HIGH COURT OF MADHYA PRADESH AT JABALPUR

WRIT PETITION NO.20831/2018

PETITIONER : **RAJKUMAR SAHU**
Vs.

RESPONDENTS **:** **STATE OF M.P AND OTHERS**

Present : Hon'ble The Chief Justice Shri S. K. Seth,
Hon'ble Justice Shri R.S. Jha,
Hon'ble Justice Smt. Nandita Dubey,
Hon'ble Justice Shri Rajeev Kumar Dubey,
Hon'ble Justice Shri Sanjay Dwivedi.

For the Petitioners : Shri Aditya Sanghi, Ms. Ghuncha Rasool, Shri Ajeet Kumar Singh & Shri Ranjeet Dwivedi, Advocates.

For the Respondent/State: Shri Shashank Shekhar, Addl. A.G.

Whether approved for reporting: YES

Law Laid down :

Significant para nos. :

O R D E R
(28/03/2019)

Per R. S. Jha, J.

This petition has been referred to a Larger Bench to reconsider the conclusions recorded by the Full Bench of this Court in the case of **Nitesh Rathore and another Vs. State of M.P. and others,** 2018 (4) M.P.L.J. 193, in respect of Issue nos.5 and 6 framed and answered thereunder, which are as follows:-

> "(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?"

2. Having heard the learned counsel for the parties and having perused the judgment in the case of **Nitesh Rathore** (supra), it is observed that several issues have been raised and are required to be considered by this Larger Bench for determining whether question nos.5 & 6 have been rightly decided or not by the Full Bench in the case of **Nitesh Rathore** (supra). The following questions/issues that arise are as under:-

(I) "Whether the decision of the Division Bench of this Court in the case of **Ram Kumar Sahu vs. State of M.P**., 2018 (4) MPLJ 171, upholding the constitutional validity of Rule 53 of the M.P. Minor Mineral Rules, 1996 (hereinafter referred to as 'the Rules of 1996'), as inserted and amended by notification dated 18.5.2017, still remains good law or stands impliedly over-ruled by the Full Bench decision in the case of **Nitesh Rathore** (supra) ?"

(2) Whether conferral of discretion upon the competent authority to pass orders of forfeiture or discharge under Rule 53(2) and 53(3) is perse violative of Article 14 of the Constitution of India, and, therefore, it is necessary to

restrict the same by issuing guidelines to save it from the vice of arbitrariness as has been done by the Full Bench in the case of **Nitesh Rathore** (supra) ?

(3). Whether the discretion vested in the competent authority under Rule 53(2) and 53(3) can be said to be totally unguided and uncontrolled inspite of the fact that the order passed by the competent authority under the aforesaid Rules is subject to scrutiny in appeal by a higher authority under Rule 57 of the Rules of 1996, and further revision by the State Government under Rule 58 of the Rules of 1996 ?

(4). Whether the power to take an appropriate decision vested in the competent authority under Rule 53(2) and 53(3) regarding forfeiture and discharge, is totally unguided, unfettered and absolute ?

(5). Whether the Full Bench of this Court in the case of **Nitesh Rathore** (supra), after recording a finding that the complete discretion to forfeit in one case and to impose penalty in another case in the absence of any guidelines suffers from the vice of arbitrariness, has rightly restricted the exercise of powers of forfeiture under Rule 53(2) and 53(3) to only those cases where penalty in terms of Rule 53(1) is not paid ?

(6). Whether the Full Bench in the case of **Nitesh Rathore** (supra) has rightly interpreted the provisions of Rule 53, to hold that "*it is only when default 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 Rules of 1996, the*

forfeiture cannot be resorted to. Similarly, in the light of the discussion in respect of question no.5, the forfeiture of seized tools, machines and vehicle 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."

(7). Whether in view of the only exceptions carved out and specifically mentioned in the proviso to Rule 53(3)(b) and Rule 53(6) regarding confiscation, providing for and laying down guidelines and reading something more into the provisions of Rule 52(2) and 52(3) as has been done by the Full Bench in the case of **Nitesh Rathore** (supra) is justified. In other words, whether reading something more into the Rules is permissible when its language is otherwise clear and unambiguous ?

(8). Whether the conclusion recorded by the Full Bench in the case of **Nitesh Rathore** (supra) relating to Rule 53(3)(b) and the proviso to the effect that "*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, finds any basis in Rule 53 or infact runs contrary to its clear and unambiguous language?*"

Issue No.1:-

3. Before we proceed any further to examine the interpretation of Rule 53 of the Rules of 1996, as made by the Full Bench in the case of **Nitesh Rathore** (supra), it is pertinent to note that the constitutional validity of Rule 53 of the Rules of 1996, as amended by notification dated 18.5.2017 has already been upheld by the Division Bench of this Court in the case of **Ram Kumar Sahu vs. State of M.P.**, 2018 (4) MPLJ 771.

4. The Division Bench of this Court, while doing so considered the challenge to the provisions of Rule 53 on the ground that it was in conflict with the provisions of Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, (hereinafter referred to as 'the MMDR Act') and the M.P. Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules 2006, (hereinafter referred to as 'the Rules of 2006'). All the relevant provisions of the M.M.D.R. Act as well as the provisions of the Rules of 2006 and 1996, were considered by the Division Bench of this Court in the case of **Ram Kumar Sahu** (supra) and, relying on the decisions of the Supreme Court rendered in the cases of **Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and others** (1985) 4 SCC 573, **State of West Bengal Vs. Gopal Sarkar** (2002) 1 SCC 495, **State Madhya Pradesh Vs. S.P. Sales Agency and others (**2004) 4 SCC 448; the Division Bench decision of this Court rendered in the case of **Kailash Chand**

and another Vs. State of Madhya Pradesh and others, AIR 1995 MP 1, as well as the decision of the Supreme Court rendered in the case of **State** (**NCT Delhi) vs. Sanjay,** (2014) 9 SCC 772 and **Yogendra Kumar Jaiswal and others Vs. State of Bihar and others** (2016) 3 SCC 183, the Division Bench of this Court upheld the validity of Rule 53 by holding that the penalty contemplated under Section 21 of the Act relates to culpability and the consequent punishment, whereas the provisions of confiscation contained in Rule 53, being measures incorporated with the object and purpose of ensuring recovery of royalty and preventing illegal extraction and transportation of mineral and to ensure that vehicles, tools, machines, etc. that are repeatedly used for illegal extraction and transportation of minerals, are kept out of circulation, do not involve criminal prosecution and are on a different footing and, therefore, are not in conflict or duplication of the punishment contemplated under Section 21 of the M.M.D.R. Act. It has also been held in **Ram Kumar Sahu** (supra) that the State has the legislative competence to frame the Rules and that the Rules do not fall foul of any fundamental right and that they have been framed with the pious object of providing machinery provisions to prevent illegal extraction and transportation of minerals and to confiscate machines, tools, vehicles, etc. used for that purpose as a deterrent measure to prevent their repeated use.

5. It is worth noting that the Full Bench in the case of **Nitish Rathore** (supra) has also categorically held that Rule 53 of the Rules of 1996, is not in conflict with and is in addition to the provisions of the Act; the Rules of 2006 or any other provisions of the Indian Penal Code and have been validly framed by the State in exercise of powers conferred under Section 15 read with Section 23C of the Act.

6. The law in this regard has also been laid down in a recent decision of the Supreme Court in the case of **State of M.P. and others vs. Kallo Bai,** (2017) 14 SCC 502, wherein similar provisions for penalty and confiscation contained in Section 15 and 15(A) to 15(D) of the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969**,** have been explained and affirmed stating that the power of confiscation is independent of and in addition to any criminal prosecution for forest offences committed.

7. The Supreme Court in the case of **Kallo Bai** (supra), relying on the decision in the case of **S.P. Sales Agencies** (supra) and in the case of **G. V. Sudhakar Rao** (supra), has held as under in paragraph 9 to 11:-

> "9. The next question that arises in the present case is as to whether confiscation proceeding can be initiated under Section 52 of the Act only after launching of criminal prosecution or it is open to the Forest Authorities upon seizure of forest produce to initiate both or either. Under Section 52 of the Act when a forest officer or a

police officer has reasons to believe that a forest offence has been committed in respect of any forest produce, he may seize the same whereupon confiscation proceeding can be initiated.“Forest offence” has been defined under Section 2(3) of the Act to mean an offence punishable under this Act or any rule framed thereunder. Section 41 empowers the State Government to frame rules for regulating transit of forest produce. Section 42 further empowers the State Government to frame rules prescribing thereunder penalties for breach of the Rules framed under Section 41 of the Act. Section 76 confers additional powers upon the State Government to make rules, inter alia, for carrying out provisions of the Act. Purporting to act under Sections 41, 42 and 76 of the Act, the Government of Madhya Pradesh framed the Transit Rules referred to above, Rule 3 whereof lays down that no forest produce shall be moved either within the State of Madhya Pradesh or beyond its territory without obtaining a transit pass. Sub-rule (1) of Rule 29 lays down that whosoever contravenes any of the provisions of these Rules shall be liable to be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

10. In the present case, the allegations are that by committing breach of Rule 3 a forest offence within the meaning of Section 2(3) of the Act has been committed for which a criminal prosecution under Rule 29 of the Transit Rules as well as a confiscation proceeding under Section 52 of the Act could be initiated. From the scheme of the Act, it would appear that for contravention of Rule 3, two independent actions are postulated — one, criminal prosecution and the other, confiscation proceeding. The power of confiscation, exercisable under Section 52 of the Act, cannot be said to be in any manner dependent upon launching of criminal prosecution as it

has nowhere been provided therein that the forest produce seized can be confiscated only after criminal prosecution is launched, but the condition precedent for initiating a confiscation proceeding is commission of forest offence, which, in the case on hand, is alleged to have been committed. Reference in this connection may be made to a decision of this Court in the case of ***Divisional Forest Officer* v. *G.V. Sudhakar Rao*** [(1985) 4 SCC 573 : 1986 SCC (Cri) 34] wherein it has been clearly laid down that the two proceedings are quite separate and distinct and initiation of confiscation proceeding is not dependent upon launching of criminal prosecution. In the said case, the Court observed thus: (SCC p. 583, para 12)

> 'The conferral of power of confiscation of seized timber or forest produce and the implements etc. on the authorized officer under sub-section (2-A) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the court for commission of an offence. Under sub-section (2-A) of Section 44 of the Act, where a Forest Officer makes a report of seizure of any timber or forest produce and produces the seized timber before the authorized officer along with a report under Section 44(2), the authorized officer can direct confiscation to Government of such timber or forest produce and the implements etc. if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under Section 20 or 29 of the Act.'

11**.** In the case of ***State of W.B.* v. *Gopal Sarkar*** [(2002) 1 SCC 495 : 2002 SCC (Cri) 161] while

> noticing the view taken in the case of ***G.V. Sudhakar Rao*** [(1985) 4 SCC 573 : 1986 SCC (Cri) 34] this Court has reiterated that the power of confiscation is independent of any criminal prosecution for the forest offence committed. This being the position, in our view,
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> the High Court has committed an error in holding that initiation of confiscation proceeding relating to *kattha* was unwarranted as no criminal prosecution was launched."

8. It is, therefore, settled law as laid down by the Supreme Court in the case of **N.C.T. Delhi** (supra), **Ram Kumar Sahu** (supra), **Kallo Bai** (supra) and the other judgments referred to in the preceding paragraphs that the proceedings for imposition of penalty and confiscation contained in Rule 53 of the Rules of 1996, have been validly enacted and are not in conflict with and are in addition to and apart from the provisions of criminal prosecution and punishment of the offender indulging in illegal extraction or transportation of mineral as contemplated and provided under the Indian Penal Code, the Indian Forest Act, the Wild Life Protection Act, the M.P. Van Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969, the M.P. Land Revenue Code, 1959 or any other statutory provisions that provides for penalty and forfeiture in such cases.

9. The Division Bench in **Raj Kumar Sahu** (supra) has also taken note of the settled law laid down by the decision of the Supreme Court rendered in the case of **N.C.T. Delhi** (supra)

and has held that the authority concerned are bound to initiate and take up criminal proceedings under the Indian Penal Code and other laws on their own to prosecute persons indulging in theft, destroying or illegally exploiting natural resources including minerals apart from the proceedings undertaken against the offender under Rule 53 of the Rules of 1996.

10. From the aforesaid it is clear that the provision of Rule 53 as amended by notification dated 18.5.2017 have already been held to be valid and the challenge to their unconstitutionality has been rejected by this Court in the case of **Ram Kumar Sahu** (supra). It is also undisputed, and an admitted fact, that the constitutional validity of Rule 53 of the Rules of 1996, was not subject matter of challenge before the Full Bench in the case of **Nitesh Rathore** (supra) nor was the correctness of the decision upholding its validity in the case of **Ram Kumar Sahu** (supra) referred for consideration in the case of **Nitesh Rathore** (supra). In other words, while the constitutional validity of Rule 53 has already been upheld by this Court in the case of **Ram Kumar Sahu** (supra), the Full Bench in the case of **Nitesh Rathore** (supra), while deciding issue nos.5 & 6 has held that Rule 53(2) and 53(3) suffers from the vice of arbitrariness and requires to be regulated by providing guidelines. This has resulted in an ambiguous situation requiring reference to this Larger Bench.

11. The Full Bench in the case of **Nitesh Rathore** (supra) was only considering the correctness of the interpretation of Rule 53 as made in the case of **Nihal Khan vs. State of M.P. and other,** 2018 MPLJ Online 6. In the light of the decisions of the Supreme Court in the case of **Kallo Bai** (supra) and the decisions relied upon by the Division Bench of this Court in the case of **Ram Kumar Sahu** (supra), we are of the considered opinion that the decision in the case of **Ram Kumar Sahu** (supra) correctly lays down the law upholding the validity of Rule 53 of the Rules of 1996, which even otherwise, has not been assailed in the present petition or referred to this Larger Bench.

12. In the backdrop of the aforesaid facts, the additional arguments of the learned counsel for the petitioner that Rule 53 of the Rules of 1996, being in conflict with the Rules of 2006 and the MMDR Act, cannot be invoked to order forfeiture of tools, machines, vehicles, etc., and on that count the decision in **Nitesh Rathore** (supra) does not warrant reconsideration, is accordingly rejected.

13. We, accordingly, answer ***issue no.1*** and proceed to decide the reference to this Larger Bench treating the provisions of Rule 53 of the Rules of 1996, as constitutionally valid.

Issue No.2.

14. The law relating to validity of statutory provisions conferring discretionary power upon an authority has been considered and laid down by the Supreme Court in several decisions. The Supreme Court has held that a statutory provision *per-se* conferring discretionary powers vested upon an authority cannot be declared unconstitutional, arbitrary and violative of Article 14 of the Constitution of India, merely on the assumption or presumption that the authority would act in an arbitrary manner in exercise of such discretion.

15. In the case of **D.K. Trivedi & Sons and others Vs. State of Gujarat and others,** AIR 1986 SC 1323, the Supreme Court in paragraph 50 has held that "*where the statute confers discretionary powers in exercise of administrative authority, the validity or constitutionality of such power cannot be judged on the assumption that the executive or such authority will act in an arbitrary manner in the exercise of the discretion conferred upon it. If the executive or the administrative authority acts in an arbitrary manner, its action would be bad in law and liable to be struck down by the Courts but the possibility of abuse of power or arbitrary exercise of power cannot invalidate the statute conferring the power or the power which has been conferred by it*".

16. The decision in the case of **D.K. Trivedi** (supra) has been followed and quoted with approval by the Supreme Court

in the case of **Raojibhai Jivabhai Patel and others Vs. State Of Gujarat and others** 1989 Supp. SCC 744, in paragraph 9, as well as in the case of **Hardev Motor Transport vs. State of M.P. and others,** (2006) 8 SCC 613, wherein in para-35 it has been held "*we, however, do not mean to suggest that only because a wide power has been conferred the same by itself would lead to a presumption that the same is capable of misuse or on that count alone the provisions of Article 14 of the Constitution of India would be attracted. But, when a statute confers a wide power upon a statutory authority, a closer scrutiny would be required*."

17. In the case of **In Re the Special Courts Bill, 1978** (1979) 1 SCC 380, a Seven Judges Bench of the Supreme Court in para-72(10) has held as under:-

> "**72(10)**.Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power."

18. In the case of **Supreme Court Advocates on Record Association and another vs. Union of India,** (2016) 5 SCC 1, the Supreme Court, taking into consideration all

previous decisions, has again reaffirmed the law in the following manner in paras 858 and 859:-

> "**858**. At the same time, it has been emphasised by this Court that the possibility of abuse of a provision of a statute is not a ground for striking it down. An abuse of power can always be checked through judicial review of the action complained of. In ***D.K. Trivedi & Sons* v. *State of Gujarat***, 1986 Supp SCC 20, para 50] it was said: (SCC pp. 60-61)
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> > "*50*. Where a statute confers discretionary powers upon the executive or an administrative authority, the validity or constitutionality of such power cannot be judged on the assumption that the executive or such authority will act in an arbitrary manner in the exercise of the discretion conferred upon it. If the executive or the administrative authority acts in an arbitrary manner, its action would be bad in law and liable to be struck down by the courts but the possibility of abuse of power or arbitrary exercise of power cannot invalidate the statute conferring the power or the power which has been conferred by it."
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> **859.** Similarly, B.P. Jeevan Reddy, J. (speaking for J.S. Verma, S.C. Agrawal, A.S. Anand, B.N. Kirpal, JJ. and himself) held in ***Mafatlal Industries Ltd.* v. *Union of India***, (1997) 5 SCC 536, para 88] : (SCC p. 619)
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> > "*88*. ... It is equally well settled that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding the provision procedurally or substantively unreasonable. In ***Collector of Customs* v. *Nathella Sampathu Chetty***, AIR 1962 SC 316, this Court observed: (AIR p. 332, para 33)

> '*33*. ... The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity.'

It was said in ***State of Rajasthan* v. *Union of India***, (1977) 3 SCC 592, para 56] ,

> 'It must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief'. (SCC p. 658, para 147)"

19. In view of the law laid down by the Supreme Court in the aforesaid decisions, it is apparent that mere possibility of abuse and arbitrary exercise of discretion vested in an authority cannot be a ground to invalidate the same. Similarly, in cases where discretion is vested in an authority, no assumption or presumption can be drawn that the same would be exercised arbitrarily or discriminately moreso as in such cases the action taken by the authority in exercise of discretion can be assailed and can be subjected to judicial review but the provisions conferring discretion cannot be found fault with. The opinion to the contrary, expressed by the Full Bench in the case of **Nitesh Rathore** (supra) is hereby over-ruled.

Issue No.3:-

20. A Five Judges Bench of the Supreme Court in the case of **Ch. Tika Ramji and others vs. State of U.P and others,** AIR 1956 SC 676, (paras-47 to 51), has held that where discretionary power exercised by an authority is subject to appeal before a higher authority, it cannot be urged that the powers conferred upon the authority is discriminatory, uncontrolled and unguided so as to violate the Fundamental Rights guaranteed under Article 14 of the Constitution of India, as the provision of appeal is a sufficient and adequate safeguard against any arbitrary exercise of powers.

21. Another Full Bench of the Supreme Court in the case of **Mangalore Ganesh Beedi Works and others vs. Union of India and others,** (1974) 4 SCC 43 (para-29) has taken a similar view and has held that the right to appeal against an order is a great safeguard preventing abuse of the powers and where such a provision of appeal has been provided, the discretionary power conferred upon the authority cannot be said to be unfair or unreasonable.

22. Similar view has been taken by the Supreme Court in the case of **Chaturbhai M. Patel vs. Union of India and others,** AIR 1960 SC 424 (para-16) and **Biswanath Bhattacharya vs. Union of India and others,**(2014) 4 SCC 329 (para-16).

23. In view of the law laid down by the Supreme Court in the above mentioned cases, the fact that the exercise of discretionary powers of taking an appropriate decision conferred upon the competent authority under Rule 53(2) and 53(3) of the Rules of 1996, is subject to scrutiny in appeal under Rule 57 of the Rules of 1996, and revision by the State Government under Rule 58 of the Rules of 1996, is in itself adequate and sufficient safeguard against discriminatory, uncontrolled and unguided exercise of discretionary powers conferred upon the competent authority. As the discretion vested in the competent authority under Rule 53 of the Rules of 1996, is subject to appeal and revision under Rule 57 and 58, it cannot be held to be unguided, uncontrolled or discriminatory. The conclusion recorded by the Full Bench to the contrary in the case of **Nitesh Rathore** (supra) is hereby over-ruled.

Issue No.4:-

24. Before we advert to the aforesaid issue, it is appropriate to consider the provisions of Rule 53 of the Rules of 1996, as amended by notification dated 18.5.2017 and the stipulations contained therein. Rule 53 of the Rules of 1996, is as under:-

> **"53. Penalty for un-authorised extraction and transportation.** - Whenever any person is found extracting or transporting minerals or on whose behalf such extraction or transportation is being made otherwise then in accordance with these rues, 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 third time or subsequent contravention, a penalty of minimum 70 times of the royalty of illegally extracted/transported minerals, shall be imposed but it shall not be less than fifty thousand rupees.

(2) Forfeiture of minerals in cases of illegal extraction 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 Collator, 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 authorised 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 miner mineral in such contravention and to handover all material so seized to the persons or lessee or any other person from whose possession, such material was seized on executing an undertaking up to the satisfaction of the officer seizing such material, to this effect that he shall forthwith produce such material as and when may be required to do so :

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

(d) officer as mentioned above shall inform the Collector or any other officer not below the rank of Deputy Collector, authorised by him

about the incident within 48 hours of coming in to notice of the same.

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

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

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

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

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

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

(e) all other powers as are vested under Code of Civil Procedure to compel any person to appear or to be examined on oath or to produce any document.

(6) Submitting application by illegal extractor/transporter to compound and its disposal. - Before initiating or during the operation of the case, if the extractor/transporter is agree to compound the case, he shall have to submit an application of his intention to do so before the Collector/Additional Collector/Deputy Collector/Sub

Divisional Officer (Revenue)/Deputy Director (Mineral Administration)/Mining Officer/Officer-in-charge (Mining section)/ Assistant Mining Officer/Officer in charge (Flying Squad) and he shall proceed to compound in the case.

Provided that to avail the benefit of compounding the violator shall have to deposit the amount as determined here under as fine, namely :-

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

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

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

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

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

(7) Action against contravention of conditions of extract trade quarry/quarry lease/permit or the provisions of this rule. - If during the enquiry of any illegal extraction/transportation a fact comes into the knowledge that any lease holder/contractor/permit holder, in order to evade the royalty from any sanctioned quarry lease/trade quarry/permit, area is involved in dispatching/selling

> of minerals in excess quantity by showing less quantity of minerals in transit pass/defective transit permit/blank transit permit, then the Collector of the concerned district may suspend the quarrying operation in such quarry lease/trade quarry permit by issuing show cause notice for violating the conditions of the agreement and after providing an opportunity of being heard may cancel the such lease/ trade quarry/permit. The additional royalty may `be recovered after making the assessment of the quantity dispatched or sold in order to evade the royalty :
>
> Provided that during the inspection if it is found that illegal minerals transporter by securing the transit pass from the lease holder in order to evade the royalty has made overwriting or tempered the pass then the officer of the minerals department/Mineral Inspector may registered a case against the person concerned."

25. On a perusal of the provisions of the aforesaid Rule, it is clear that when a person is presumed to be involved in illegal extraction and transportation of minerals in contravention of the Rules, the authority is required to initiate proceedings against him as laid down in Rule 53(4) of the Rules of 1996, collect all necessary evidence, seize all tools, devices, vehicle and other material as well as the mineral suspected of being involved in the illegal extraction and transportation and thereafter inform the Collector or the authorized Dy. Collector about the same within 48 hours and if necessary to seek

police help and assistance to prevent unlawful extraction and transportation of minerals.

26. Under Rule 53(5) of the Rules of 1996, the Investigating Officer has been conferred with the rights and powers to call the person concerned to record their statement, to seize record and other materials relating to cases, to enter into a place, conduct search and inspection and exercise all other powers vested in a police officer in-charge of a police station while investigating any cognizable offence under the Code of Criminal Procedure as well as to exercise all the powers under the CrPC to compel any person to appear and to be examined on oath or to produce documents. Under Rule 53(1), the Collector or any other Officer authorized by him not below the rank of Dy. Collector, after giving an opportunity of being heard, is required to determine whether the person has extracted/transported mineral in contravention of the provisions of the Rules and impose penalty in the manner prescribed under Rule 53(1) of the Rules of 1996. Simultaneously and at the same time the Collector or any other Officer authorized by him not below the rank of Dy. Collector, is also required to mandatorily take a decision in respect of forfeiture/discharge of the minerals extracted/transported illegally under Rule 53(2), forfeiture/discharge of tools, machines and vehicles used in the illegal extraction under Rule 53(3)(a) and in respect of

forfeiture/discharge of the vehicle, tools, machines and other materials being carried without any transit pass under Rule 53(3)(b).

27. The proviso to Rule 53(3)(b) carves out an exception in respect of passing orders of forfeiture in a case where there is no illegal extraction and the transportation is on the basis of transit pass but the vehicle is carrying mineral in excess of the quantity mentioned in the transit pass and in such cases it has been laid down that the vehicle carrying such excess mineral shall be discharged on payment of penalty for the first three times and would be liable to be forfeited on repetition on the fourth occasion. The other and second exception and relaxation regarding passing orders of forfeiture is contained in Rule 53(6) relates to cases where the extractor/transporter agrees to compound the case before initiation of the proceedings and in case he does so, the mineral, tools, machinery, etc. shall be discharged on the first four occasions by paying graded compounding fees and in case of repetition thereafter shall be liable to be forfeited.

28. These are the only two exceptions and relaxations mentioned in Rule 53 itself in respect of the decision to forfeit which can generally and otherwise be ordered even at the first instances of violation of the Rules under Rule 53(2), 53(3(a) and 53(3)(b).

29. The provisions of the Rules make it further clear that in case the authority, after imposition of penalty, decides not to forfeit but to discharge the mineral, tools, machines, vehicles, etc., it shall make sure that the offender has first deposited the penalty imposed upon him before permitting discharge. A bare perusal of the Rules make it clear that the pre-condition of deposit relates to and applies only to those cases where the authority takes a decision to discharge the seized goods, vehicle, material, etc. and does not apply to or relate to cases where an order of forfeiture is passed. The conclusion to the contrary recorded in the case of **Nitesh Rathore** (supra) is hereby over-ruled.

30. We are of the considered opinion that the scheme of Rule 53 of the Rules of 1996, which provides for initiating an offence, collecting necessary evidences, giving an opportunity of hearing, determining and taking a decision regarding imposition of penalty and, taking an "*appropriate decision*" in respect of forfeiture, furnish adequate and sufficient safeguards upon the exercise of discretion by the competent authority under Rules 53(4), 53(5), 53(1), 53(2) and 53(3) for the purposes of taking a decision regarding forfeiture.

31. In addition to the above, the words "*illegal mining, illegal transportation, necessary evidence, opportunity of hearing, "determine*" i.e. taking an "*appropriate decision", "unauthorized extraction and transportation*", are all terms

having definite connotation and meaning which can easily be derived from the provisions of the Act as well as the Rules and there is no vagueness or confusion in the definitive meaning of these terms which emphatically guide and regulate the exercise of discretion conferred upon the competent authority while passing orders of forfeiture.

32. We are also of the considered opinion that the authority, while taking a decision to either forfeit or discharge, can also take into consideration all relevant factors, for example, the manner of commission of illegal extraction and transportation, the number of times that the violator has indulged in the same, the value and type of the minerals involved, its quantity, the area or place from which the illegal extraction or transportation is undertaken, the provisions of the Act and the Rules defining illegal mining and illegal transportation, the violation of the other statutory provisions like the Indian Penal Code, the Indian Forest Act, the Wild Life Protection Act, the M.P. Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006, the M.P. Land Revenue Code, 1959, and other such statutory provisions. The list is only illustrative and not exhaustive. These and others factors are all relevant guiding factors and may be taken into consideration by the competent authority and are some, and not all, of the factors on the basis of which the competent authority could and would decide whether or not to pass orders of forfeiture.

33. These factors would differ from case to case and, therefore, entitle the authority to pass an order of forfeiture in one case and discharge in another. As the order passed by the authority would depend on the facts and the various factors involved in a particular case, the orders in each case could and would necessarily be different and, therefore, the discretion to pass different orders in each case has rightly been conferred upon the competent authority and merely on this ground the discretion cannot be held to be unfettered or uncontrolled. The power or discretion to take an "appropriate decision" inherently and necessarily bestows and carried with it the power to take a decision for or against a person and cannot be said to be uncanalised or controlled only on this ground, specially in a case like the present one where it is guided and prompted by several guiding principles and factors, some of which have been mentioned by us in the preceding paragraphs.

34. We find support from the view taken by us from the decision of the Supreme Court rendered in the case of **Premium Granites Vs. State of Tamil Nadu and others** 1994 (2) SCC 691, paragraphs 48 to 51, wherein the Supreme Court was required to consider the constitutional validity of Rule 39 of the Tamil Nadu Mineral Concession Rules, 1959, which enabled the State Government to grant/renew quarry leases to private persons for reasons to be recorded in the

interest of mineral development and in public interest on the ground that it conferred unbridled, uncontrolled discretionary powers on the State as no guidelines were mentioned in the Rule. The Supreme Court while upholding the validity of the Rules, held that the words '*Mineral Development*' and '*Public Interest*' are words of definite concept which are easily understood and provide sufficient guidelines. The Supreme Court went on to hold that the aforesaid terms are not vague and have a definite concept on the basis of which the power under Rule 39 of the T.N. Rules should be exercised and that such exercise of power would have to satisfy the reasonableness of State action before a Court of law if any challenge to the improper action in exercise of the said power is taken. The Court went on to state that in case the authority is required to pass an order on such objective considerations, the provision is not vitiated as the remedy of judicial review of the decision is by itself an adequate safeguard against improper and arbitrary exercise of powers. It was further held that it is not always feasible and practical to lay down exhaustive written guidelines which can cover all contingencies and, therefore, it becomes necessary to make provisions conferring discretion by giving broad guidelines and indicating parameters within which the power has to be exercised.

35. In view of the aforesaid discussion, we are of the considered opinion that when the scheme of Rule 53 is read and understood in the backdrop of the Rules of 1996, the Rules of 2006 and the MMDR Act as well as the detailed procedure for search, seizure and investigation, opportunity of hearing and taking an appropriate decision, it is manifestly clear that there are sufficient and adequate safeguards and guidelines contained in the Rules for exercising the discretion vested in the competent authority while taking an appropriate decision and the same cannot be said to be uncontrolled, unguided and unfettered.

36. We are also of the considered opinion that even if such guidelines would have been absent in Rule 53 of the Rules of 1996, the fact that the order passed by the competent authority was and is subject to appeal and revision under the Rules of 1996, is in itself sufficient and adequate safeguard against arbitrary exercise of discretionary powers.

Issue no.4 is answered accordingly.

Issue nos.5 & 6:-

37. In view of the discussion and conclusion recorded by us in respect of issue no.3 and the analysis of the provisions of Rule 53 made by us, we are of the considered opinion that the powers vested in the authority of forfeiture and imposition of penalty conferred upon the competent authority under Rule 53

does not suffer from the vice of arbitrariness and is sufficiently guided by several factors mentioned in the Rule of 1996, the Rules of 2006 and the MMDR Act and the various other statutory provisions.

38. In view of the aforesaid conclusion arrived at by us, we are of the considered opinion that the conclusion of the Full Bench in the case of **Nitish Rathore** (supra) to the effect that powers of forfeiture under Rule 53 (2) and 53(3) can be exercised only in those cases were penalty in terms of Rule 53(1) is not paid, does not lay down the correct law and has to be and is hereby over-ruled.

39. As analyzed and stated by us in the preceding paragraphs, forfeiture can be ordered in isolation, simultaneously or alongwith orders imposing penalty and an order of forfeiture is not dependent upon imposition of penalty. This is evident from a perusal of the factors that are relevant for ordering forfeiture that are mentioned in Rule 53(2) and 53(3) itself namely, *illegal extraction* or *transportation of mineral*, as the case may be. To put it differently, forfeiture can be ordered in all or any case of "*illegal extraction or transportation*" of mineral and is not subject to, conditional upon or restricted only to those cases where penalty has been imposed. Had the State intended to provide for such an eventuality it would have clearly stated so in the Rules by

using words like "*in cases where penalty is imposed*" or the like in Rule 53(2) and 53(3) which provide for forfeiture. As Rule 53(2) and 53(3) stand today, they unequivocally empower the competent authority to pass orders of forfeiture in all or any case of "*illegal extraction or transportation*" of mineral without referring to or mentioning anything about any proceedings relating to penalty or any orders imposing penalty. The scheme of the Rule makes it clear that orders of forfeiture can be passed independently or in isolation in all cases of illegal extraction or transportation of mineral irrespective of and apart from proceedings of penalty and orders of forfeiture can be passed even in cases where no penalty order is passed or imposed.

40. We are, therefore, of the considered opinion that Rule 53(2) and 53(3) no where states or requires that order of forfeiture can be passed only in cases where penalty under Rule 53(1) is imposed by the authority. Apparently, the two powers, i.e. of penalty and forfeiture are distinct and can be exercised collectively or individually in appropriate cases. The conclusion recorded by the Full Bench in the case of **Nitish Rathore** (supra) to the contrary, is hereby set aside and over-ruled.

41. We are also of the considered opinion that in view of the analysis of Rule 53 made by us and the conclusion recorded

by us that orders imposing penalty and forfeiture can be passed simultaneously, collectively or in isolation depending upon the facts of each case and as the Rule does not confer any power or option upon the competent authority to invoke only one of the two i.e. either impose penalty or order forfeiture, therefore, the decisions of the Supreme Court in the case of **M/s Jagdish Chand Radhey Shyam vs. State of Punjab and others**, (1973) 3 SCC 428, **Jiwani Kumar Paraki v. First Land Acquisition Collector, Calcutta and others,** (1984) 4 SCC 612 and **Managing Director, Haryana State Industrial Development Corporation and others v. Hari Om Enterprises and Another** (2009) 16 SCC 208, have no applicability to the facts of the present case and have no applicability for the purpose of interpreting Rule 53 of the Rules of 1996, and have wrongly been relied upon by the Full Bench in the case of **Nitesh Rathore** (supra).

Issue nos.5 & 6 are answered accordingly.

Issue nos.7 & 8:-

42. The provisions of Rule 53 have been analyzed by us in the preceding paragraphs and we have also taken note of the fact that there are only two exceptions and relaxations carved out by the Rule itself that are contained in Rule 53(3)(b) proviso and Rule 53(6) where forfeiture may not be ordered in the first and fourth instance respectively. To put it differently, except in respect of the cases falling under Rule 53(3)(b)

proviso of Rule 53(6), forfeiture can be ordered even in the first instance or violation of the Rules. The language of Rule 53 is clear and ambiguous in this regard. Had the Rule making authority intended to provide that an order of forfeiture could not be passed in a case where penalty has been imposed and paid or that forfeiture was dependent on payment or non-payment of penalty, it would have clearly and specifically said so. A bare reading of the provision of Rule 53 makes it further clear that the Rule making authority was conscious of the fact that it was required to carve out an exception in respect of forfeiture only in certain cases and has, therefore, consciously done so only in respect of the two situations clearly mentioned and laid down in Rule 53(3)(b) proviso of Rule 53(6).

43. We are of the considered opinion that a bare perusal of Rule 53 makes it clear that the very object and purpose of the Rules and the intention of the Rule Makers is to confer powers of forfeiture to prevent and prohibit a person indulging in illegal extraction or transportation of minerals to repeatedly and boldly used tools, machinery, vehicles, etc. in the commission of illegal extraction and transportation. The very object and purpose is to ensure that tools, machinery, vehicles, other materials, etc. used in the commission of illegal extraction and transportation are confiscated and kept out of circulation, preventing those indulging in illegal

extraction and transportation from using them again and again. The provision of Rule 53 of the Rules of 1996, is apparently meant to act as a deterrent for those indulging in illegal extraction or transportation of minerals.

44. In such circumstances, in case the liberal approach and interpretation given to the Rules by the Full Bench in the case of **Nitesh Rathore** (supra), is upheld, it would encourage, instead of preventing, violators to continue to indulge in illegal extraction and transportation of mineral by repeatedly paying small amount of penalty. This would defeat the very purpose and object of the Rules.

45. It is settled law that when the words in the Rules are clear, plain and ambiguous and are susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of the consequences and in such cases where the words are capable of only one construction, the Court cannot adopt any other construction even on the ground that such construction is more in line with the policy of the Act.

46. In the facts and circumstances of the present case and the conclusion recorded by us in the preceding paragraphs, it is not permissible or possible to read the words "*only in cases where penalty is not paid*" in the provision relating to forfeiture as that would amount to reframing the Rules which is not permissible or possible as the Court has no power to

legislate and as it is settled law that words can be read into a statute only in cases of obvious drafting errors, that to, only after abundantly making sure about the intend and purpose of the statute or the provision in question and that the obvious drafting error is leading to failure to give effect to the purpose of the provision that the Parliament would have made or was intending to make, had the drafting error not occurred. A departure from the Rule of literal construction by adding or reading words into the statute can only be resorted to in exceptional circumstances where not doing so would deprive the provision of the Rules, as it exists, of all meaning or render certain provisions redundant and otios. Reading of the words "into a statute" can be done by adopting the mischief rule or purposive construction only when there is no doubt about the purpose and object which the law makers intended to achieve. The law in this regard has been elaborately discussed in Chapter-2 of the Principles of Statutory Interpretation by Justice G. P. Singh, 14th Edition, which fully applies to the present case. None of the above factors are present in the present case.

47. In view of the aforesaid discussion, as the language of Rule 53 is clear and unambiguous and clearly provides for only two instances of relaxation to the general rule of forfeiture that are specifically mentioned in (Rule 53(3)(b) proviso and Rule 53(6)n no further words can be read into the Rules as has

been done by the Full Bench in the case of **Nitesh Rathore** (supra).

48. We are also of the considered opinion that the conclusion recorded by the Full Bench in the case of **Nitesh Rathore** (supra) to the effect that the benefit of default on the first three occasions which is provided to those transporting mineral in excess of the quantity mentioned in the transit pass under Rule 53(3)(b) is also available even to those who are transporting mineral *without any transit pass*, is apparently erroneous and contrary to the unambiguous and clear provisions of Rule 53(3)(b). The same is, accordingly, set aside and over-ruled.

49. As a result of the aforesaid discussion, we are of the considered opinion that the Full Bench in the case of **Nitesh Rathore** (supra) could not have read the words "*only in case penalty is not paid*" into Rule 53(2) and 53(3)(b) as it has changed the meaning of the Rules and rendered certain provisions contained therein otios and redundant and has resulted in defeating the very purpose and object of the Rules.

Issue nos.7 & 8 are answered accordingly.

50. In view of the aforesaid analysis and keeping in view the object and purpose for introducing the amended provisions of Rule 53 of the Rules of 1996, namely, to prevent, deter and prohibit illegal extraction and transportation of minerals

"*apart from and in addition to the criminal prosecution of the offenders simultaneously under other provisions of law*" and keeping in mind the very object and purpose of the entire legislation relating to mines and minerals which has been explained in great detail by the Supreme Court in the case of **State (NCT Delhi)** (supra) and looking to the fact that the provisions of the Act and the Rules provide sufficient and adequate guidelines for exercise of discretion vested in the competent authority in respect of forfeiture under Rule 53 and the fact that the order passed thereunder is subject to scrutiny in appeal and revision which provide sufficient and adequate safeguard against abuse of exercise of discretionary powers, the observations made by the Full Bench in the case of **Nitesh Rathore** (supra) in this regard and the conclusions recorded by it in respect of issue nos.5 & 6 that have been referred to this Larger Bench have not been correctly decided in our considered opinion and are hereby over-ruled and set aside.

51. As a consequence thereof, it is held that the power of forfeiture/confiscation can be exercised by the competent authority as and when it takes an appropriate decision in this regard under Rule 53(2) or 53(3) irrespective of the fact that the contravention is made by the defaulter for the first time. In other words, the power of forfeiture vested in the competent authority under Rules 52(2) and 52(3) can be

exercised in isolation, simultaneously or collectively with the power to impose penalty and would not depend upon payment of penalty by the offender and that even in cases where the offender pays the penalty imposed upon him under Rule 53(1) the competent authority has the power and would be competent to pass orders of forfeiture and that the said power is not circumscribed by the provision of or the fact of payment of penalty.

52. We are also of the considered opinion that in view of the clear language of the Rules, forfeiture under Rule 53(2) and 53(3) can be ordered even in case of first instance of violation by the violator and the conclusion to the contrary recorded by the Full Bench in the case of **Nitesh Rathore** (supra) is hereby over-ruled. It goes without saying that the power to order forfeiture would be subject to the provisions of Rule 53 itself, namely, exception and relaxation that have been mentioned in the proviso to Rule 53(3)(b) and Rule 53(6), depending upon the facts of each case.

53. The conclusion recorded in respect of issue nos.5 & 6 by the Full Bench in the case of **Nitesh Rathore** (supra) is overruled and modified in terms of the orders passed by this Larger Bench.

54. The Reference is answered accordingly. The matter be placed before the appropriate Bench as per Rules and Roster for further orders.

(S.K. Seth) (R. S. Jha) (Nandita Dubey) (Rajeev Kumar Dubey) (Sanjay Dwivedi)
Chief Justice Judge Judge Judge Judge

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