HIGH COURT OF MADHYA PRADESH : JABALPUR
(Full Bench)

W.P. No. 25364/2019

M/s Trinity Infrastructure ..... Petitioner

Vs.

The State of M.P. and others ..... Respondents

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W.P. No. 10711/2019

M/s Trinity Infrastructure ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 18737/2019

Abhishek Singh ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 18776/2019

Om Kumar Mahto ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 19313/2019

Sanjay Chourasiya ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 24869/2019

Mohd. Saikun ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 24870/2019

Shailesh Nagayach ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 25365/2019

M/s Trinity Infrastructure ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 25704/2019

M/s Shambhvi Associates …..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 25932/2019

Jayant Kumar Jhawar ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 26091/2019

Bheemram Nakhate ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 26097/2019

Adil Khan ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 26589/2019

Ajay Tripathi ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 27371/2019

Hemlata Solanki ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 27378/2019

Hemlata Solanki ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 27530/2019

Abhilash Singh and another ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 129/2020

M/s Maa Bhavani Granite ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 690/2020

Abdul Kalam ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 703/2020

Abdul Kalam ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 945/2020

Mustafa ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

*****

W.P. No. 948/2020

Abdul Salam ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 954/2020

Abdul Salam ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

*****

W.P. No. 1005/2020

Devendra Chaturvedi ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 1006/2020

Pranav Maloo ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 1010/2020

M/s Jindal Earthmines ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 1665/2020

Krishna Pratap Singh Tomar ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 1667/2020

Ram Pratap Singh Tomar ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 1670/2020

Gayatri Singh Tomar ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 1739/2020

Veerendra Singh Solanki ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 1744/2020

Mathura Prasad ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 1746/2020

Abhilekh Singh Solanki ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

*****

W.P. No. 1862/2020

Arjun Nirman Infrastructure Pvt. Ltd. ..... Petitioner

Vs.

Union of India and others ..... Respondents

*****

W.P. No. 2138/2020

Smt. Prabha Singariya ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 2141/2020

Smt. Uma Adiwasi ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 2143/2020

Smt. Pooja Sharma ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 2144/2020

Smt. Priyanka Dhameniya ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 2160/2020

Pushpendra Pratap Singh ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 2444/2020

M/s Sohni Stone Crushers ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

*****

W.P. No. 2620/2020

Siddharth Singh Rathore ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 2623/2020

Divyarth Singh Rathore ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

*****

W.P. No. 2625/2020

Rajkumari Tomar ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 2626/2020

Rajkumari Yadav ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 2628/2020

Rajkumari Singh Tomar ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 2734/2020

Satendra Singh ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

*****

W.P. No. 3044/2020

Akhilesh Kumar Dangi ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

*****

W.P. No. 3045/2020

Smt. Preeti Yadav ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

*****

W.P. No. 3046/2020

Smt. Preeti Yadav ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

*****

W.P. No. 5243/2020

Avdhendra Pratap Singh ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 5412/2020

Jai Kumar ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 6087/2020

Bhole Baba Stone Crusher ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 9344/2020

Ashutosh Bundela ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 9930/2020

Wakil Ahmad Ansari ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 6767/2020

M/s Aman Stone Crasher ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

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W.P. No. 5277/2020

M/s Shriram Stone Industries ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

*****

W.P. No. 5965/2020

Smt. Santo Chaurasiya ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

*****

W.P. No. 2637/2020

Nagendra Pratap Singh ..... Petitioner

Vs.

State of M.P. and others ..... Respondents

Coram:

Hon'ble Mr. Justice Ajay Kumar Mittal, Chief Justice
Hon'ble Mr. Justice Sanjay Yadav, Judge
Hon'ble Mr. Justice Vijay Kumar Shukla, Judge

Presence:

Mr. Devdatt Kamat, Senior Advocate with Mr. Shoeb Hasan Khan and Mr. Amit Seth, Advocates; Mr. Kishore Shrivastava, Senior Advocate with Mr. Kapil Jain, Advocate; Mr. Arvind Dudawat; Mr. Samdarshi Tiwari; Mr. Shekhar Sharma; Mr. Anil Lala; Mr. Vivek Kumar Jain; Mr. Shyam Yadav; Mr. Ranjeet Dwivedi; Mr. Devendra Singh; Mr. Tapan Bathere; Ms. Aishwarya Singh and Mr. Saurabh Makhija; Mr. Ankit Upadhyay; and Mr. Rahul

Deshmukh, Advocates for the petitioners in the respective writ petitions.

Mr. P.K. Kaurav, Advocate General with Mr. Pushpendra Yadav, Additional Advocate General for the respondents/State.

Whether approved for reporting : Yes

***Law laid down*:**

Question No.(I) : The stone for making *Gitti* by mechanical crushing (i.e. use of crusher) specified at Serial No.6 of Schedule-I of the M.P. Minor Mineral Rules, 1996, is governed by Rule 6 under Chapter III and supported by Rules 9, 17, 18, 21, 22, 26, 29 and 30 of the 1996 Rules in respect of its grant and renewal. It does not show that the quarry lease in respect of Mineral at Serial No.6 of Schedule-I on Government land shall be allotted by open auction and thus, it does not enlarge its scope to be covered by Rule 7 of the 1996 Rules. There is clear distinction in respect of grant/renewal of quarry lease of Mineral at Serial No.6 of Schedule-I governed by Rule 6 and the allotment of Mineral at Serial No.3 of Schedule-II by auction as per Rule 7 of the 1996 Rules.

Question No.(II): The Mineral at Serial No.6 of Schedule-I is specifically held to be covered by Rule 6 of the 1996 Rules, which admits of the quarry lease for the said mineral by application for grant or renewal and not by auction. There cannot be two processes i.e. one by open auction for Government land and another by way of grant for private land in respect of the said Mineral.

Question No.(III): In absence of any finding to even remotely associate the Mineral at Serial No.6 of Schedule-I with Mineral at Serial No.3 of Schedule-II of the 1996 Rules it would not be correct, just and proper to hold that the Mineral at Serial No.6 of Schedule-I is covered under Serial No.3 of Schedule-II, therefore, the process of auction as provided under Rule 7 of the 1996 Rules has to be followed in larger public interest. Hence, the judgment in ***W.P. No.6215/2019*** *(****Prathvi Infrastructure Pvt. Ltd.*** *vs. State of M.P. and others*) decided on 27.06.2019 – modified vide common order dated 08.11.2019 in ***R.P. No.1051/2019*** *(State of M.P. vs.* ***Prathvi Infrastructure Pvt. Ltd.)*** has not correctly read the legal conclusions enunciated by the Supreme Court in *Centre for Public Interest Litigation vs. Union of India, (2012) 3 SCC 1* and the Constitution Bench judgment in *Natural Resources Allocation, In re, Special Reference No.1 of 2012, (2012) 10 SCC 1*, and thus, stand ***overruled***.

Question No.(IV): Division Bench judgment of Gwalior Bench in W.P. No.19690/2019 (***Smt. Prabha Sharma vs. State of M.P. and others)*** has made the correct interpretation of the Rules 6 and 7 of the 1996 Rules. Additionally, the similar questions referred in W.P. No.6767/2020 ***(M/s Aman Stone Crusher vs. State of M.P. and others)*** stand answered accordingly.

* The Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. Reliance placed upon the Judgments of the Supreme Court in *Union of India vs. Sankalchand Himatlal Sheth, (1977) 4 SCC 193; Nelson Motis vs. Union of India, (1992) 4 SCC 711; Nasiruddin vs. Sita Ram Agarwal, (2003) 2 SCC 577*, *Maulavi Hussein Haji Abraham Umarji vs.*

State of Gujarat and another, (2004) 6 SCC 672.

* The Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. *Decision in Nathi Devi vs. Radha Devi Gupta, (2005) 2 SCC 271 – relied upon.*

Significant paragraphs : **11, 13 to 25, 33, 34 and 36**

Heard on: 08.09.2020

O R D E R

(Passed on this 21st day of September, 2020)

(*through Video Conferencing*)

Per Ajay Kumar Mittal, Chief Justice:

A Division Bench of this Court while hearing the **Writ Petition No.25364/2019** (***M/s Trinity Infrastructure vs. State of M.P. and others***) along with connected matters on 29.01.2020 found conflict ***between*** the Division Bench decision of Indore Bench of this Court passed in **W.P. No.6215/2019 (*Prathvi Infrastructure Pvt. Ltd. vs. State of M.P. and others*)** decided on 27.06.2019, which was later on modified by the Bench vide common order dated 08.11.2019 passed in **Review Petition No.1051/2019 (*State of M.P. and others vs. Prathvi Infrastructure Pvt. Ltd. and others*)** decided along with connected review petitions ***and*** the observations made by a Division Bench of Gwalior Bench of this Court vide order dated 20.01.2020 passed in **W.P. No.19690/2019 (*Smt. Prabha Sharma vs. State of M.P. and others*)**. Therefore, the following questions were framed for consideration and determination by the Larger Bench:-

(I) Whether the grant of quarry lease for minor mineral *stone for*

making Gitti by mechanical crushing (i.e. use of crusher) at Item No.6 of Schedule I, which is governed by Rule 6 of the M.P. Minor Mineral Rules, 1996, on the government land, could be only by way of open auction?

(II) Whether under the 1996 Rules there can be two separate processes i.e. one by open auction for government land and another by way of grant for private land in respect of grant of minor mineral *stone for making Gitti by mechanical crushing (i.e. use of crusher)* at Item No.6 of Schedule I particularly when Rule 6 of the 1996 Rules prescribes for grant and renewal of quarry lease by the Authority mentioned thereunder?

(III) Whether the Division Bench judgment of Indore Bench of this Court in **W.P. No.6215/2019 (*Prathvi Infrastructure v. State of M.P.*)** decided on 27.06.2019 which was modified in **R.P. No.1051/2019** decided on 08.11.2019 *to mean that allotment of quarry lease on any land owned/controlled by any instrumentality of the State or the State in respect of quarry for making Gitti shall be done by the State through the process of open auction only* can be held to be deciding the legal issue correctly in view of the Constitution Bench decision of the Supreme Court in ***Natural Resources Allocation, In re, Special Reference No.1 of 2012, (2012) 10 SCC 1***?

(IV) Whether the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the M.P. Minor Mineral Rules, 1996 have been correctly interpreted in the Division Bench judgment of Gwalior Bench of this Court in **W.P. No.19690/2019 (*Smt. Prabha Sharma vs. State of M.P. and others*)**?

(V) Any other question, which may arise for adjudication of the issue involved in the present petition or which the Larger Bench thinks appropriate to decide?

2. After the matter was referred to the Larger Bench for consideration and determination of the aforesaid questions in ***M/s Trinity Infrastructure***'s case ***(supra)*** and connected matters, some more writ petitions involving similar

dispute have been filed. In **W.P. No.6767/2020 (*M/s Aman Stone Crusher vs. State of M.P. and others*)** filed before the Gwalior Bench involving similar controversy, the petitioner therein sought parity with the order dated 20.01.2020 passed by the Division Bench in the case of ***Smt. Prabha Sharma (supra)*** wherein the Court has directed the Licensing Authority to exercise powers under Rule 6 of the M.P. Minor Mineral Rules, 1996 (hereinafter referred to as "the 1996 Rules") and table contained therein, which indicates that the case of the petitioner therein falls under Entry 6 of Schedule-I (specified minerals which can only be granted and renewed as per the procedure prescribed therein). After discussing both the pronouncements in the cases of ***Prathvi Infrastructure Pvt. Ltd. (supra)*** and ***Smt. Prabha Sharma (supra)***, the Division Bench at Gwalior vide order dated 08.07.2020 again observed that quarry of stone for making *Gitti* by mechanical crushing can only be allotted by the authority as per the procedure prescribed in Rule 6 of 1996 Rules itself and not by auction. Accordingly, the said Division Bench relying upon the judgment of the Supreme Court in ***P. Suseela and others vs. University Grants Commission and others (2015) 8 SCC 129***, formulated the two questions for determination by the Full Bench:-

(i) Whether, in view of Rule 6 of M.P. Minor Mineral Rules, 1996, where specific mode of allotment of quarry lease is provided, whether judicial pronouncement can dilute the said provision and direct the authority to hold auction contrary to Rule 6, even if it is for maximization of revenue?

(ii) Whether, direction No. B given by Division Bench of this Court at Indore Bench in the case of **Prathvi Infrastructure** (**supra**) to hold auction even in respect of Stone for making Gitti by mechanical crushing (i.e. use of crusher) is contrary to Rule 6 of M.P. Minor Mineral Rules, 1996?

3. Since the above referred two questions in ***M/s Aman Stone Crusher***'s case ***(supra)*** are almost similar which have already been formulated and referred for consideration in the case of ***M/s Trinity Infrastructure*** ***(supra)***, therefore, the said writ petition and all other matters involving identical dispute have been linked. However, the facts are extracted from ***M/s Trinity Infrastructure***'s case ***(supra)*** wherein the above referred questions were primarily framed.

4. Brief facts, leading to the questions referred, are that the petitioner M/s Trinity Infrastructure has obtained a quarry lease from one M/s Premium Stones by way of transfer, which is situated at village Ghathari, Tehsil Gorihar, District Chhatarpur bearing Khasra No.48 admeasuring 4.00 Hectares, for "Minor Mineral Stone for making *Gitti* by mechanical crushing" (hereinafter referred to in short as "Mineral-G"), which was registered in its favour on 08.08.2016. The said lease is valid till 2021. Therefore, the petitioner submitted an application dated 02.08.2018 (Annexure P-2) to the Collector, Chhatarpur for renewal of grant in terms of Rule 17 of the M.P. Minor Mineral Rules, 1996 (for short "the 1996 Rules"), but, in view of an order dated 27.06.2019 (Annexure P-1) passed by Division Bench of Indore Bench of this Court in ***Prathvi Infrastructure's*** case ***(supra)*** the Mining Department has stalled the entire process for grant/renewal of quarry lease for Mineral-G other than by way of auction, as a result of which, the renewal application of the petitioner has been kept pending. In this manner, the present petition has been filed by the petitioner seeking a writ of mandamus against the respondent Nos.1 to 4 to renew its quarry lease for Mineral-G as prescribed in the Rules 6 and 18 of the 1996 Rules.

5. Before taking up the questions referred, it would be essential to summarise the facts of the case in ***Prathvi Infrastructure's*** case ***(supra)***, which led to issue of directions to the State Government by the Division Bench to take

up the process of open auction only in respect of mines for making *Gitti* and later on, modifying the said order in **R.P. No.1051/2019** (**supra**) to the extent that in respect of land, which is under the exclusive title of a private person, the provisions of Rules 6, 9 and 18 of the 1996 Rules wherein a separate procedure is prescribed, shall be followed and in respect of Government land, the question of grant of mining lease/renewal without conducting a process of auction/ issuing NIT does not arise and that the judgment dated 27.06.2019 which was under review, shall also be applicable in respect of renewal as well as pending applications for the Government land. The petitioner– M/s Prathvi Infrastructure and some of the respondents therein had applied for grant of mining lease in respect of Mineral-G. An order was passed on 17.02.2017 granting mining lease in favour of M/s Prathvi Infrastructure, which was assailed by the respondents Nos.5 and 6 therein by filing writ petition being W.P. No.2888/2017 and W.P. No.2691/2017. The said writ petitions were disposed of by directing the parties to avail the alternative remedy of appeal. Accordingly, an appeal was filed, which was dismissed by order dated 08.03.2019 and the order granting the mining lease in favour of M/s Prathvi Infrastructure was affirmed. But, surprisingly, on the same day, another order was passed by the Department allowing the appeal and thereafter, the third order dated 11.03.2019 was passed stating that the order dated 08.03.2019 by which the appeal was allowed, was the correct order. It was in these circumstances, M/s Prathvi Infrastructure had preferred W.P. No.6215/2019 (supra). The Division Bench, apart from summoning the original record in respect of those three orders, referred the matter to the Inspector General of Police, CID to ascertain whether any tampering in the record was done or mischief was played. On the basis of the investigation report, which held the conduct of the officers as suspicious

coupled with the allegations and counter-allegations between the parties and further taking note of Rule 7 of the 1996 Rules, which provides for allotment of trade quarries only by auction and Schedule-I and Schedule-II appended to the 1996 Rules, the Division Bench observed that the proper course of action in the case would be to direct the respondent/State to adhere to the provisions of Rule 7 of the 1996 Rules and to conduct an open auction in respect of quarry in question. Further, the Division Bench relying upon the two decisions of the Supreme Court in **Centre for Public Interest Litigation vs. Union of India, (2012) 3 SCC 1** and **Natural Resources Allocation, In re, Special Reference No.1 of 2012, (2012) 10 SCC 1**, directed the State to conduct an auction in respect of the quarry in question, as quarry relates to a mineral which is at Serial No.3 of Schedule-II appended to the 1996 Rules and further that in future also the State in respect of mines for making *Gitti* shall conduct an open auction and no mining lease shall be granted without conducting an open auction. The relevant operative part of the judgment in ***Prathvi Infrastructure's*** case ***(supra)*** is reproduced as under:-

> "In the light of the aforesaid order also and the judgments referred above of the Hon'ble Supreme Court, the safest course is to direct the State Government to conduct a process of auction, which is also provided under the rules, the writ petition is disposed of with the following directions:-
>
> (A) The respondent/State shall conduct an auction in respect of the quarry in question as quarry relates to a mineral which is at item No.3 schedule 2 appended *(sic* to) the MP Minor Mineral Rules, 1996. The process of auction be initiated within the period of four weeks from today.
>
> (B) The Respondent/State in future also in respect of mines for making Gitti shall conduct an open auction and no mining lease shall be granted without conducting an open auction."

Thereafter, some of the affected parties including the State of M.P. sought review of the said order dated 27.06.2019 (Annexure P-1) forming the subject

matter of R.P. No.1271/2019 (*Gulshan Temre vs. State of M.P. and others*); R.P. No.1051/2019 (*State of M.P. and others vs. Prathvi Infrastructure Pvt. Ltd. and others*) and R.P. No.1270/2019 (*Rupesh Bisen vs. State of M.P. and others*), which were decided vide common order dated 08.11.2019 (Annexure P-4) and the order dated 27.06.2019 was modified to the extent indicated hereinbefore. The relevant paragraphs of the order passed in *R.P. No.1051/2019 (supra*) are reproduced as under:-

> "5. After hearing learned counsel for the parties, this Court is of the opinion that for private land, a separate procedure is prescribed under the Rules. The order passed by this Court for conducting auction/issuing NIT in respect of private land deserves to be modified. Resultantly, it is made clear that in respect of land which is under the exclusive title of a private person, the provisions of Rule 6, 9 & 18 shall be followed. It is further clarified that in case the land is owned/controlled by any local body, Gram Panchayat or any other instrumentality of State or the State, it shall not be treated as private land. Only that land which is vesting in a private person shall be subject to Rules 6, 9 & 18.
>
> 6. It has also been argued by the learned counsel Shri Tiwari that certain applications in respect of government land are at the verge of renewal and are at the verge of finalisation. In the considered opinion of this Court, in respect of government land, the question of grant of mining lease/renewal without conducting a process of auction/issuing NIT does not arise and, therefore, the judgment delivered by this Court dated 27/06/2019 shall also be applicable in respect of renewal as well as in respect of pending applications in case they are in respect of government land."

6. Mr. Devdatt Kamat, learned senior counsel leading the arguments on behalf of the respective petitioners with regard to the legal defensibility and sustainability of the directions contained in the orders dated 27.06.2019 (Annexure P-1) and 08.11.2019 (Annexure P-2) passed in ***Prathvi Infrastructure****'s case (**supra**)* for conducting open auction in respect of Mineral-G on the Government land as well as in cases of renewal and pending applications therefor, took us through the various provisions of the 1996 Rules

and broadly made the following submissions:-

i. Mineral-G in question is specifically provided at Serial No.6 of Schedule-I governed by Rule 6 of the 1996 Rules and therefore, there is no scope of different interpretation with regard to the said Rule;

ii. Rule 6 of the 1996 Rules covers grant and renewal of quarry lease by the authority mentioned in table appended thereto and another is grant of trade quarry which follows the process of auction in terms of Rule 7(1) of the said Rules. Once both the processes of grant and allotment respectively of quarry leases for minerals specified in Schedule-I and Schedule-II are clearly governed by different provisions of the 1996 Rules without the one falling on the other, they should not have been applied by the Division Bench in ***Prathvi Infrastructure****'s* case (***supra***) to arrive at a conclusion that the entire action of the State Government in allotting the mines in question without adhering to the process of auction is bad in law, as it is contrary to the statutory provisions. Further, the Division Bench has failed to properly appreciate as to what those two entries at Serial No.6 of Schedule-I and Serial No.3 of Schedule-II are;

iii. while interpreting different entries in the schedule there is a presumption that each entry constitutes a class and every endeavour should be made to read and maintain the distinction in different classes. Attention was invited to the Supreme Court judgment in ***State of Tamil Nadu vs. Pyare Lal Malhotra and others, (1976) 1 SCC 834***;

iv. it is not the Rule 6 but the Rule 7 of the 1996 Rules which only

confines to allotment of trade quarry in respect of minerals specified at Serial No.5 of Schedule I and Serial Nos.1 and 3 of Schedule II of the 1996 Rules to be done by auction;

v. under Chapter-IV of the 1996 Rules, Rule 9 provides for the manner of grant or renewal of a quarry lease in respect of minerals specified in Schedule I and II by submitting an application in the prescribed Form-I for quarry lease. The Mineral-G is a specified mineral worded at Serial No.6 of the Schedule-I and for its grant or renewal also the application is submitted in Form-I and nowhere its allotment is prescribed by auction;

vi. the Rule 17 pertaining to renewal of quarry lease and Rule 18 of the 1996 Rules prescribing disposal of application for grant or renewal of quarry lease do not call for allotment of quarry lease by auction;

vii. as per Rule 21 of the 1996 Rules, the quarry lease of the mineral specified at Serial No.6 of Schedule I shall be preferably given to Cooperative Society/Association of Schedule Tribe/ Schedule Caste/Backward class; educated unemployed youth belonging to below poverty line families etc. The scheme of the State Government for the said purpose is with respect to Article 39 of the Constitution of India which expects every State to direct its policies towards securing the common good and clause (b) whereof provides that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. The State in its wisdom can always carve out a class of persons who will be given the natural resources in preference

through other modes of grant than the auction. If the Mineral-G at Serial No.6 of Schedule-I is ordered to be allotted by auction, the Rule 21 will become meaningless;

viii. in respect of grant of minerals specified at serial Nos.1 to 4, 6 and 7 of Schedule-I, the State has consciously set out a specific policy as envisaged in Chapter III and IV of the 1996 Rules. If not so, the State would not have excluded these minerals from the purview of Rule 7(1) of the 1996 Rules i.e. the minerals other than Serial No.5 of Schedule I and Serial Nos.1 and 3 of Schedule II situated in Government land;

ix. the purpose of trade quarry to be allotted by auction in respect of minerals at Serial No.1 and 3 of Schedule-II of the 1996 Rules is the revenue maximization, which cannot be the only parameter for alienation of natural resources by the State. Therefore, the direction to auction the quarry lease for Mineral-G, which is meant for grant as per preferential rights, cannot be sustained in the eye of law;

x. the application submitted by the petitioner is to be considered by the competent authority in accordance with the provisions contained in the Rules 18 and 21 of the 1996 Rules and therefore, withholding the process on any ground which is not contemplated in the said Rules is arbitrary;

xi. the Mineral-G at Serial No.6 of Schedule-I is totally different from the Minerals at Serial No.3 of Schedule-II. Entry at Serial No.6 applies for grant of quarry lease when the stone is to be used only for making *Gitti* by mechanical crushing wherein the existence of mechanical crushing by way of crusher etc. is must but there is

absence of such requirement for Minerals mentioned at Serial No.3 of the Schedule-II. This fact is further supported by Rule 21(3)(ii) which directs the sanctioning authority to take into consideration the technical and special management experience of establishing, running and maintaining a cutting and polishing industry;

xii. the Rule 22 of the 1996 Rules relates to the period for which leases may be granted or renewed. On plain reading of the said Rule, it would be discernible that the period prescribed for quarry lease, which are given by grant or renewal under Rule 6, is different than the one allotted by auction in terms of Rule 7 of the 1996 Rules. The Rule 7 in itself is exhaustive in terms of period of its allotment. As per Sub-Rule (2) of Rule 7, the period of quarry of minerals at Serial No.1 and 3 of Schedule-II is five years contrary to the period prescribed for quarry of Mineral-G in terms of Rule 22, which is maximum ten years and minimum not less than five years and further renewable for the period equal to original period. Further, in terms of proviso to Sub-rule (2) of Rule 7, it is only when the contractor invests for establishing cutting and polishing industry or crusher for making *Gitti* by mechanical means within an initial period of contract for minerals specified at Serial No.5 of Schedule I and Serial No.3 of Schedule-II respectively that the period of contract quarry of said minerals shall be extended by the Government for the period specified therein but if no cutting and polishing industry or crusher as such is established then the period is not extendable. Reliance was placed upon the Division Bench judgment of this Court in ***G.R. Kulkarni vs. State of M.P., 1957***

SCC OnLine MP 63;

xiii. under Rule 29 of the 1996 Rules, the rates of dead rent in respect of 'stone for crusher' and 'stone for building purposes and other minor minerals' which are provided under Schedule-IV are completely different, which separates the Mineral-G at Serial No.6 of Schedule-I from the minerals at Serial No.3 of Schedule-II;

xiv. in Rule 30 of the 1996 Rules which relates to general conditions of quarry lease also there is no provision to grant quarry lease by the process of auction;

xv. the grant or renewal of quarry lease for Mineral-G at Serial No.6 of the 1996 Rules cannot be and should not be by auction is further corroborated by Rule 36 of the 1996 Rules prescribing auction of quarries and sub-rule (1) thereof mandates grant of trade quarries of the very same minerals enumerated in Rule 7 by auction situated in Government land. The grant of Mineral-G over any land whether private or government land is excluded from the purview of Rules 7 and 36 of the 1996 Rules;

xvi. though the Entry at Serial No.3 of Schedule-II includes 'stone' but the category of Mineral-G has been purposely kept in Schedule-I and related with Rule 6 of the 1996 Rules and this fact is sufficient to show that the Legislature had no intention to prescribe a common process of allotment of these minerals;

xvii. there was no challenge to the Constitutional validity of the provisions of Rules 6 and 7 of the 1996 Rules and neither the issue for open auction of mineral-G as such was specifically raised in ***M/s Prathvi Infrastructure***'s case ***(supra)***, therefore, such

provisions were not open for judicial interpretation, as has been done therein. Support was gathered from the two decisions of the Supreme Court in ***Union of India & others vs. Vipan Kumar Jain & others, (2005) 9 SCC 579*** and ***Union of India & others vs. S.K. Saigal & others, (2007) 14 SCC 556***;

xviii. the 1996 Rules prescribe separate procedure for grant of "trade quarry" as defined under Clause (xvi-a) and "quarry lease" as per Clause (xxv) of Rule 2, in terms of minerals and not on the basis of Government land or private land. Therefore, there cannot be any separate process for private land as well as government land unless specifically provided for;

xix. After taking us through the various paragraphs of the judgment of the Supreme Court in ***Natural Resources Allocation, In re, Special Reference (supra),*** learned counsel submitted that the same has not been read in correct perspective whereas the Constitution Bench in the said decision has clarified the ratio in ***Centre for PIL***'s case ***(supra)*** and held that the auction is not a constitutional mandate and legitimate deviation from the auction is permissible for the purposes of disposal of natural resources; and

xx. the High Court in exercise of judicial review dealing with different entries/provision cannot render an interpretation which may have the effect of making a particular entry/provision completely redundant. The Court cannot read anything into a statute which is plain and unambiguous. Reference was made to the judgment of the Supreme Court in ***Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and others, (2003) 2 SCC 111***;

xxi. the probability of abuse of the statute cannot be a ground for either declaring the statute unconstitutional or making the provision redundant. If there is abuse of the provision of the statute, the Court has wide powers to set right the same in the given facts and circumstances of the case as held by the Supreme Court in ***Sushil Kumar Sharma vs. Union of India and others, (2005) 6 SCC 281***; and

xxii. in almost similar circumstances, the view expressed by a Division Bench of Gwalior Bench of this Court in ***Smt. Prabha Sharma's*** case ***(supra)*** and ***M/s Aman Stone Crusher***'s case (**supra**) is more probable and reasonable than the Division Bench judgment in ***Prathvi Infrastructure***'s case (**supra**), which does not lay down the correct law as it is merely based on the assumption that the entry at Serial No.6 of Schedule-I i.e. Mineral-G also falls under Schedule-II because in Rule 7 the Entry No.3 of Schedule-II starts with Stone, Boulder, Road Metal Gitti, Dhoka, Khanda, Dressed Stones, Rubble, Chips, which is meant for allotment by auction by dint of Rule 7 of the 1996 Rules.

7. The aforesaid arguments of Mr. Kamat have been adopted by the learned counsel appearing for the other petitioners and they have vehemently argued that the Rules 6 and 7 of the 1996 Rules are separate and distinct in respect of grant/renewal and allotment respectively of the minerals specified in Schedule-I and II and since there is no ambiguity in the said Rules and the Division Bench in ***Prathvi Infrastructure***'s case (***supra)*** having completely overlooked the entry at Serial No.6 of Schedule-I and Serial No.3 of Schedule-I *vis a vis* Rule 6 of the 1996 Rules, the said judgment in directing the State to conduct auction in

respect of Mineral-G on the Government land is untenable in the eye of law. However, Mr. Kishore Shrivastava, learned senior counsel supplemented the arguments by contending that the Division Bench judgment in ***Prathvi Infrastructure***'s case (***supra***) has erroneously proceeded on the assumption that the judgments of the Supreme Court in cases of ***Centre for PIL***'s case (***supra***) and ***Natural Resources Allocation, in re, Special Reference (supra)*** have propounded the theory of auction and the fallout of which led to amendment in the Mines and Minerals (Development and Regulation) Act, 1957 (in short "the 1957 Act") and the Parliament enacted Mines and Minerals (Development and Regulation) Amendment Act, 2015. It provides for a process of auction and the constitutional validity of the amendment was affirmed by a Full Bench of this Court in ***Savita Rawat vs. State of M.P. and others*** passed in W.P. No.4278/2001 decided on 11.03.2016. He invited our attention to paragraphs 67, 69, 82, 83, 108, 112, 113, 115 and 120 of the Constitution Bench judgment in ***Natural Resources Allocation, in re, Special Reference (supra***). It was further contended that Rule 6 of the 1996 Rules projects a different picture. As such the table appended to the said Rules provides the Authority to take care of grant and renewal of applications in the case of quarry lease. As per Item No.1 of the Table, Mineral-G mentioned at Column No.3(i) is provided to be granted or renewed by the Director to the extent the area applied for exceeds 10.00 Hectares as per column No.4(i), whereas according to Item No.2, again for the Mineral-G mentioned at Column No.3(ii), if the area applied for exceeds 2.00 Hectares but does not exceed 10.00 Hectares as per Column No.4(ii) then the Collector/Additional Collector (Senior IAS Scale) is the prescribed authority to grant or renew the application for the quarry of Mineral-G. According to him, the Division Bench in **Prathvi Infrastructure**'s case (**supra**) has completely

overlooked the Rule 6 and its governing provisions particularly Rule 18 of the 1996 Rules which prescribes for the disposal of applications for the grant or renewal of quarry lease. Learned senior counsel further argued that the purpose of Mineral-G is to make *Gitti* by using it as raw material and nothing else and that too by using crusher whereas the entry at Serial No.3 of Schedule-II only uses the word "stone" like any other item, which makes the clear distinction between the two minerals. Learned counsel submitted that in a situation where a particular item like "stone" in the present case is mentioned in two different schedules or provisions, how it is to be interpreted and which one will be preferred by the Court would be governed by the law laid down by the Supreme Court in ***Eskayef Limited vs. Collector of Central Excise, (1990) 4 SCC 680.*** Therein, the Item 68 of the Excise Tariff was a residuary entry, which dealt with all other goods not elsewhere specified. It was held that a product which is found to be covered by the other items of the schedule of the Excise Tariff would be outside the ambit of Item No.68.

8. Mr. Shekhar Sharma, learned counsel for some of the petitioners additionally submitted that in exercise of the jurisdiction under Article 226 of the Constitution of India, the Court shall not read down the provision in the manner done therein and therefore, the Division Bench judgment in ***Prathvi Infrastructure***'s case (***supra***) does not deserve to be sustained.

9. Mr. Arvind Dudawat and Mr. Samdarshi Tiwari, learned counsel for certain other petitioners further supplemented the arguments that the Division Bench in ***Prathvi Infrastructure***'s case (***supra***) appears to have escaped the conclusion part of the majority view in ***Natural Resources Allocation, in re, Special Reference*** (***supra***) and thus, arrived at a wrong conclusion whereas,

there is a specific method of grant of quarry lease under Rule 6 of the 1996 Rules and therefore, the auction is not the only permissible method.

10. Mr. P.K. Kaurav, learned Advocate General for the State submitted that in ***Prathvi Infrastructure***'s case (***supra***), the Division Bench *prima facie* observed questionable action of the authority deciding the appeal of the private respondents against the grant of quarry lease in favour of the petitioner therein i.e. initially dismissing their appeal and then on the same day allowing the appeal and thereafter, on 08.03.2019 affirming the order allowing the appeal. There being three orders in respect of the same appeal, the Court on 26.03.2019 ordered for producing the original record, which was produced by the State on 04.04.2019. Thereupon, the Court ordered for C.I.D. investigation and report was sought. As such there was no occasion for the State to file reply. Therefore, a review petition was filed that if the directions to conduct open auction in respect of Mineral-G are implemented, the same would amount to rewriting the relevant rules and thus, the order dated 27.06.2019 was modified. He fairly assisted the Court for proper interpretation of the various provisions of the Statute governing the trade quarry/quarry lease. The learned counsel contended that the minerals be it on the Government or private land are the privileges of the State under Sections 57 and 247 of the M.P. Land Revenue Code, 1959 and considering the nature of the minerals, the same have been specified in different schedules of the 1996 Rules and procedure for allotment has been prescribed under two different Rules 6 and 7 of the 1996 Rules. Keeping in view the Table appended to the Rule 6 of the 1996 Rules, the same is also applicable for minerals on the Government land. The Minerals specified at Serial Nos.1 to 4, 6 and 7 of Schedule-I which are mentioned at Item No.1 Column 3(i) of the Table are covered by Rule 6 and therefore, the nature of land either Government or

private has not been mentioned. The private land has been specifically provided in respect of mineral specified at Serial No.5 of Schedule-I. Such provision has been accordingly made in the said Table, at Item No.1 Column 3(ii) because the Government land is excluded by Rule 7. The Minerals specified at Serial No.1 to 4, 6 and 7 of Schedule-I are not covered by Rule 7. Further, the Rule 9 of Chapter IV relates to grant of quarry lease in respect of minerals specified at Schedule-I and II. As per Rule 9(k) under Chapter-IV, if the land is not owned by the applicant, the application for quarry lease shall be submitted with an affidavit that the applicant has obtained surface rights over the area or has obtained the consent of the owner for conducting mining/quarrying operations. However, the proviso to Rule 9(k) makes it clear that no affidavit shall be necessary where land-rights vest with the State Government. This would clear any doubt that the application for quarry lease can be filed for mineral in the Government land or private land. Thus, the Rules 6, 9 and 18 are applicable on the Government land also. It was, thus, contended that if it is held that Rule 6 is applicable only for the private land then all other minerals which are not covered by Rule 7 specified in Schedule-I and II on the Government land will also have to be allotted by auction.

11. The finding of the Division Bench judgment of Indore Bench of this Court in ***Prathvi Infrastructure***'s case *(**supra***), likening Mineral-G at Serial No.6 of Schedule-I (*see* Rule 6) of the 1996 Rules to the Minerals at Serial No.3 of Schedule-II (*see* Rules 6 & 7) of the said Rules and the consequent directions to the State Government to conduct a process of auction in respect of the quarry in question, which was later on modified in review petition in respect of private land only but covering the grant or renewal on Government land, has triggered the present controversy, as a result of which all the petitioners' applications for

renewal of quarry lease for Mineral-G in the State are languishing.

12. We now proceed to take up the questions framed and referred for determination by the Full Bench. For considering the first question, it is necessary to analyse the provisions of the 1996 Rules, insofar as they are relevant for the purposes of the present discussion. The State Government in exercise of its powers conferred by Section 15 of the 1957 Act has framed the 1996 Rules. In the definition Clauses under Rule 2 of the 1996 Rules, the "Trade Quarry" has been defined under clause (xvi-a), which means a quarry for which the right to work is auctioned. The "Quarry Lease" has been defined in clause (xxv), which means a mining lease for minor minerals as mentioned in Section 15 of the 1957 Act. The said provisions of the 1957 Act and the 1996 Rules, read thus:-

"**MMDR Act, 1957**"

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;

(b) the time within which, and the form in which, acknowledgment of the receipt of any such applications may be sent;

(c) the matters which may be considered where applications in respect of the same land are received within the same day;

(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;

(f) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

(h) the manner in which rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;

(i) the manner in which rehabilitation of flora and other vegetation such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;

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

(k) the construction, maintenance and use of roads power transmission lines, tramways, railways, aerial rope ways, pipelines and the making of passage for water for mining purposes on any land comprised in a quarry or mining lease or other mineral concession;

(l) the form of registers to be maintained under this Act;

(m) the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;

(n) the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefore, and the powers of the revisional authority; and

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

(2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of these Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent,

whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:

Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years.

(4) Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely:-

(a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining under sub-section (2) of section 9B;

(b) the composition and functions of the District Mineral Foundation under sub-section (3) of section 9B; and

(c) the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under section 15A.

M.P. Minor Mineral Rules, 1996

CHAPTER I

"**2. Definitions**. – In these Rules, unless the context otherwise requires, -

*** *** ***

(xvi-a) "Trade Quarry" means a quarry for which the right to work is auctioned.;

*** *** ***

(xxv) "Quarry Lease" means a mining lease for minor minerals as mentioned in Section 15 of the Act;

13. The Rule 6 under Chapter-III of the 1996 Rules deals with the powers to grant quarry lease, which provides that the quarry lease in respect of minerals specified in Schedule-I and II shall be granted and renewed by the authority mentioned in Column (2) for the minerals specified in column (3) subject to the extent as specified in the corresponding entry in column (4) thereof of the Table given thereunder. Since in the present case, the cavil is not with regard to the competence and the extent of powers conferred upon the Authority mentioned in the Table appended to Rule 6 to grant any specified mineral, therefore, the said

part of the Rule 6 is not required to be delve into. However, the controversy involved in the present case revolves around the "stone for making *Gitti* by mechanical crushing (i.e. use of crusher)", which is the subject matter of grant and/or renewal and referred to as the Mineral-G hereinabove. The Mineral-G, as is apparent from perusal of Schedule-I of the 1996 Rules, is specified at Serial No.6 of Schedule-I, which is governed by the Rule 6 of the 1996 Rules. On the other hand, Rule 7(1) under Chapter-III of the 1996 Rules deals with the power to grant trade quarry in respect of the minerals, specified at Serial No.5 of Schedule-I and Serial Nos.1 and 3 of Schedule-II of the 1996 Rules, situated in Government land to be allotted only by auction subject to the proviso attached thereto. The said proviso provides for grant of quarry lease of minerals specified at Serial No.1 of Schedule II in favour of the Madhya Pradesh State Mining Corporation Ltd. (Government of Madhya Pradesh Undertaking). The relevant Rules 6 and 7 along with the Schedule-I and Schedule-II of the 1996 Rules are reproduced as under:-

"CHAPTER III
Powers to grant Prospecting Licence,
Quarry Lease or Trade Quarry

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

TABLE

S. No.	Authority	Minerals	Extent of powers
(1)	(2)	(3)	(4)
1.	Director	(i) Minerals specified in serial number 1 to 4, 6 and 7 of Schedule-I.	(i) Where the area applied for exceeds 10.00 hectares.
		(ii) Quarry of minerals specified in serial number 5 of Schedule I situated in private land.	(ii) Where the area applied for exceeds 10.00 hectares.
		(iii) Quarry of minerals specified in serial number 3	(iii) Where the area applied for exceed 10.00

		of Schedule-II situated in private land.	hectares.
		(iv) Minerals specified in serial number 4 of Schedule-II.	(iv) Where the area applied for exceeds 10.00 hectares.
2.	Collector/ Additional Collector (Senior IAS Scale)	(i) Minerals specified in serial number 1 to 3 of Schedule-I.	(i) Where the area applied for does not exceeds 10.00 hectares.
		(ii) Minerals specified in serial number 4,6 and 7 of Schedule-I.	(ii) Where the area applied for exceeds 2.00 hectares but does not exceeds 10.00 hectares.
		(iii) Quarry of minerals specified in serial number 5 of Schedule-I situated in private land.	(iii) Where the area applied for does not exceeds 10.00 hectares
		(iv) Minerals specified in serial number 2 of Schedule II ordinary clay for making bricks and tiles in chimney-kilns/kilns.	(iv) Where the area applied for exceeds 4.00 hectares.
		(v) Quarry of minerals specified in serial number 3 of Schedule II situated in private land.	(v) Where the area applied for exceeds 2.00 hectares but does not exceeds 10.00 hectares.
		(v) Minerals specified in serial number 4 of Schedule II.	(v) Where the area applied for exceeds 2.00 hectares but does not exceeds 10.00 hectares.
		(vi) Minerals specified in serial number 5 to 12 of Schedule II.	(vi) Where the area applied for exceeds 4.00 hectares.
3.	Officer Incharge, Mining Section	(i) Minerals specified	(i) Where the area applied for does not exceed 2.00 hectares.
		(ii) Minerals specified in serial number 2 of Schedule II, ordinary clay for making bricks and tiles in cheminey-kilns/kilns.	(ii) Where the area applied for does not exceed 4.00 hectares.
		(iii) Quarry of minerals specified in serial number 3 of Schedule II situated in private land.	(iii) Where the area applied for does not exceed 4.00 hectares.
		(iv) Minerals specified in serial number 4 of Schedule II.	(iv) Where the area applied for does not exceed 2.00 hectares.
		(iv) Minerals specified in serial number 5 to 12 of Schedule II.	(iv) Where the area applied for does not exceed 4.00 hectares.

Note. - Power to sanction prospecting license of mineral specified in serial number 1 to 3 of schedule I shall be with those authorized officer who has the power to sanction quarry lease of these minerals.

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

Provided that quarry lease of minerals specified in serial number 1 of Schedule II may be granted in favour of the Madhya Pradesh State Mining

Corporation Limited (Government of Madhya Pradesh Undertaking.)

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

Provided that if contractor establishes cutting and polishing industry of crusher for making gitti by mechanical means, within an initial period of contract, for mineral specified in serial number 5 of schedule I and serial number 3 of schedule II respectively, then the period of contract quarry of minerals specified in serial number 5 of schedule I shall be 15 years instead of 5 years and period of contract quarry of mineral specified in serial number 5 of serial number 3 of schedule II shall be 10 years instead of 5 years. For extended period contractor shall submit approved mining plan/environmental permission. The contractor shall maintain separate account of gitti and mineral after establishing crusher:

Provided further that, a contract money of the contract quarry shall be increased by 5 percent every year excluding first year.

Explanation. - For example if contract money is Rupees 1000 then contract money for second year shall be Rupees 1050 for third year Rupees 1100, for fourth year Rupees 1150 and for fifth year Rupees 1200. Likewise calculation of contract money for ensuing years shall be made.

(emphasis supplied)

The Schedule I and II appended to the 1996 Rules, read thus:-

"Schedule-1

(*See* Rule 6)

Specified Minerals

1. Dimensional stone-granite, dolerite, and other igneous and metamorphic rocks which are used for cutting & polishing purpose for making blocks, slabs, tiles of specific dimension.
2. Marble which is used for cutting and polishing purpose for making blocks, slabs, tiles of specific dimension.
3. Marble stone for other purposes.
4. Limestone when used in kilns for manufacture of lime used as building material.
5. Flagstone-Natural sedimentary rock which is used for flooring, roof top etc and used in cutting and polishing industry.
6. Stone for making gitti by mechanical crushing (i.e. use of crusher).
7. Bentonite/Fuller's earth.

Schedule-II

(*See* Rules 6 & 7)

Other Minerals

1. Ordinary Sand, Bajri.
2. Ordinary clay for making bricks, pots, tiles etc.
3. Stone. Boulder, Road Metal Gitti, Dhoka, Khanda. Dressed Stones, Rubble, Chips.
4. Murrum.
5. Lime Kankar when used in kilns for manufacture of lime used as building material.
6. Gravel.
7. Lime shell when used in kilns for manufacture of lime used as building material.
8. Reh Mitti.
9. Slate when used for building material.
10. Shale when used for building material.
11. Quartzite and quartzitic sand when used for purposes of building or for making road metal or house-hold utensils.
12. Salt petre."

(emphasis supplied)

A plain reading of Rule 6 of the 1996 Rules does not show any express provision that the quarry lease for any of the minerals specified either in Schedule-I or for Mineral-G specified at Serial No.6 of Schedule-I, shall be allotted by open auction.

14. The Division Bench in ***Prathvi Infrastructure***'s case **(*supra*)** while returning the finding that the mineral in question (i.e. Mineral-G at Serial No.6 of Schedule-I covered by Rule 6 of the 1996 Rules) also finds place at Entry 3 of Schedule-II of the 1996 Rules has nowhere considered the effect of Rule 6 in respect of Entry at Serial No.6 of Schedule-I of the 1996 Rules with regard to Mineral-G. It appears that solely because of the obtaining factual matrix in the peculiar facts and circumstances of the case in ***Prathvi Infrastructure***'s case **(*supra*)**, the Division Bench was carried away with the words "stone, boulder,

road metal Gitti, Rubble, Chips etc." narrated in Serial No.3 of the Schedule-II of the 1996 Rules to hold that even if it is established that the Mineral-G finds place in both the schedules, in larger public interest, the process of auction as provided under Rule 7 of the 1996 Rules, which is a transparent process, has to be followed. To return a finding with regard to grant of mining lease/renewal for Mineral-G only through the process of auction/issuing NIT in respect of Government land and the same being applicable in respect of renewal as well as in respect of pending applications, it would be unsafe to leave the matter merely on the probability and possibility of Mineral-G also finding place in both the Schedules as held by the Division Bench in ***Prathvi Infrastructure***'s case **(*supra*)**. Rather the Division Bench could have concluded only after specifically holding that there is material indicating the likeness or connection between "the Mineral-G" mentioned at Serial No.6 of Schedule-I covered by Rule 6 of the 1996 Rules and the "Stone, Boulder, road metal Gitti, Rubble Chips etc." which find place at Serial No.3 of Schedule-II thereof and therefore, the grant/renewal of Mineral-G should also take place through the process of auction as provided under Rule 7 of the 1996 Rules in larger public interest. But, there is nothing observed in the judgment to even remotely associate the Mineral-G with the entry at Serial No.3 in Schedule-II of the 1996 Rules. In absence thereof, it would not be correct, just and proper to hold that the mineral in question (Mineral-G) is governed under Serial No.3 of Schedule-II, therefore, the process of auction as provided under Rule 7 of the 1996 Rules has to be followed. The relevant paragraphs of the judgment in **Prathvi Infrastructure**'s case (supra) are reproduced as under:-

> "…….Stone, boulder, road metal Gitti, Rubble, Chips etc are under item no.3 of schedule-2 and rule 7 provides for auction of the same and therefore, in the considered opinion of this Court, keeping in view the controversy involved

> in the matter and all kind of allegations, counter allegations, manner and method in which, the State government has conducted itself in issuing the mining lease, the proper course of action would be to direct the respondent/State to adhere the provision of rule 7. Meaning thereby, to conduct an open auction in respect of quarry in question.
>
> *** *** ***
>
> The mineral in question also finds place in Entry 3 of Schedule- 2. Even if it is established that mineral finds place in both the Schedule, in larger public interest, the process of auction as provided under Rule 7 has to be followed. It is a transparent process and otherwise also it is in the larger public interest and in the interest of State exchequer and hence, the State Government is directed to conduct an auction."

15. Let us now examine whether the Mineral-G at Serial No.6 of Schedule-I also finds place at Serial No.3 of Schedule-II of the 1996 Rules. A perusal of Rule 7 of the 1996 Rules, reproduced hereinabove, makes it amply clear that the Legislature has categorically excluded the quarries of Minerals, specified at Serial No.5 of Schedule-I along with those specified at Serial Nos.1 and 3 of Schedule-II situated in Government land to be allotted only by auction. Had it not been so, there was no occasion for the Legislature to frame separate Rule 7 in respect of grant of trade quarry for the quarries of minerals specified at Serial No.5 of Schedule-I and Serial Nos.1 and 3 of Schedule-II. It is only because the minerals specified in Schedule-II are in the category of other minerals that they have been put in Schedule-II and not in Schedule-I and therefore, it is provided that they shall be covered both by Rules 6 and 7 of the 1996 Rules. To put it differently, except the minerals at Serial No.1 and 3 of Schedule-II, rest of the minerals specified in Schedule-II shall be covered by Rule 6 of the 1996 Rules.

16. A perusal of the application (Annexure P-2) submitted by the petitioner for renewal of quarry lease shows that the same is in the prescribed Form-I as per Rule 9 under Chapter IV of the 1996 Rules wherein it is provided as to how

the application for grant or renewal of a quarry lease in respect of minerals specified in Schedule I and II is to be submitted. Since the Mineral-G is a specified mineral at Serial No.6 of the Schedule-I, therefore, it is covered by Rule 9 to be granted or renewed by way of an application submitted in the prescribed Form-I thereunder. Necessarily, it does not cover the cases of public auction. Furthermore, as per Rule 9(k), an affidavit is required to be filed by the applicant with the application for grant if the land is not owned by him, stating that he has obtained surface rights over the area or has obtained the consent of the owner for conducting mining/quarrying operations. The proviso attached to Rule 9(k) makes it clear that no affidavit shall be necessary where land-rights vest with the State Government. Thus, it is vivid that the application for quarry lease can be filed for mineral in the Government land or private land. Under Rule 17 of the 1996 Rules, the time and limitation for furnishing application for renewal is prescribed. The relevant Rules read as under:-

> **"9. Application for quarry lease.** - An application for the grant or renewal of a quarry lease shall be made in Form I in triplicate for the minerals specified in Schedule I and II. The application shall be affixed with a court fee stamp of the value of five rupees and shall contain the following particulars together with documents in support of the statements made therein
>
> (a) If the applicant is an individual, his name, nationality, profession, caste, educational qualification, age, residence, present address and financial status;
>
> (b) If the applicant is a company, its name, nature and place of business and place of registration or incorporation, list of directors and their nationality, financial status, registration/incorporation certificate;
>
> (c) If the applicant is a firm, its name, nature and place of business, list of partners and their nationality, partnership deed, registration certificate, financial status;
>
> (d) If the applicant is a society/association, its name, nature and place of working, list of members and their caste, educational qualification, nationality, registration certificate, bye-laws and financial status of individual member;

(e) A description illustrated by a map or plan showing as accurately as possible the situation and boundaries of the land in respect of which the quarry lease is required where the area is unsurveyed the location of the area should be shown by some permanent physical feature, roads, tank, etc.;

(f) Copy of latest Khasra Panchsala;

(g) The minerals or mineral which the applicant intends to quarry or mine;

(h) The period for which the quarry lease is required;

(i) The purpose for which the extracted mineral is to be used;

(j) Every application for the grant or renewal of a quarry lease shall be accompanied by an affidavit showing particulars of the areas mineral-wise in each district of the State, which the applicant or persons jointly with him:-

(i) already holds under quarry lease;

(ii) has already applied for, but not granted; and

(iii) being applied for simultaneously;

(k) An affidavit to the effect that the applicant has, where the land is not owned by him, obtained surface rights over the area or has obtained the consent of the owner/owners for conducting mining; quarrying operations:

Provided that no such affidavit shall be necessary where the Land-rights vest with the State Government;

(I) Every application for the grant or renewal of a quarry lease shall be accompanied by a no dues certificate in Form II granted by the Mining Officer or Assistant Mining Officer, or incharge of the Mining Section of the district in respect of payment of mining dues payable under the Act or rules made thereunder from all the districts where the applicant holds or held mineral concessions:

Provided that it shall not be necessary for the applicant to produce the no dues certificate if he has furnished an affidavit and such other evidence as may be required to the satisfaction of the concerned authority that he docs not hold and has never held any minerals concession in any district of the State:

Provided further that the grant of no dues certificate shall not discharge a holder of such certificate from the liability to pay the mining dues which may be subsequently found to be payable by him under the Act or Rules made thereunder."

*** *** ***

> **17. Renewal of quarry lease**. – Every application for the renewal of a quarry lease shall be made at least one year before the date on which the lease is due to expire. In case of delay on submission of application, sanctioning authority on the basis of satisfactory reasons may condone such delay and dispose of such application, imposing penalty of Rs.1000/- per month:
>
> Provided that, on any condition, submission of renewal application, three months prior to due date of expiry of lease, shall be mandatory."
>
> (emphasis supplied)

17. The aforesaid reasoning further finds support from the Rules 18 and 21 of the 1996 Rules. The Rule 18 of the 1996 Rules provides for the procedure of disposal of application for grant/renewal of quarry lease. Under second proviso to Rule 18(2), it is provided that if the application is not disposed of by sanctioning authority within the period of six months then the same shall be disposed of by senior authority as mentioned in Rule 6. Thus, even under Rule 18 of the 1996 Rules, there is no provision for allotment of quarry lease by auction. The said Rule reads, thus:-

> **"18. Disposal of applications for the grant or renewal of quarry lease.-**
> (1) On receipt of an application for the grant or renewal of a quarry lease, its details shall be first circulated for display on the notice board of the Zila Panchayat, Janpad Panchayat and Gram Sabha concerned of the district and collectorate of the district concerned.
>
> (1-A) Addition to in sub-rule (1), the details of quarry lease application, received for any area shall be published in leading daily Hindi newspaper in the form of notice for general information within fifteen days from the date of receipt of application.
>
> (2) The sanctioning authority after making such inquires as he may deem fit. The sanctioning authority, may take decision to grant of quarry lease or refuse to sanction it or renew the quarry lease or refuse to renew it before the expiry of quarry lease already sanctioned, after receiving the enquiry report. Information of in-principle sanction, shall be given to applicant. Applicant shall furnish approved mining plan/approved environment management plan, within six months from such information. Provided that if in-principle sanction is for five hectare or more area, then applicant from the date of such information, shall submit environment permission obtained under notification

dated 14.09.2006 of Ministry of Environment and Forest within period of six month. After completion of all formalities sanctioning authority shall issue grant order or it's renewal of quarry lease. On the basis of satisfactory reasons, the sanctioning authority may permit to enhance the time period, if all formalities are not completed in prescribed time period:

Provided that no new quarry lease shall be sanctioned without obtaining opinion of the respective Gram Sabha:

Provided further that if the application, is not disposed of by sanctioning authority within the period of six months then application shall be disposed of by senior authority as mentioned in rule 6.

(3) Notwithstanding anything contained in sub-rule (2), all pending applications for the grant inclusive of such applications on which agreements have not been executed on the date of commencement of these rules shall be deemed to have been refused by the Sanctioning Authority. Fresh applications in this behalf may be made according to the procedure laid down under these rules.

(4) Where an applicant for grant or renewal of a quarry lease, dies before the sanction order is passed it will be deemed to have been filed by his heir and if the applicant dies after the sanction order of grant or renewal but before execution of lease deed it will be deemed to have been granted or renewed to the legal heir of the applicant.

(5) Mineral concession to Minerals specified at Sr. No. 1, 2 and 3 of Schedule I may be granted as per the provisions of Granite Conservation And Development Rules, 1999 and Marble Conservation and Development Rules, 2002."

18. Preferential rights are governed under Rule 21 of the 1996 Rules. Under Sub-Rule (2) thereof, the quarry lease of the minerals specified at Serial No.4, 6 and 7 of Schedule-I and Minerals specified in Schedule-II excluding Serial No.1 and 3 shall be preferably given to the Co-operative Society/Association of Scheduled Tribe/Scheduled Caste/Backward Classes, Co-operative Society/ Association of educated unemployed youths or individuals subject to the further stipulations contained thereunder. Here also the Legislature has purposely excluded the quarry lease of the minerals specified at Serial No.3 of Schedule-II from being given to certain category of bodies unlike the mineral specified at

Serial No.6 of Schedule-I i.e. the Mineral-G because it is easier to give the quarry lease of the Mineral-G as per the preferential rights enumerated in Rule 21 of the 1996 Rules and not the minerals specified at Serial No.3 of Schedule-II, which are meant to be allotted only by auction. It is a common ground that while putting the grant of trade quarry for allotment by auction the rates for allotment would vary and therefore, it would be difficult to allot the quarry through auction which is meant to be given as per preferential rights. The said grant/renewal of quarry lease for Mineral-G under Rule 6 and in terms of Rule 21 of the 1996 Rules as per preferential rights is in tune with the Directive Principles of State Policy under Part-IV of the Constitution of India. Article 39 thereunder, provides for certain principles of policy to be followed by the State and that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood under clause (a) thereof and under clause (b) thereof, it is mandated that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. In view of these principles, the State has thought out that the quarry lease of certain minerals at Serial Nos.4, 6 and 7 of Schedule-I is given in order of preference to certain class of persons whereas it is not so in the case of minerals specified at Serial No.3 of Schedule-II. If the Mineral-G at Serial No.6 of Schedule-I is held to be allotted through auction, the scope and purpose of Rule 21 shall become redundant because the grant or renewal as per preferential rights cannot be taken care of through the process of auction. Thus, the Legislature has purposely excluded the minerals specified at Serial No.3 of Schedule-I to be given as per the preferential rights. The Rule 21 of the 1996 Rules, is extracted as under:-

> **“21. Preferential Rights**. - (1) *(sub-rule (1) omitted by No.12 (19.9.2008).*

(2) The quarry lease of the minerals specified at S.No.4, 6 and 7 of Schedule I and Minerals specified in Schedule II excluding Serial No.1 and 3 shall be preferably given to the following category, namely:-

(i) Co-operative Society/Association of Scheduled Tribe/Scheduled Caste/Backward Classes, Co-operative Society/Association of educated unemployed youths or individuals where more than fifty per cent, of the members belong to the concerned category and also where the Chairman of the Society is of the concerned category and also where the executive committee have the representation in the ratio of the members of the concerned category and hail from below Poverty Line families listed in the District Rural Development Agency or educated unemployed youth belonging to Scheduled Tribe/Scheduled Caste/Backward Classes in that order.

*** *** ***

(3) Whenever more than one application in any particular category are received for minerals of Schedule I for an area, the Sanctioning Authority shall while sanctioning a quarry lease take into consideration the following matters in respect of the applicants -

(i) Any special knowledge or experience of mining and export;

(ii) Technical and special management experience of establishing, running and maintaining cutting polishing industry; and

*** *** ***

(emphasis supplied)"

19. Still further, under the Scheme of the 1996 Rules, the renewal in respect of quarry lease of mineral specified at Serial No.6 of Schedule-I is altogether different than the trade quarries allotted in respect of minerals specified in Entry 3 of Schedule II. The maximum period of quarry lease, under Rule 22 of the 1996 Rules, is ten years and the minimum period is not less than five years. Under Sub-rule (2) of Rule 22, the period of renewal of quarry lease is equal to the original period. However, the period of allotment of trade quarry for Minerals at Serial No.3 of Schedule-II is separately prescribed under Sub-rule (2) of Rule 7 of the 1996 Rules i.e. upto the end of fifth financial year from the financial year, fixed for auction but there is no provision for its renewal in Rule

7. There is force in the submission advanced by Mr. Kamat, learned senior counsel for the petitioners that for the purposes of Mineral-G use of crusher is indispensable and therefore, it requires setting up of an industry for which investment is made and thus, larger time period is provided in the 1996 Rules for its grant and provision of renewal is also made. However, for the Mineral at Serial No.3 of Schedule-II, a fixed period is provided in Sub-Rule (2) of Rule 7 unless as per first proviso thereto the contractor establishes cutting and polishing industry or crusher for making *Gitti* by mechanical means. While so, the period of contract quarry of such mineral shall be 10 years instead of 5 years and for the extended period the contractor shall submit approved mining plan/environmental permission. The Rule 22 of the 1996 Rules is in the following terms:-

> **"22. Period for which leases may be granted or renewed. –** (1) The period of quarry lease shall not be more than ten years and minimum period shall not be less than five years. If any period applied in between maximum and minimum period then sanctioning authority shall sanction quarry lease for the applied period.
>
> (2) The period of renewal of quarry lease shall be equal to the original period.
>
> **Note**. – Period of quarry lease of minerals specified in serial number 1, 2 and 3 of Schedule I, shall be as prescribed in Granite Conservation and Development Rule, 1999 and Marble Development and Conservation Rule, 2002]"

20. Taking into account Rule 22, as aforesaid and the proviso to Sub-Rule (2) of Rule 7 reproduced above, it clearly depicts that distinction between Mineral-G at Serial No.6 of Schedule-I and Mineral at Serial No.3 of Schedule-II is carved out. Inasmuch as, it is understood that the Mineral-G at Serial No.6 of Schedule-I i.e. Stone for *Gitti* does not contain the mineral part in it and therefore, is granted by the prescribed authority on an application for grant or renewal whereas the Mineral at Serial No.5 of Schedule-I i.e. Flagstone-Natural

sedimentary rock which is used for flooring, roof top etc. and used in cutting and polishing industry and those mentioned in Schedule-II, at Serial No.1 i.e. Ordinary Sand, Bajri and Serial No.3, namely, Stone, Boulder, Road Metal Gitti, Dhoka, Khanda, Dressed Stones, Rubble, Chips as mentioned under Sub-Rule (2) of Rule 7 of the 1996 Rules contain mineral part in it, and thus, allotted through the process of auction for a period of five years. It is only when the contractor establishes the cutting and polishing industry or crusher for making *Gitti* by mechanical means within an initial period of contract for non-mineral part of the Stone mentioned therein, the period of lease is required to be extended and it is made mandatory for the contractor to maintain separate account of *Gitti* and mineral after establishing the crusher. Therefore, the first proviso to Sub-rule (2) of Rule 7 appears to have been added for extending the period of quarry lease because the contractor like for the Mineral-G, would make an investment for such establishment of crusher in respect of non-mineral part of the minerals at Serial No.3 of Schedule-II. Still further, the second proviso to sub-rule (2) of Rule 7 provides that a contract money of the contract quarry shall be increased by 5 percent every year excluding the first year which is not in the case of quarry lease given by grant or renewal in terms of Rule 6 read with Rules 17, 18, 21 and 22 of the 1996 Rules. Thus, there is a clear distinction in respect of grant or renewal of quarry lease of Mineral-G in terms of Rule 6 and the allotment of Mineral at Serial No.3 of Schedule-II as per Rule 7 of the 1996 Rules. In Division Bench decision of this Court in ***G.R. Kulkarni's*** case (***supra***) relied upon on behalf of the petitioners, the process of manufacture has been explained. The question therein was: whether the breaking of boulders into metal (gitti) is a process of manufacture. It was held as under:-

> "8. The stones which are won in the process of quarrying may be sold without fashioning them into something else. If they are so sold they would not be manufactured but merely delivered from the quarry-head. When they are broken into metal or gitti there is some process, manual though it may be, for the purpose of shaping the stones into another marketable commodity."

21. The limitation under Rule 26 of the 1996 Rules for the execution of the lease is three months. The Rule provides that after the quarry lease is granted or renewed, a lease deed in Form VII shall be executed and registered under the Indian Registration Act, 1908 within three months of the order of sanction of the lease. Whereas, for the trade quarries allotted by auction in terms of Rule 7 and 36 of the Rules, the contract agreement in different Form XVIII relating to auction of trade quarry shall be registered under the Indian Registration Act, 1908 in terms of Rule 37(2) of the 1996 Rules. Thus, different procedure is prescribed under the Rules for registration of the quarries leases granted or renewed by application and those allotted by auction. The Relevant Rules 26 and 37(2) of the 1996 Rules are reproduced as under:-

> "**26. Lease to be executed within three months**. – Where a quarry lease is granted or renewed, the lease deed in Form VII shall be executed and registered under the Indian Regulation Act, 1908 (No.16 of 1908) within three months of the order of sanction of the lease and if no such lease is executed within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked:
>
> Provided that where the Sanctioning Authority is satisfied that the applicant is not responsible for the delay in the execution of the lease deed, the Sanctioning Authority may permit the execution of the lease deed after the expiry of the aforesaid period of three months.
>
> *** *** ***
>
> **37. Execution and Registration of Contract Agreement**. -
>
> (1) *** *** ***
>
> (2) The contract agreement in Form XVIII relating to auction of trade quarry shall be registered in accordance with the provisions of the Indian Regulation Act, 1908 (XVI of 1908)."

22. Similarly, the Mineral-G at Serial No.6 of Schedule-I is completely

different from the minerals at Serial No.3 of Schedule-II is also apparent from perusal of Rule 29 of the 1996 Rules read with Schedule-IV of the 1996 Rules, as the rates of dead rent in respect of 'stone for crusher' and 'stone for building purposes and other minor minerals' which are provided at Serial No.5 and 8 of the Schedule-IV are completely different. The relevant Rule 29 and the entries in the Schedule-IV, for ready reference are as under:-

> **"29. Rent and Royalty.** - (1) When a quarry lease is granted or renewed –
>
> (a) dead rent shall be charged at the rates specified in Schedule IV;
>
> (b) royalty except for limestone shall be charged at the rates specified in Schedule III;
>
> (c) rate of royalty on limestone shall be the same as fixed by the Government of India from time to time for limestone in Schedule II of the Act;
>
> (d) surface rent shall be charged at the rates specified by the Collector of the district from time to time for the area occupied or used by the lessee.
>
> (2) On and from the date of commencement of these rules, the provisions of sub rule (1) shall also apply to the leases granted or renewed prior to the date of such commencement and subsisting on such date;
>
> (3) If the lease permits the working of more than one mineral in the same area separate dead rent in respect of each mineral may be charged:
>
> Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral, whichever is higher in amount;
>
> (4) Notwithstanding anything contained in any instrument of the lease, the lessee shall pay rent/royalty in respect of any mineral removed and/or consumed at the rate specified from time to time in Schedule III and IV;
>
> (5) The State Government may, by notification in the Official Gazette amend the Schedules III and IV so as to enhance or reduce the rate at which rents/royalties shall be payable in respect of any mineral with effect from the date of publication of the notification in the Official Gazette:
>
> Provided that the rate of royalty/dead rent in respect of any mineral shall not be increased more than once during any period of three years;
>
> (6) No granite and marble block either processed or in the raw form or any other mineral shall be dispatched from any of leased areas without a valid transit pass issued by Mining Officer. The transit pass shall be

issued on an application in Form VIII after depositing royalty for the quantity intended to be transported out of the minerals extracted. Contravention of this rule may result in forfeiture of the security deposit by the Collector without prejudice to any other action that might lie against the lessee;

(7) The Transit Pass shall be in Form IX.

*** *** ***

SCHEDULE IV
(See rule 29)
Rates of Dead Rent in Rupees per Hectare per Annum

S. No.	Category of Mineral	1st year of the quarry lease	2nd year to 3rd year of the quarry lease	4th year of the quarry lease and onward
(1)	(2)	(3)	(4)	(5)
	***	***		***
5.	Stone for crusher	Nil	30,000/-	40,000/-
	***	***		***
8.	Stone for building purpose and other Minerals	Nil	25,000/-	30,000/-

Note. – In case of renewal of quarry lease, the rates of dead rent applicable shall be as per column (5) above.

23. Under Rule 30 of the 1996 Rules relating to general conditions of quarry lease also nothing has been spelt out about the process of auction regarding grant of quarry lease. The relevant part of the said Rule is as under:-

"30. Conditions of quarry lease.-(1) Every quarry lease shall be subject to the following Conditions:-

(a) The lessee shall pay, for every year, yearly dead rent at the rates specified in the Schedule IV in the advance for the whole year, on or before the 20th day of the first month of the year;

(b) The lessee shall pay the dead rent or royalty in respect of each mineral whichever is higher in amount but not both. The lessee shall pay royalty in respect of quantities of mineral intended to be consumed or transported from the leased area, no sooner the amount of dead rent already paid equals the royalty on mineral consumed or transported by him. The dead rent or royalty shall be deposited in the Revenue receipt head prescribed in sub-rule (3) of Rule 10;

(c) The lessee shall also pay for the surface area occupied or used by him

for the purposes of mining operations, surface rent in advance for the whole year on or before the 20th day of the first month every year;

(d) Notwithstanding any other action that may be taken for default in the payment of dues as specified in clause (a), (b), (c) within time under these rules or under any other condition of the lease, the lessee shall pay interest at the rate of 24% per annum for all defaulted payments of dead rent, royalty and surface rent.

*** *** ***"

24. The Chapter VI of the 1996 Rules pertains to grant of trade quarries wherein the procedure for grant of the trade quarries; their execution and registration of contract; rates of royalty; maintenance of register of trade quarry; maintenance of accounts of income; and resumption of possession etc. has been clearly prescribed. Rule 36 under the said Chapter provides for auction of quarries wherein the minerals meant to be allotted only by auction are the same minerals which are specified in Rule 7 of the 1996 Rules i.e. the mineral at Serial No.5 of Schedule-I and minerals specified at Serial No.1 and 3 of Schedule-II situated in Government land. Apart from these minerals, under Rule 36 none of the mineral specified in Schedule-I have been provided to be allotted only by auction. Thus, the grant or renewal of quarry lease of Mineral-G cannot be by auction is also substantiated by Rule 36 of the 1996 Rules. The Rule 36 is quoted, as under:-

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

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

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

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

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

25. The words "Trade quarry" and "Quarry Lease" have been defined under the definition Clauses (xvi-a) and (xxv) of Rule 2 of the 1996 Rules respectively. According to it, the "Trade quarry" means a quarry for which the right to work is auctioned whereas the "Quarry Lease" is a mining lease granted to quarry minor minerals as mentioned in Section 15 of the Act. Thus, keeping in view the said two definition clauses as well, there is a clear distinction between the "Trade quarry" and "Quarry Lease" as to the nature of operation and minerals. Still further, Schedule-I of the 1996 Rules speaks about the specified minerals whereas Schedule-II relates to other minerals. Therefore, from distinction in the definition clauses of "Trade quarry" and "Quarry Lease", the aforesaid analysis of the Rules 6 and 7 and other relevant Rules of the 1996 Rules is fortified and therefore, it logically follows that the Mineral-G, which is included in Schedule-I under Rule 6 of the 1996 Rules is a separate and distinct mineral than the entry at Serial No.3 of Schedule-II governed by Rule 7 of the 1996 Rules. The Mineral-G at Serial No.6 of Schedule-I specifically covered by Rule 6 supported by Rules 9, 17, 18, 21, 22, 26, 29 and 30 of the 1996 Rules does not enlarge its scope to be covered by Rule 7 and 36 of the 1996 Rules.

26. Having analysed the statutory provisions of the 1996 Rules, it would be apt to delve with the judicial precedents. A Constitution Bench of the Supreme Court in ***Union of India vs. Sankalchand Himatlal Sheth and others, (1977) 4 SCC 193*** laid down the broad principles of interpretation of a Statute. It was expressed that if the provision is clear and explicit, it cannot be reduced to a nullity by reading into it a meaning which it does not carry and, therefore,

"Courts are very reluctant to substitute words in a statute or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense". It was further observed that the another rule of interpretation which is equally well-settled and follows as a necessary corollary is that where the words according to a literal meaning produce an inconsistency or absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification, the court would be justified in putting on them some other signification which, though less proper, is one which the court thinks the words will bear. When the court interprets a constitutional provision it breathes life into the inert words used in the founding document. The relevant extract of the said decision reads as under:-

> "**54**. Now, it is undoubtedly true that where the language of an enactment is plain and clear upon its face and by itself susceptible to only one meaning, then ordinarily that meaning would have to be given by the Court. In such a case the task of interpretation can hardly be said to arise. But language at best is an imperfect medium of expression and a variety of significations may often lie in a word of expression. It has, therefore, been said that the words of a statute must be understood in the sense which the legislature has in view and their meaning must be found not so much in a strictly grammatical or etymological propriety of language, nor in its popular use, as in the subject or the occasion on which they are used and the object to be attained. It was said by Mr. Justice Holmes in felicitous language in Town v. Elsner, 245 U.S. 418 that "a word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used". The words used in a statute cannot be read in isolation; their colour and content are derived from their context and, therefore, every word in a statute must be examined in its context. And when I use word 'context', I mean it in its widest sense "as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in para materia and the mischief which-the statute was intended to remedy". The context is of the greatest importance in the interpretation of the words used in a statute. "It is quite true" pointed out by Judge Learned Hand in Helvering v. Gregory, 69 F (2) (d) 809 "that as the articulating of a statute increase, the room for interpretation must contract; but

the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes and no degree of particularity can ever obviate recourse to the setting in which all appear and which all collectively create." Again, it must be remembered that though the words used are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing, be it a statute, a contract, or anything else, it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary, but to remember that a statute always has some purpose or object to accomplish, whose sympathetic and imaginative discovery, is the surest guide to its meaning. The literal construction should not obsess the Court, because it has only prima facie preference, the real object of interpretation being to find out the true instant of the law maker and that can be done only by reading the statute as an organic whole, with each part throwing light on the other and bearing in mind the rule in Heydon's case (1584) 3 W. Rep. 16: 76 E.R. 637 which requires four things to be "discerned and considered" in arriving at the real meaning: (1) what was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parliament has appointed; and (4) the reason of the remedy. There is also another rule of interpretation which is equally well settled and which seems to follow as a necessary corollary, namely, where the words, according to their literal meaning "produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification", the Court would be justified in "putting on them some other signification, which, though less proper, is one which the Court thinks the words will bear". Vide River Wear Commissioners v. Adamson (1876-77) App. Cs. 743 at 764....”

(emphasis supplied)

27. The Supreme Court in ***Nelson Motis vs. Union of India and another, (1992) 4 SCC 711*** has held that where the words of the statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. The Court held as under:-

“8. The language of sub-rule (4) of Rule 10 is absolutely clear and does not permit any artificial rule of interpretation to be applied. It is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences. The language of

the sub-rule here is precise and unambiguous and, therefore, has to be understood in the natural and ordinary sense. As was observed in innumerable cases in India and in England, the expression used in the statute alone declares the intent of the legislature. In the words used by this Court in *State of U.P.* v. *Dr Vijay Anand Maharaj* [AIR 1963 SC 946] when the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the act speaks for itself. Reference was also made in the reported judgment to Maxwell stating:

> "The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

The comparison of the language with that of sub-rule (3) reinforces the conclusion that sub-rule (4) has to be understood in the natural sense. It will be observed that in sub-rule (3) the reference is to "a Government servant under suspension" while the words "under suspension", are omitted in sub-rule (4). Also the sub-rule (3) directs that on the order of punishment being set aside, "the order of his suspension shall be deemed to have continued in force" but in sub-rule (4) it has been said that "the Government servant shall be deemed to have been placed under suspension". The departure made by the author in the language of sub-rule (4) from that of sub-rule (3) is conscious and there is no scope for attributing the artificial and strained meaning thereto. In the circumstances it is not permissible to read down the provisions as suggested. We, therefore, hold that as a result of sub-rule (4) a government servant, though not earlier under suspension, shall also be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, provided of course, that the other conditions mentioned therein are satisfied."

(emphasis supplied)

28. In the case of ***Nasiruddin and others vs. Sita Ram Agarwal, (2003) 2 SCC 577***, the Supreme Court arrived at the conclusion that the Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It was clearly stated that where the

statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner only because of harsh consequences arising therefrom. The Court held as under:-

> **"35.** In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom. In *E. Palanisamy* v. *Palanisamy* (2003) 1 SCC 123, a Division Bench of this Court observed: (SCC p. 127, para 5)
>
> "The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters."
>
> *** *** ***
>
> **37.** The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."
>
> (emphasis supplied)

29. The Supreme Court in ***Maulavi Hussein Haji Abraham Umarji vs. State of Gujarat and another, (2004) 6 SCC 672***, has held that the language employed in a statute is the determinative factor of legislative intent. The question is not what may be supposed and has been intended but what has been said. The relevant extract of the said judgment reads as under:-

> **"18.** The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid",

Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co.* v. *Yensavage* [218 FR 547].) The view was reiterated in *Union of India* v. *Filip Tiago De Gama of Vedem Vasco De Gama* [(1990) 1 SCC 277] (SCC p. 284, para 16).

19. In *D.R. Venkatachalam* v. *Dy. Transport Commr.* [(1977) 2 SCC 273] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

20. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *CST* v. *Popular Trading Co.* [(2000) 5 SCC 511]). The legislative casus omissus cannot be supplied by judicial interpretative process.

21. Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in *Artemiou* v. *Procopiou* [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (All ER p. 544 I), "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* [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2 WLR 559 (HL)] where at AC p. 577 he also observed: (All ER p. 664 I) "This is not a new problem, though our standard of drafting is such that it rarely emerges."]"

(emphasis supplied)

30. In ***Nathi Devi vs. Radha Devi Gupta, (2005) 2 SCC 271,*** it has been propounded that the Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. It was further held that it is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. The relevant extract of the decision, reads, thus:-

> **"13.** The interpretative function of the court is to discover the true legislative intent. It is trite that in interpreting a statute the court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When the language is plain and unambiguous and admits of only one meaning, no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.
>
> **14.** It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts

always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. (See *State of U.P.* v. *Dr. Vijay Anand Maharaj* [AIR 1963 SC 946], *Rananjaya Singh* v. *Baijnath Singh* [AIR 1954 SC 749] , *Kanai Lal Sur* v. *Paramnidhi Sadhukhan* [AIR 1957 SC 907] , *Nyadar Singh* v. *Union of India* [(1988) 4 SCC 170] , *J.K. Cotton Spg. and Wvg. Mills Co. Ltd.* v. *State of U.P.* [AIR 1961 SC 1170] and *Ghanshyamdas* v. *CST* [AIR 1964 SC 766].)

15. It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity."

31. The Supreme Court in ***Aravali Golf Club vs. Chander Hass, (2008) 1 SCC 683*** went on to the extent of holding that in the name of judicial activism Judges cannot cross their limits and try to take over functions which belong to another organ of the State. The relevant observations are:-

"**17**. Before parting with this case we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.

18. Judges must exercise judicial restraint and must not encroach into the executive or legislative domain, vide Indian Drugs & Pharmaceuticals Ltd. v. Workmen (2007) 1 SCC 408; and S.C. Chandra v. State of Jharkhand (2007) 8 SCC 279 (see concurring judgment of M. Katju, J.).

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State -- the legislature, the executive and the judiciary -- must have respect for the other and must not encroach into each other's domains.

21. The theory of separation of powers first propounded by the French thinker Montesquieu (in his book The Spirit of Laws) broadly holds the field in India too. In Chapter XI of his book The Spirit of Laws Montesquieu writes:

> "When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.
>
> Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.
>
> There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."

32. The similar provisions of the 1996 Rules, which are involved herein came up for consideration before a Five Judge Bench of this Court in ***Pankaj Kumar Rai vs. State of M.P and others, 2017 SCC Online MP 1764.*** The Court relying upon the judgment of the Supreme Court in ***Kailash Chandra and another vs. Mukundi Lal and others, (2002) 2 SCC 678*** observed that a provision in the statute is not to be read in isolation. When the subject-matter dealt with in different sections or parts of the same statute is the same or similar in nature then it has to be read with other related provisions of the Act itself. The Bench in **Pankaj Kumar Rai**'s case (**supra**) observed as under:-

> "**13**. We have heard learned counsel for the parties and find that the "Quarry Permit" mentioned in Rule 68 third proviso is distinct from a "Trade quarry" granted under Rule 7 read with Rule 36 or a "Quarry lease" granted under Rule 6 read with Rule 18 of the Rules……The "Trade quarry" is the one for which right to work is auctioned in terms of Rule 7 read with Rule 36 as contained in Chapter VI of the Rules. The quarry lease is allotted under Rule 6. Thus, the quarry lease is governed by allotment whereas the trade quarry is allotted by auction whereas the quarry permit is granted for a specified period for the purposes of specific contract in terms of third proviso to Rule 68. …"

33. Considering the true meaning and effect of the Rules 6 and 7 and the relevant entries in the Schedule-I and II coupled with the other relevant provisions of the 1996 Rules, which have been discussed hereinbefore, in the light of the principles of interpretation laid down by the Supreme Court in the cases of ***Sankalchand Himatlal Sheth (supra), Nelson Motis (supra), Nasiruddin (supra), Maulavi Hussein Haji (supra), Nathi Devi (supra)*** and ***Aravali Gold Club (supra)***, it is manifest that the Rules 6 and 7 of the 1996 Rules operate in different fields and they cover different minerals specified in Schedule I and II and even after reading the said provisions together with other Rules in the 1996 Rules, no likeness is established between the Mineral-G at Serial No.6 of Schedule-I and "Stone, Boulder, road metal Gitti, Rubble Chips etc." mentioned at Serial No.3 of Schedule-II. Under the entire scheme of the 1996 Rules, the quarries of Minerals specified at Serial No.5 of Schedule-I and Serial Nos.1 and 3 of Schedule-II situated in Government land alone are meant to be allotted by auction under Rule 7 of the 1996 Rules. A perusal of Column (3)(iii) of the Table appended to Rule 6 clearly goes to show that even the quarry of minerals specified at Serial No.3 of Schedule-II situated in private land is covered by Rule 6 of the 1996 Rules which prescribes the procedure for its grant and renewal by the Authority and not by auction as per Rule 7 of the 1996 Rules. The grant or renewal of quarry lease of Mineral-G at Serial No.6 of Schedule-I and rest of the minerals in Schedule-I and II (except Serial No.5 of Schedule-I and Serial No.1 and 3 of Schedule-II on the Government land) is governed by Rule 6 of the 1996 Rules and could not be by way of open auction. Since in the Table appended to the Rule 6 of the 1996 Rules, the grant of quarry lease of certain specified minerals on the private land has been specifically provided at column (3) e.g. at Column 3(ii) and (iii) at Serial No.(1) of the Table

whereby Director is the Authority to grant the minerals and column 3(iii), (v) of Serial No.2 of the Table where the Collector is the Authority, therefore, it is apparent that except the minerals mentioned in the said Table which are on the private land, all other minerals could be on the Government or private land. Thus, under Rule 6 of the 1996 Rules, the nature of the land has not been mentioned. Accordingly, the **Question No.(I)** referred, is answered in the negative and it is held that the grant of quarry lease for Mineral-G at Serial No.6 of Schedule-I which is governed by Rule 6 of the 1996 Rules, on the Government land, cannot be by way of open auction.

34. Since the Mineral-G at Serial No.6 of Schedule-I is specifically held to be covered by Rule 6 of the 1996 Rules, which admits of the quarry lease for the said mineral by application for grant or renewal and not by auction, therefore, there cannot be two processes i.e. one by open auction for Government land and another by way of grant for private land in respect of Mineral-G. Thus, the **Question No.(II)** referred, is also answered in the negative.

35. Adverting back to the judgment in ***Prathvi Infrastructure's*** case ***(supra)***, it was argued by the learned counsel for the petitioners that apart from heavy emphasis laid on Rule 7 and entry at Serial No.3 of Schedule-II of the 1996 Rules, misreading of the two judgments of the Supreme Court in ***Centre for PIL***'s case (***supra***) and ***Natural Resources Allocation***'s case (***supra***) has also accounted for the conclusion by the Division Bench at Indore that the State Government has acted contrary to the statutory Rules in allotting mines in question without adhering to the process of auction. The said submission needs to be examined in the context of the question No.(III) referred.

36. The Division Bench at Indore specifically relied upon paragraphs 85, 89,

94, 95 and 96 of the judgment in ***Centre for PIL***'s case (***supra***) and paragraph 188 of the judgment in ***Natural Resources Allocation***'s case (***supra***) and held that the allocation of natural resources by taking recourse to auction is a fair and reasonable process and since the Rules also provide for conducting an auction, therefore, direction to adopt the most fair and transparent process came to be passed. It is, however, noticed that the judgment in ***Centre for PIL***'s case (***supra***) was the subject matter of Presidential Reference under Article 143(1) of the Constitution of India in ***Natural Resources Allocation***'s case (***supra***) for deciding the following question among others:-

> "***Question 2***. Whether a broad proposition of law that only the route of auctions can be resorted to for disposal of natural resources does not run contrary to several judgments of the Supreme Court including those of the larger Benches?

The judgment in ***Centre for PIL***'s case (***supra***) i.e. *2G Case* was explained by the Constitution Bench holding that the said judgment did not make any mention about auction being the only permissible and *intra vires* method for disposal of natural resources and the findings were limited to the case of spectrum. If the Court had actually held so, it would have found a mention in the summary at the end of the judgment. It was further explained that Article 14 of the Constitution of India does not predefine any economic policy as a constitutional mandate and even the mandate of Article 39(b) imposes no restrictions on the means adopted to subserve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. The relevant paragraphs from the Constitution Bench judgment are profitably reproduced as under:-

> **"*On merits***
>
> *** *** ***
>
> **67.** As already pointed out, the judgment in *Centre for Public Interest*

Litigation vs. Union of India (2012) 3 SCC 1 triggered doubts about the validity of methods other than "auction" for disposal of natural resources which ultimately led to the filing of the present Reference. Therefore, before we proceed to answer Question 1, it is imperative to understand what has been precisely stated in *Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1 and decipher the law declared in that case.

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69. Article 141 of the Constitution lays down that the "law declared" by the Supreme Court is binding upon all the courts within the territory of India. The "law declared" has to be construed as a principle of law that emanates from a judgment, or an interpretation of a law or judgment by the Supreme Court, upon which, the case is decided. (See *Fida Hussain* v. *Moradabad Development Authority* (2011) 12 SCC 615) Hence, it flows from the above that the "law declared" is the principle culled out on the reading of a judgment as a whole in light of the questions raised, upon which the case is decided. [Also see *Ambica Quarry Works* v. *State of Gujarat* [(1987) 1 SCC 213] and *CIT* v. *Sun Engg. Works (P) Ltd.* [(1992) 4 SCC 363]]. In other words, the "law declared" in a judgment, which is binding upon courts, is the ratio decidendi of the judgment. It is the essence of a decision and the principle upon which the case is decided which has to be ascertained in relation to the subject-matter of the decision.

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81. Our reading of these paragraphs suggests that the Court was not considering the case of auction in general, but specifically evaluating the validity of those methods adopted in the distribution of spectrum from September 2007 to March 2008. It is also pertinent to note that reference to auction is made in the subsequent para 96 with the rider "perhaps". It has been observed that "a duly publicised auction conducted fairly and impartially is *perhaps* the best method for discharging this burden". We are conscious that a judgment is not to be read as a statute, but at the same time, we cannot be oblivious to the fact that when it is argued with vehemence that the judgment lays down auction as a constitutional principle, the word "perhaps" gains significance. This suggests that the recommendation of auction for alienation of natural resources was never intended to be taken as an absolute or blanket statement applicable across all natural resources, but simply a conclusion made at first blush over the attractiveness of a method like auction in disposal of natural resources. The choice of the word "perhaps" suggests that the learned Judges considered situations requiring a method other than auction as conceivable and desirable.

82. Further, the final conclusions summarised in para 102 of the judgment

(SCC) in *Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1 make no mention about auction being the only permissible and intra vires method for disposal of natural resources; the findings are limited to the case of spectrum. In case the Court had actually enunciated, as a proposition of law, that auction is the only permissible method or mode for alienation/allotment of natural resources, the same would have found a mention in the summary at the end of the judgment.

83. Moreover, if the judgment in *2G case* [*Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1] is to be read as holding auction as the only permissible means of disposal of all natural resources, it would lead to the quashing of a large number of laws that prescribe methods other than auction e.g. the MMDR Act. While dealing with the merits of the Reference, at a later stage, we will discuss whether or not auction can be a constitutional mandate under Article 14 of the Constitution, but for the present, it would suffice to say that no court would ever implicitly, indirectly, or by inference, hold a range of laws as ultra vires the Constitution, without allowing every law to be tested on its merits. One of the most profound tenets of constitutionalism is the presumption of constitutionality assigned to each legislation enacted. We find that *2G case* [*Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1] does not even consider a plethora of laws and judgments that prescribe methods, other than auction, for dispensation of natural resources; something that it would have done, in case it intended to make an assertion as wide as applying auction to all natural resources. Therefore, we are convinced that the observations in paras 94 to 96 could not apply beyond the specific case of spectrum, which according to the law declared in *2G case* [*Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1], is to be alienated only by auction and no other method.

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Whether "auction" a constitutional mandate

108. Such being the constitutional intent and effect of Article 14, the question arises — Can auction as a method of disposal of natural resources be declared a constitutional mandate under Article 14 of the Constitution of India? We would unhesitatingly answer it in the negative since any other answer would be completely contrary to the scheme of Article 14. Firstly, Article 14 may imply positive and negative rights for an individual, but with respect to the State, it is only couched in negative terms: like an admonition against the State which prohibits the State from taking up actions that may be arbitrary, unreasonable, capricious or discriminatory. Article 14, therefore, is an injunction to the State against taking certain type of actions rather than commanding it to take particular steps. Reading the mandate of auction into its

scheme would thus, be completely contrary to the intent of the article apparent from its plain language.

*** *** ***

113. Finally, reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(*b*). The said Article enumerating certain principles of policy, to be followed by the State, reads as follows:

> "**39.** ***Certain principles of policy to be followed by the State***.—The State shall, in particular, direct its policy towards securing—
>
> (*a*) *** *** ***
>
> (*b*) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;"

The disposal of natural resources is a facet of the use and distribution of such resources. Article 39(*b*) mandates that the ownership and control of natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on "distribution" built into the Constitution. But the restriction is imposed on the object and not the means. The overarching and underlying principle governing "distribution" is furtherance of common good. But for the achievement of that objective, the Constitution uses the generic word "distribution". Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately subserve the "common good".

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115. It can thus, be seen from the aforequoted paragraphs that the term "distribute" undoubtedly, has wide amplitude and encompasses all manners and methods of distribution, which would include classes, industries, regions, private and public sections, etc. Having regard to the basic nature of Article 39(*b*), a narrower concept of equality under Article 14 than that discussed above, may frustrate the broader concept of distribution, as conceived in Article 39(*b*). There cannot, therefore, be a cavil that "common good" and "larger public interests" have to be regarded as constitutional reality deserving actualisation.

116. The learned counsel for CPIL argued that revenue maximisation during the sale or alienation of a natural resource for commercial exploitation is the only way of achieving public good since the revenue collected can be

> channelised to welfare policies and controlling the burgeoning deficit. According to the learned counsel, since the best way to maximise revenue is through the route of auction, it becomes a constitutional principle even under Article 39(*b*). However, we are not persuaded to hold so. Auctions may be the best way of maximising revenue but revenue maximisation may not always be the best way to subserve public good. "Common good" is the sole guiding factor under Article 39(*b*) for distribution of natural resources. It is the touchstone of testing whether any policy subserves the "common good" and if it does, irrespective of the means adopted, it is clearly in accordance with the principle enshrined in Article 39(*b*)."
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> (emphasis supplied)

The Constitution Bench in para 120 of its judgment concluded that the submission that any disposal of a natural resource for commercial use must be for revenue maximization and therefore, by auction, is neither legal nor logical and hence, it was held that disposal of all natural resources through auction is clearly not a constitutional mandate and legitimate deviations from auction are permissible for the purposes of disposal of natural resources. The said paragraph is reproduced as under:-

> **"120.** Therefore, in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue maximisation, and thus by auction, is based neither on law nor on logic. There is no constitutional imperative in the matter of economic policies — Article 14 does not predefine any economic policy as a constitutional mandate. Even the mandate of Article 39(*b*) imposes no restrictions on the means adopted to subserve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/allocation of natural resources to the highest bidder may not necessarily be the only way to subserve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate."
>
> (emphasis supplied)

After holding so, the Constitution Bench summarized its conclusions in para 146 and concluded that the Court cannot mandate one method to be

followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. The Court can test the legality and constitutionality of these methods when questioned and give a constitutional answer as to which methods are *ultra vires* and *intra vires* the provisions of the Constitution. It was further propounded that the Court cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down. The conclusions are, thus:-

> ***"Judicial review of policy decisions***
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> *** *** ***
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> **146.** To summarise in the context of the present Reference, it needs to be emphasised that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-à-vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down.
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> *** *** ***
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> **150.** In conclusion, our answer to the first set of five questions is that auctions are not the only permissible method for disposal of all natural resources across all sectors and in all circumstances.

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J.S. Khehar, J. (*concurring*)— I have had the privilege of perusing the opinion rendered by my esteemed Brother, D.K. Jain, J. Every bit of the opinion (which shall hereinafter be referred to by me, as "the main opinion") is based on settled propositions of law declared by this Court. There can, therefore, be no question of any disagreement therewith. I fully endorse the opinion expressed therein."

(emphasis supplied)

37. We are in full agreement with the submission advanced by the learned counsel for the petitioners that in ***Prathvi Infrastructure's*** case **(*supra*)** there was no challenge to the validity of the Rules. In the absence thereof, the mandate as given therein was legally unfounded. The Supreme Court in ***Vipan Kumar Jain***'s case (***supra***) had laid down as under:-

"10. Finally, the courts cannot read in limitations to the jurisdiction conferred by statutes, in the absence of a challenge to the provision itself when the language of the Act clearly allows for an ostensible violation of the principles of natural justice including the principle that a person cannot be a judge in his own cause….."

38. Similar view was expressed by the Supreme Court in ***S.K. Saigal***'s case (***supra***) with the following observations:-

"**8**. We have been taken through the entire petition filed by the respondents herein before the Tribunal. There is not even a whisper of challenging the Rules as discriminatory or ultra vires much less Rule 7(2)(b) of the Rules.

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10. It was, therefore, clearly an admitted case of the respondents by themselves that they had not worked for 5 years as Scientists 'B', which is the mandate of the Rules and, therefore, the Tribunal transgressed its jurisdiction granting the relief to the respondents dehors the mandate of the Rules. It is now settled principle of law that no mandamus can be issued which would be contrary to the Act and the Rules. (See State of U.P. vs. Harish Chandra, (1996) 9 SCC 309 and Union of India vs. Assn. for Democratic Reforms (2002) 5 SCC 294)."

39. Keeping in view the analysis of the judgments of the Supreme Court in ***Centre for PIL***'s case ***(supra)*** and ***Natural Resources Allocation***'s case ***(supra)***,

the Division Bench in ***Prathvi Infrastructure***'s case ***(supra)*** has not correctly read the legal conclusions enunciated by the Constitution Bench judgment of the Supreme Court in ***Natural Resources Allocation***'s case (***supra)***. Thus, the **Question No.(III)** referred, stands answered accordingly.

40. As a necessary corollary, in view of the foregoing reasons, the **Question No.(IV)** with regard to correctness of the order passed by the Division Bench of Gwalior Bench of this Court in the case of ***Smt. Prabha Sharma (supra),*** is answered in the affirmative. Additionally, Division Bench at Gwalior in ***M/s Aman Stone Crusher***'s case (***supra***) has referred two questions, as reproduced in the earlier part of the judgment. In view of the above answers and the said questions overlapping with them, the same stand answered accordingly in terms thereof.

41. Consequently, we have no manner of doubt that the Mineral-G at Serial No.6 of Schedule-I governed by Rule 6 of the 1996 Rules cannot be taken for the "Stone, Boulder, road metal Gitti, Rubble Chips etc." mentioned at Serial No.3 of Schedule-II governed by Rule 7 of the 1996 Rules. Therefore, we regret our inability to concur with the view expressed by the Division Bench in ***Prathvi Infrastructure***'s case **(*supra*)** whereby it has held that grant of quarry lease for minor mineral stone for making *Gitti* by mechanical crushing (i.e. use of crusher) at Serial No.6 of Schedule-I would only be by way of open auction on the Government land and the said judgment is, thus, hereby ***overruled***.

42. The writ petitions shall now be laid before the Division Bench for hearing as per Roster.

(Ajay Kumar Mittal)	**(Sanjay Yadav)**	**(Vijay Kumar Shukla)**
Chief Justice	Judge	Judge

S/