation proceedings is to stop menace of illegal transportation of minerals which have attained gigantic proportion. Such provisions are applicable in non-discriminatory and in non-arbitrary manner."

**13.** We find that the Rule 53 of the 1996 Rules as amended on 18.05.2017 is a valid Rule enacted in furtherance of Section 23C of the Central Act. Coming to the provisions of the Code and the Rules framed under the Central Act, even the 2006 Rules have been framed in exercise of

the powers conferred under Section 23C of the Central Act. But, both occupy separate fields. The 2006 Rules provide for prosecution in case of illegal transportation and storage in respect of minerals including minor mineral whereas the 1996 Rules provide for imposition of penalty, which has been held to be a distinct than of a criminal offence. Thus, a violator can be prosecuted in respect of mineral including minor minerals in relation to transportation and storage of minerals under the 2006 Rules whereas penalty, a civil action can be taken against the violator under Rule 53 of the 1996 Rules. There is no provision in the Code which deals with transportation and storage of minerals to prevent illegal mining. Therefore, in the absence of any other provision in the Code, such Rules do not suffer from the vice of any illegality as they are not in conflict with any other law made by the State. Thus, the 1996 Rules have been validly framed by the State in exercise of powers conferred under Section 15 read with Section 23C of the Central Act.

**14.** Still further, we find that 2006 Rules have been framed in respect of transportation and storage of minerals including minor minerals contemplating only criminal proceedings including the procedure of imposition of penalty and the quantification of penalty apart from penalty in terms of Sub-section (7) of Section 247 of the Code. On the other hand, Rule 53 of the 1996 Rules does not contemplate criminal proceedings but imposition of penalty in graded manner and forfeiture of the minor mineral, tools, machines and vehicles etc. The Rule 53 has a distinct objective and procedure for dealing with menace of illegal extraction of minor minerals.

Thus, the provisions of Rule 53 are in addition to the provisions of prosecution under 2006 Rules in respect of minor minerals.

**15.** Sub-Rule (5) of Rule 18 of the 2006 Rules contemplates imposition of fine, which may extend to ten times of the market value of the mineral or its products or Rupees Five Thousand but, in any case, it shall not be less than Rupees One Thousand or twenty times of royalty of minerals so seized, whichever is higher. Sub-section (7) of Section 247 of the Code does not deal with transportation or storage of mineral. Therefore, the 2006 Rules framed in exercise of the powers conferred under Section 23C of the Central Act do not suffer from any vice of illegality as the penalty in terms of Sub-section (7) of Section 247 of the Code is on extraction or removal of minerals and not on transportation or storage of minerals. In view thereof, even the 2006 Rules are not in conflict with Sub-section (7) of Section 247.

**16.** The 1996 Rules provide for penalty for illegal extraction of mineral and also for transportation and storage of mineral. The Code also provides for penalty for illegal extraction or removal of mineral. However, the incidence of penalty in both the provisions is different. Under the Code, the penalty is imposable on the *market value* of the minerals extracted or removed, whereas in terms of 1996 Rules, Rule 53 imposes penalty on the amount of *royalty* payable on illegally extracted minerals. The 1996 Rules deal with minor minerals. Therefore, the 1996 Rules framed under Section 15 read with Section 23C of the Central Act can be harmoniously read with Sub-section (7) of Section 247 of the Code, as the penalty imposable under Rule 53 of the 1996 Rules is relating to the amount of royalty whereas under Sub-section (7) of Section 247 of the Code, the amount of penalty is four

times of the market value of the minerals. But, penalty amount, as per the royalty amount evaded in terms of the 1996 Rules, cannot exceed four times of the market value of the minerals so extracted in terms of Sub-section (7) of Section 247 of the Code. Thus, the Rule 53 of the 1996 Rules are required to read down in the above said manner.

**17.** Therefore, the penalty in terms of Rule 53 is legal and valid till such time it does not exceed four times *(as amended by M.P. Act No.42 of 2011 w.e.f. 30.12.2011*) of the market value of the mineral extracted, which in the context of 1996 Rules would mean only minor minerals. We may clarify that minerals other than minor minerals are not covered by the 1996 Rules. Therefore, the extraction or removal of minerals other than minor mineral shall continue to attract penalty in terms of Sub-section (7) of Section 247 of the Code apart from prosecution under Rule 18 of 2006 Rules. We may say that penalty in terms of Rule 53 on transportation of minor mineral can be in terms of Rule 53 of 1996 Rules, as Sub-section (7) of Section 247 of the Code does not deal with transportation or storage of minerals. The question No.(1) is, thus, answered accordingly.

**18.** In respect of question No.(2), the 2006 Rules prohibit the transportation or storage of any mineral except in accordance with the licence and permission granted under such Rules. However, the violation of such Rules lead to criminal prosecution, imprisonment and imposition of fine in the manner mentioned in Sub-rule (5) of Rule 18. Such Rules do not deal with imposition of penalty. In view of the judgment of this Court in **Ramkumar Sahu**'s case (**supra**), the confiscation consequent to criminal trial and forfeiture of minor mineral or the tools, machinery or the vehicles

etc. under the 1996 Rules has a distinct object to be achieved. The 1996 Rules do not substitute the trial for an offence as contemplated under Section 21 of the Central Act but also under Rule 18 of the 2006 Rules. Therefore, Rule 53 of the 1996 Rules contemplating imposition of penalty cannot be said to be contravening the provisions of the 2006 Rules. Hence, the 1996 Rules as amended on 18.05.2017 are legal and valid in the face of 2006 Rules as both have been enacted by the State in exercise of the powers conferred on it under the Central Act. The question No.(2) is, thus, answered accordingly.

**19.** As regards the third question: as to whether the competent Authority can forfeit the mineral, tools, machines, vehicles in the first instance without giving an opportunity to the violator to pay penalty in terms of Sub-rule (1) of Rule 53 of the 1996 Rules, the same is now required to be examined. We find that Rule 53 of the said Rules is a poor drafting of the Rules. In fact, Sub-rule (4) of Rule 53 is the first action which is taken by the competent Authority if any person is found involved in extracting or transporting the mineral. The rights of the Investigating Officer are mentioned in Sub-rule (5) whereas Sub-rule (6) deals with compounding of the case. Sub-rules (1), (2), (3) and (4) come thereafter in the sequence of events.

**20.** In terms of Sub-clause (c) of Sub-rule (4) of Rule 53 of the 1996 Rules, all tools, devices, vehicles used in excavation of minor mineral can be handed over to the persons or lessee or any other person from whose possession such material was seized on executing an undertaking to the satisfaction of the officer seizing such material. The competent Authority, as

mentioned in the said Rule, can take police assistance as well. The competent Authority in terms of Sub-rule (4) is the Investigating Officer as well, who has been conferred powers as are vested in the In-charge of a Police Station while investigating any cognizable offence under the Code of Criminal Procedure and also all powers as are vested under the Code of Civil Procedure to compel any person to appear or to be examined on oath or to produce any document. Sub-rule (6) gives liberty to the violator, which will include an extractor or a transporter to seek compounding of the case. Such compounding is permissible on an application to be submitted by the violator before the Authorities mentioned therein but such benefit of compounding is available if he deposits the amount mentioned in Sub-rule (6) in the manner mentioned therein. However, the power of compounding is available before initiating or during operation of the case.

**21.** As per the petitioners, any violator has the right to seek compounding at any time till such time the matter is finally decided in terms of Sub-rule (2) and/or Sub-rule (3) and even in appeal, which is continuation of the *lis*. Whereas, the argument of the State is that option to seek compounding is available to the violator in the first instance as the compounding is available before initiating or during the operation of the case. It is argued that "before initiating" means that before a show cause notice is served in terms of Sub-rule (2) by an officer not below the rank of Deputy Collector in respect of forfeiture of mineral and in respect of seized tools, machines and vehicles in terms of Sub-rule (3). It is also argued that the compounding fee is less than the penalty imposable in terms of Sub-rule (1) of Rule 53 of the 1996 Rules. Therefore, the compounding is a

concession granted to a violator and thus, such benefit of compounding can be sought soon after the minerals are seized but in any case before issuance of imposition of penalty notice.

**22**. The question: as to whether, the liberalized provision of sentence introduced by Central Amending Act No. 9 of 2001 amending Narcotic Drugs and Psychotropic Substances Act, 1985 is available in appeal, came up for consideration before the Supreme Court in a judgment reported as **(2004) 3 SCC 609** (**Basheer** alias **N.P. Basheer v. State of Kerala)**, wherein, it was held that there is no ground for holding that the legislation violated Article 14, as there is classification based on intelligible differentia, which advances the object of the legislation. The Court held as under:-

> **"20.** Merely because the classification has not been carried out with mathematical precision, or that there are some categories distributed across the dividing line, is hardly a ground for holding that the legislation falls foul of Article 14, as long as there is broad discernible classification based on intelligible differentia, which advances the object of the legislation, even if it be class legislation. As long as the extent of overinclusiveness or underinclusiveness of the classification is marginal, the constitutional vice of infringement of Article 14 would not infect the legislation.
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> **21.** In the case before us, Parliament had two discernible objectives in bringing forth the amendment of 2001. These are evident from the Statement of Objects and Reasons and they are:
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> (*1*) avoidance of delay in trials; and
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> (*2*) rationalisation of sentence structure.
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> **22.** Inasmuch as Act 9 of 2001 introduced significant and material changes in the parent Act, which would affect the trial itself, application of the amended Act to cases where the trials had concluded and appeals were pending on the date of its commencement could possibly result in the trials being vitiated, leading to retrials, thereby defeating at least the first objective of avoiding delay in trials. The accused, who had been tried and convicted before 2-10-2001 (i.e. as per the unamended 1985

> Act) could possibly urge in the pending appeals, that as their trials were not held in accordance with the amended provisions of the Act, their trials must be held to be vitiated and that they should be retried in accordance with the amended provisions of the Act. This could be a direct and deleterious consequence of applying the amended provisions of the Act to trials which had concluded and in which appeals were filed prior to the date of the amending Act coming into force. This would certainly defeat the first objective of avoiding delay in such trials. Hence, Parliament appears to have removed this class of cases from the ambit of the amendments and excluded them from the scope of the amending Act so that the pending appeals could be disposed of expeditiously by applying the unamended Act without the possibility of reopening the concluded trials.
>
> **23.** Thus, in our view, the Rubicon indicated by Parliament is the conclusion of the trial and pendency of appeal. In the cases of pending trials, and cases pending investigation, the trial is yet to conclude; hence, the retrospective mollification of the rigour of punishment has been made applicable. In the cases where the trials are concluded and appeals are pending, the application of the amended Act appears to have been excluded so as to preclude the possible contingency of reopening concluded trials. In our judgment, the classification is very much rational and based on clearly intelligible differentia, which has rational nexus with one of the objectives to be achieved by the classification. There is one exceptional situation, however, which may produce an anomalous result. If the trial had just concluded before 2-10-2001, but the appeal is filed after 2-10-2001, it cannot be said that the appeal was pending as on the date of the coming into force of the amending Act, and the amendment would be applicable even in such cases. The observations of this Court in *Nallamilli case [State of A.P. v. Nallamilli Ram Reddi (2001) 7 SCC 708]* would apply to such a case. The possibility of such a fortuitous case would not be a strong enough reason to attract the wrath of Article 14 and its constitutional consequences. Hence, we are unable to accept the contention that the proviso to Section 41 of the amending Act is hit by Article 14."

**23**. We find that after the issuance of penalty notice in terms of Sub-rule (2) or (3) of Rule 53 of the 1996 Rules, the benefit of concession of

composition will not be available to the violator as the expression used is "before initiating or during operation of the case". Once the show cause notice is issued, the penalty in terms of Sub-rule (1) of Rule 53 becomes imposable and it is on payment of such penalty alone, the violator will get discharged. Therefore, the option to seek compounding has to be exercised before serving a notice of imposition of penalty in terms of Sub-rule (2) of Rule 53 or even in case of seized tools, machines, vehicles and other material in terms of Sub-rule (3) of Rule 53 of the 1996 Rules. The competent Authority is not required to give any option to the violator to opt for compounding of violation of the Rules but the violator himself has to volunteer and seek compounding. The competent Authority will only serve notice in terms of Sub-rule (2) and/or Sub-rule (3) of Rule 53 of the 1996 Rules. As such, the question No.(3) stands answered accordingly.

**24**. Another question No.(4), which arises, is the consequence of the fact that the word "vehicles" does not find mention in the last line of Sub-rule (6) of Rule 53 of the 1996 Rules, which provides that "on being compounded, the seized mineral, tools, machinery/and other materials shall be discharged".

**25**. On behalf of the petitioners the argument is that in the entire Rule 53, the words "tools", "machines", "vehicles" etc. have been used together. Reference is made to a long title of Sub-rule (3) and also clause (a) and (b) of Sub-rule (3). Even clause (c) of Sub-rule (4) again uses the words "tools, devices, vehicles and other materials" used in excavation of minor mineral. Therefore, the omission to incorporate the word "vehicles" in the last line of Sub-rule (6) is meaningless if on payment of compounding the vehicle is not

to be released. The scheme of Rule 53 is to give an option to the violator to seek compounding of the violation and the seized material, tools, machines and other material shall be discharged as the violator pays the penalty in terms of Sub-rule (1) of Rule 53. The State could not explain any special reason to exclude the word "vehicles" from the last line of Sub-rule (6).

**26**. We find that the omission of word "vehicles" appears to be unintentional; therefore, to give effect to Sub-rule (6) permitting violator to seek compounding of the violation, the last line of Sub-rule (6) shall include the word "vehicles". Such interpretation would be in furtherance of the objective for which the Rule 53 of the 1996 Rules has been framed. In fact, the expression "other materials" in the last line of the said Sub-rule would include "vehicles" as well in the absence of anything contrary in the Rules and the definition of the word "vehicles". The material would include everything tangible including the vehicles.

**27**. The Supreme Court in a judgment reported as **Commissioner of Income Tax, Central Calcutta v. National Taj Traders, (1980) 1 SCC 370**, examined as to when the Courts can add words in a Statute. It was held that the first principle is that 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. The relevant extracts of the said decision read, thus:-

> **"10.** 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. In regard to the former the following statement of law appears in *Maxwell on Interpretation of Statutes* (12th Edn.) at p. 33:
>
> > "*Omissions not to be inferred.*—It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Morsey said: 'It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do'. 'We are not entitled', said Lord Loreburn L.C., 'to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself'. A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears in consequence to have been unintentional."
>
> In regard to the latter principle the following statement of law appears in Maxwell at p. 47:
>
> > **"***A statute is to be read as a whole.*—It was resolved in the case *of Lincoln College* [(1595) 3 Co. Rep. 58b at p. 59b] that the good expositor of an Act of Parliament should 'make construction on all the parts together, and not of one part only by itself'. Every clause of a statute is to 'be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute'." (Per Lord Davey in *Canada Sugar Refining Co. Ltd.* v.*R.*, 1898 AC 735.)
>
> In other words, 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 Danckwerts, 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 legislation 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* (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".] In the light of these principles we will have to construe sub-section (2)(*b*) with reference to the context and other clauses of Section 33-B."

**28**. In a recent judgment reported as **Eera** through Dr. Manjula Krippendorf **v. State (NCT of Delhi) and another, (2017) 15 SCC 133**, the Supreme Court held that the legislative intention must be gatherable from the text, content and context of the statute and the purposive approach should help and enhance the functional principle of the enactment. If an interpretation is likely to cause inconvenience, it should be avoided. The Court held as under:-

> **"56.** In *Padma Sundara Rao* v. *State of T.N. [(2002) 3 SCC 533]* the Constitution Bench referred to two principles of construction — one relating to casus omissus and other in regard to reading the statute as a whole. I am referring to the authority to appreciate the principle of "casus omissus". In that context, the Court has ruled that: (SCC pp. 542-43, para 15)
>
> > "*15*. … 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. …"
>
> *** *** ***
>
> **65.** I have perceived the approach in *Hindustan Lever Ltd. v. Ashok Vishnu Kate, (1995) 6 SCC 326* and *Director of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440*, *Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551* and many others. I have also analysed where the Court has declined to follow the said approach as in *R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628* and other decisions. The Court has evolved the principle that the legislative intention must be gatherable from the text, content and context of the statute and the purposive approach should help and enhance the functional principle of the enactment. That apart, if an interpretation is likely to cause inconvenience, it should be avoided, and further personal notion or belief of the Judge as regards the intention of the makers of the statute should not be thought of. And, needless to say, for adopting the purposive approach there must exist the necessity. The Judge, assuming the role of creatively constructionist personality, should not wear any hat of any colour to suit his thought and idea and drive his thinking process to wrestle with words stretching beyond a permissible or acceptable limit. That has the potentiality to cause violence to the language used by the legislature. Quite apart from, the Court can take aid of casus omissus, only in a case of clear necessity and further it should be discerned from the four corners of the statute. If the meaning is intelligible, the said principle has no entry. It cannot be a ready tool in the hands of a Judge to introduce as and what he desires."

**29**. Thus, we find that though the expression "other materials" appearing in the last line of Sub-Rule 6 would include "vehicles" as well but we find that the absence of specific word "vehicles" is of no consequence as in the entire Rue 53, the word "vehicles" has been used along with words, mineral, tools and machinery. There is no reason forthcoming to specifically exclude "vehicles" from being discharged on payment of composition fee.

**30**. In respect of question Nos.(5) and (6), the argument of the learned senior counsel for the petitioners is that the competent Authority cannot be given complete discretion so as to forfeit the mineral in one case and to impose penalty in terms of Sub-rule (1) of Rule 53 of the 1996 Rules in another. There is no guidelines available on the entire reading of Rule 53 of the 1996 Rules, therefore, to avoid the vice of discrimination and arbitrariness, the forfeiture of the minerals in terms of Sub-rule (2) of Rule 53 or of vehicles, tools, machines and other materials in terms of Sub-rule (3) can only be effected after the violator fails to pay penalty imposable under Sub-Rule (1) of Rule 53 of the said Rules. The complete discretion to forfeit in one case and to impose penalty in another case, in the absence of any guidelines available in the entire reading of Rule 53 would suffer from vice of arbitrariness. Reference may be made to Supreme Court judgment rendered in **M/s Jagdish Chand Radhey Shyam vs. State of Punjab and others, (1973) 3 SCC 428** wherein the Supreme court has held as under:-

> "**16**. Section 9 confers power to resume the site. There is a charge on the land for the unpaid consideration money. This charge can be enforced by instituting a suit in a court of law. The owner will have the opportunity of paying the money and clearing the property of the charge. On the other hand when the Government proceeds under Section 9 of the Act, to resume the land or building the Government proceeds under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. There is no guidance in the Act as to when the Government will resort to either of the remedies.
>
> **17**. Again in all these cases of recovery of money or resumption of land or building and forfeiture of monies paid the Government may choose and discriminate in proceeding against one person in one manner and another person in another manner.
>
> **18**. The Act creates a charge on the property. The Act forbids creation of a third part right by the transferee until the amount represented by the

> charge is paid in full. In the teeth of statutory security and enforceability it is totally unreasonable restriction on the enjoyment of property by resuming the site for defaults in payments of money and forfeiting the monies paid by the transferee.
>
> **19**. For these reasons, we are of opinion that the Government is not entitled to forfeit the monies paid and resume the site under the provision contained in Section 9 of the 1952 Act. These provisions violate Articles 14 and 19(1)(f). These provisions are unconstitutional."

**31**. In another judgment reported as **(1984) 4 SCC 612 (Jiwani Kumar Paraki v. First Land Acquisition Collector, Calcutta and others**) it has been held by the Supreme Court that where two powers are vested with one Authority and if the purpose can equally be served by one which causes lesser inconvenience and damage to the citizen then the use of another clause which is disadvantageous to the citizen would be bad on the ground that it will be a misuse of the power of law. The relevant extract of the said decision is reproduced as under:

> "**23**. Where one is repository of two powers that is power of requisition as well as power of acquisition qua the same property and if the purpose can equally be served by one which causes lesser inconvenience and damage to the citizen concerned unless the repository of both the powers suffers from any insurmountable disability, user of one which is disadvantageous to the citizen without exploring the use of the other would be bad not on the ground that the Government has no power but on the ground that it will be a misuse of the power in law."

**32**. In a judgment reported as **(2009) 16 SCC 208 (Managing Director, Haryana State Industrial Development Corporation and others v. Hari Om Enterprises and Another**) the Supreme Court held that where two remedies to enforce a contract are available, the power should be exercised in reasonable manner. A harsher remedy may not ordinarily be resorted to.

**33**. Therefore, though Sub-rule (2) of Rule 53 empowers the Deputy Collector to take an appropriate decision but it also says that the seized material shall not be discharged till the penalty imposed is not paid. Thus, it is only in case of forfeiture, the seized material is required to be disposed of. Therefore, in terms of Sub-rule (2), if the penalty imposable in terms of Sub-rule (1) of Rule 53 is paid, the stage of forfeiture does not mature. It is only when penalty in terms of Sub-rule (1) of Rule 53 is not paid; the question of forfeiture will arise. Such process alone will save Sub-rule (2) of Rule 53 from the vice of discrimination and arbitrariness. Therefore, in question No. (5) it is held that without giving an opportunity to the violator to pay penalty in terms of Sub-rule (1) of Rule 53 of the 1996 Rules, the forfeiture cannot be resorted to. Similarly, in the light of the discussion in respect question No. (5), the forfeiture of seized tools, machines and vehicles etc. in terms of Clause (a) of Sub-rule (3) of Rule 53 can be resorted to only when penalty in terms of Sub-rule (1) of Rule 53 is not paid.

**34**. However, in respect of Clause (b) of Sub-rule (3) of Rule 53, when a vehicle carrying mineral extracted/transported without any transit pass is intercepted, the forfeiture can be resorted to only after penalty in terms of Sub-rule (1) is not paid. However, in terms of the proviso, the vehicle carrying mineral cannot be forfeited for the first three defaults but the vehicle is liable to be forfeited on the fourth default whereas in terms of Sub-rule (1), the forfeiture ensues after four defaults i.e. fifth times. Therefore, in respect of a vehicle carrying mineral extracted/transported without any transit pass, the violator can offer to pay penalty in terms of Sub-rule (1) for the defaults three times but it is only in the case of default at

the fourth time, the vehicle would be liable to be forfeited. Therefore, in the case of vehicles, transporting or extracting mineral without any transit pass, the forfeiture can be ordered after three defaults whereas, in case of other situations, the forfeiture can be ordered after four defaults.

**35**. In view of the said discussion, we find that the order of this Court in **Nihal Khan**'s case (**supra**) is not the correct enunciation of law, as it was held forfeiture can be ordered in case a violator is not possessed of transit pass. Sub-rule (2) of Rule 53 of the 1996 Rules deals with illegal extraction of mineral whereas Sub-rule (3) of Rule 53 deals with illegal extraction and/or transportation of minerals. Since the illegal extraction and/or transportation are covered under Sub-rules (2) and (3), therefore, forfeiture in the absence of transit pass cannot be invoked in the first instance without giving the violator an opportunity to penalty. Thus, the judgment of this Court in **Nihal Khan**'s case (**supra**) is overruled.

**36**. Having answered the questions framed, the conclusions can be summarized as under:-

i) The M.P. Minor Mineral Rules, 1996 or the M.P. Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 are the Rules made by the State Government in exercise of the powers vested in the State Government in terms of the Mines and Minerals (Development and Regulation) Act, 1957. Such Rules neither contradict Sub-section (7) of Section 247 of the M.P. Land Revenue Code, 1959 nor suffer from any other vice of illegality.

ii) The M.P. Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 provide for prosecution in respect of transportation and storage of minerals including minor minerals but such prosecution is in addition to penalty to be imposed in terms of Sub-section (7) of Section 247 of the Code in respect of illegal extraction or removal of minerals.

iii) The M.P. Minor Mineral Rules, 1996 provide for penalty for extraction or transportation of minor minerals, which is in addition to the prosecution under the M.P. Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 or the penalty to be imposed under Sub-section (7) of Section 247 of the Code.

iv) The penalty relating to royalty amount in terms of Rule 53 of the 1996 Rules is legal and valid till such time it does not exceed four times (as amended by M.P. Act No.42 of 2011 w.e.f. 30.12.2011) of the market value of the minor mineral extracted. The extraction or removal of minerals other than minor mineral shall continue to attract penalty in terms of Sub-section (7) of Section 247 of the Code.

v) The penalties and forfeiture of minerals, machines, tools, vehicles etc. under Rule 53 of the 1996 Rules, in all other respects, except in respect of illegal extraction or removal of minor minerals, which are covered by Sub-section (7) of

Section 247 of the Code, shall be applicable without any condition.

vi) The benefit to seek compounding has to be exercised before serving a notice of imposition of penalty in terms of Sub-rule (2) of Rule 53 of 1996 Rules or in the event of seizure of tools, machines, vehicles and other material in terms of Sub-rule (3) of Rule 53 of the 1996 Rules. The competent Authority is not required to give any option to the violator to seek compounding of violation of the Rules but the violator himself has to volunteer and seek compounding.

vii) The vehicle is included in the expression "other materials" in the last line of sub-rule 6 of Rule 53. Still the omission to use the "vehicle" specifically in the last line of Sub-rule (6) is meaningless and unintentional.

viii) The forfeiture of mineral or tools, machines and vehicles cannot be resorted to without giving an opportunity to the violator to pay penalty in terms of Sub-rule (1) of Rule 53 of the 1996 Rules. Similarly, the forfeiture of seized tools, machines and vehicles etc. in terms of Clause (a) of Sub-rule (3) of Rule 53 can be resorted to only when penalty in terms of Sub-rule (1) of Rule 53 is not paid.

ix) In case of the vehicles transporting or extracting mineral without any transit pass in terms of Clause (b) of Sub-rule (3) of Rule 53, the forfeiture can be ordered after three defaults

whereas, in case of other situations, the forfeiture can be ordered after four defaults.

x) The violator would be liable to be criminally prosecuted in respect of minerals including the minor minerals in terms of the 2006 Rules whereas in terms of Rule 53 of the 1996 Rules, the violator will be liable to pay penalty, which is distinct from the criminal proceedings.

**37**. In view of the above opinion, the matters be now placed before the Bench in accordance with the Roster for final disposal.

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|---|---|---|
| **(Hemant Gupta)** | **(Vijay Kumar Shukla)** | **(Sanjay Dwivedi)** |
| **Chief Justice** | **Judge** | **Judge** |

***S/***