Kerala High Court
Subramanian, S/O. ... vs The State Of Kerala on 19 November, 2008
IN THE HIGH COURT OF KERALA AT ERNAKULAM WP(C).No. 15847 of 2008(J)

1. SUBRAMANIAN, S/O. PARANGODANKUTTY, ... Petitioner

Vs

1. THE STATE OF KERALA,

... Respondent

2. THE DISTRICT COLLECTOR, MALAPPURAM.

3. THE TAHSILDAR,

4. THE SUB INSPECTOR OF POLICE,

For Petitioner :SRI.BABU S. NAIR For Respondent :GOVERNMENT PLEADER The Hon'ble MR. Justice V.GIRI

Dated :19/11/2008

O R D E R

"C.R."

V.GIRI, J.

---------- W.P.(C).No.15847, 27536, 27541,

27645, 27686, 27697, 27733, 27863, 27805,27926, 28078, 28756, 29047, 29272, 29355, 29408, 29609, 29672, 29707, 29708, 29719, 29960, 29961, 29963, 30666, 30825, 31414, 32817, 32886, 33830 & 34066 of 2008

---------- Dated this the 19th day of November, 2008. JUDGMENT

The constitutionality of certain provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (hereinafter referred to as the "Sand Act") and the validity of some of the provisions contained in the Rules framed thereunder (hereinafter referred to as "the Rules") have been challenged in these writ petitions.

2. Challenge has been mounted in certain writ petitions against the proceedings taken for alleged contravention of the Act and the Rules framed thereunder, essentially resulting in the confiscation of the vehicles belonging to the petitioners. The competence of the State legislature to enact the Act in question itself has been questioned in some of the writ petitions, though the focus of the submissions W.P.(C).NO.15847/08 & con.cases

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made by the learned counsel for the petitioners, in this regard, has also been centered around the validity of certain provisions in particular. Since, pleadings are complete in W.P.(C).No.15847 of 2008, I have taken up

the same as the leading case. I have heard extensive arguments by the learned counsel for the petitioners, touching upon the legislative competence of the State legislature in passing the Act in question.

3. I heard learned Advocate General also in this regard. All the writ petitions were taken up for disposal by consent of parties. I will refer to the bare facts in W.P.(C).No.15847 of 2008 in the first instance.

4. Where the question of validity of the provisions have been challenged, those questions have been discussed first.

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5. The petitioner is the registered owner of a lorry, bearing registration No.KL9- G/5124, seized by the Tahsidlar, Ponnani Taluk, 3rd respondent, on 9.10.2007, alleging unauthorised transportation of river sand. The petitioner W.P.(C).NO.15847/08 & con.cases

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submits that the transportation of the sand was accompanied by the permit issued in this regard by the Secretary of the Regional Transport Authority, Ponnani. After seizure of the vehicle, there was no adjudication, as such, by the District Collector, either as to the validity of the seizure or on the plea raised by the petitioner for release of the vehicle contending that there is no unauthorised transportation of the sand and therefore, the seizure of the vehicle, in the first instance, is without any authority.

6. On 5.11.2007, the District Collector passed Ext.P2 order, imposing a fine of Rs.50,000/- and also fixed the value of the vehicle at Rs.70,000/-. Those amounts were ordered to be remitted to the River Management Fund, with a further direction that, if the amounts are not paid, further proceedings will be taken up as per the Sand Act. Ext.P3 consequential auction notice was issued by the Tahsildar. Exts.P2 and P3 are challenged in these writ petitions. The petitioner also prays for a declaration that Section 23 of the Sand Act is repugnant to the provisions contained in the Mines and Minerals W.P.(C).NO.15847/08 & con.cases

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(Development and Regulation) Act, 1957 (hereinafter referred to as the "MMRD Act") and the Kerala Minor Mineral Concession Rules, 1967 and consequently invalid in view of Article 254(1) of the Constitution.

7. No counter affidavit has been filed by the State. But, elaborate submissions have been made by the learned Advocate General in support of the provisions of the Sand Act.

8. I heard M/s.Babu S.Nair, Sunny Mathew, K.M.Firoz, Shoby K.Francis, Sageer Ibrahim, R.Sudhish and P.V.Kunhikrishnan, learned counsel for the petitioners and learned Advocate General Mr.C.P.Sudhakara Prasad, assisted by Mr.Hood, learned Government Pleader, for the State.

9. Learned counsel for the petitioners contends that the Sand Act contains elaborate provisions regulating the removal of river sand, which is also a minor mineral. The provisions of the Act, in general, provide for the control and removal of sand from the river banks and river beds. Though the preamble to the Act declares that the purpose of the legislation is to control the indiscriminate removal of sand from the rivers, W.P.(C).NO.15847/08 & con.cases

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the provisions of the Act otherwise brings about a serious curtailment on the removal of sand from the river banks. It enables the Committee constituted under the Act to restrain the removal of sand from the river bed of

any river, in any area. It enables a local authority, to insist that passes obtained from the Geological Department, on the recommendation of the Constituted District Expert Committee, be made available before any person is permitted to remove sand. It provides for the establishment of the River Management Fund for the management of the kadavu/river bank development. It enables the committee constituted under the Act or the Kadavu committee to fix the price of sand in each Kadavu. It also provides for penal provisions, as penalty for the contravention of the provisions of the Act. Removal of sand except in the manner provided in the Act is punishable. The entirety of the provisions of the Act, in pith and substance, constitutes a restriction and a regulation on the removal of sand, a minor mineral. It is contended that if that be so, the provisions of the Act, as a whole, and Section 23 of the Act in particular, which W.P.(C).NO.15847/08 & con.cases

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provides for confiscation of the vehicle, which is used for transportation of the sand, a minor mineral, is an encroachment into a legislative field, completely occupied by the legislation passed by the Central Legislature viz., the MMRD Act. In other words, the Sand Act, essentially and effectively constitutes a regulation for the removal of sand from the river beds, which is a minor mineral and it is eligible to be treated as a legislation traceable to Entry 23 of List II (State list) of the 7th Schedule of the Constitution. If that be so, going by the express provision in Entry 23, it is subject to the provisions of List I, with respect to regulation and development under the control of the Union. A perusal of the provisions of the MMRD Act, contends the learned counsel for the petitioners, would show that it touches upon each and every aspect dealing with the mines and mineral development. This would, therefore, include sand in the river beds also. If that be so, the competence of the State legislature would stand abstracted, at least, insofar as those areas, which are otherwise comprehensively dealt with by W.P.(C).NO.15847/08 & con.cases

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the Central legislation. Assuming that certain provisions of the Sand Act are not intended to regulate mines and mineral development, at least, those provisions of the Act, which come into a direct conflict with analogous provisions contained in the MMRD Act are liable to be treated as void, by virtue of Article 254 of the Constitution. Particular reference is made to the provisions contained in Section 23 of the Sand Act by which confiscation of the vehicle is possible for contravention of the Act or the Rules framed thereunder.

10. Learned Advocate General, on the other hand, submits that the Sand Act is not exclusively sourced to Entry 23 of List II of the 7th Schedule. It is sourced to Entries 5, 17, 18 and 23 of List II. In pith and substance, the Sand Act does not amount to a legislation dealing with the regulation of minor Mineral Development. It is a legislation intended to protect river banks and river beds from large scale dredging of river sand, to protect their biophysical environment system and regulate the removal of river sand and for matters connected therewith or incidental W.P.(C).NO.15847/08 & con.cases

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thereto. The Central Act is not concerned with the protection of river banks and river beds. At any rate, the Central Act cannot purport to deal with the river banks and river beds, inasmuch as that, the said subject is exclusively comprehended by the State List. The question of abstraction of legislative competence of the State Legislature, therefore, does not arise.

11. The entirety of the Sand Act is sourced to legislative Entries in List II of the 7th Schedule of the Constitution. The entirety of the MMRD Act is sourced to Entry 54 of List I of the 7th Schedule of the Constitution. In such circumstances, the question of repugnancy, within the meaning of Article 254 of the Constitution, does not arise, it is contended.

12. It would be apposite to refer to the legislative entries, which are relevant for the purpose of these cases.

13. Entry 54 of List I and Entries 5, 17, 18, 23 and 64 of List II are the legislative entries, which are relevant and they are extracted hereunder:

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" List I

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

List II

5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

18. Land, that s to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and W.P.(C).NO.15847/08 & con.cases

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development under the control of the Union.

64. Offences against laws with respect to any of the matters in this List."

14. The MMRD Act enacted by the Parliament declares it as an "Act to provide for the development and regulation of mines and minerals under the control of the Union". The preamble is almost a verbatim reproduction of Entry 54 of List I of the 7th Schedule. Therefore, there obviously need not be any discussion whatsoever, as to the legislative Entry, to which the MMRD Act is sourced. It is apposite to straight away refer to Entry 23 in List II of 7th Schedule of the Constitution, where the State Legislature is entitled to pass a law, which also purports to regulate the mines and minerals, but the competence of the State Legislature is "subject to the provisions of Entry 54 of List I, insofar as the latter provides for the regulation and development under control of the Union". In other words, the legislative competence of the State Legislature, under Entry 23 of List II, is subject to any law passed by the Central Legislature, expressly sourced to Entry 54 of List W.P.(C).NO.15847/08 & con.cases

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I of the 7th Schedule. A conspectus of the provisions of the MMRD Act becomes necessary.

15. As stated above, it is intended for the development and regulation of mines and minerals under the control of the Union. Section 2 of the MMRD Act reads as follows: "2. Declaration as to the expediency of Union control:- It is hereby declared that it is expedient in the public interest that the Union should take under its

control the regulation of mines and the development of minerals to the extent hereinafter provided."

16. The control, with regard to the development and regulation of mines and minerals is, therefore, brought within its purview to the extent it is provided under the MMRD Act. Section 4 of the said Act is listed under the sub-heading "General Restrictions on Undertaking Prospecting and Mining Operations". Section 4 deals with the reconnaissance licence granted under the provisions of the Act and the Rules made thereunder. Section 4A empowers the Central Government, after consultation with the State Government, to make a premature termination of a W.P.(C).NO.15847/08 & con.cases

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prospecting licence or mining lease in respect of any mineral other than a minor mineral. Section 5 empowers the State to impose restrictions on the grant of prospecting licences. Sections 6,7 and 8 can be treated as ancillary provisions to section 4, insofar as the latter deals with the prospecting licences of minor mineral. Section 9 enables the imposition of royalty in respect of mining leases and Section 9A is the provision which deals with the imposition of dead rent. Section 13 empowers the Central Government to make provisions in respect of regulating the grant of reconnaissance permits, prospecting licences and mining leases in respect of minerals. But, Section 13 has to be read with Section 14, which makes it clear that the provisions of Sections 5 to 13 shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals. The power to make Rules in respect of minor minerals is conferred on the State Government under Section 15 and the Rule making power conferred under Section 15 extends to the manner in which applications for quarry leases, mining leases or other mineral leases in respect W.P.(C).NO.15847/08 & con.cases

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minor minerals can be given. In other words, the power to regulate a minor mineral and regulate the development of the minor minerals is made available to the State Government. But, obviously, the power made available to the State, in this regard, is only as a delegate of the Union, which otherwise is constitutionally competent to bring about any regulation as regards the development of even a minor mineral. The authority given to the State Government is, therefore, only as a delegate of the Union, insofar as the matters which come under Section 15 of the MMRD Act is concerned. Section 21 of the Act deals with penalties and Section 21(1) reads as follows:

"21(1). Whoever contravenes the provisions of sub-section(1) or

sub-section (1A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty- five thousand rupees, or with both."

17. Section 21(5) of the Act reads as follows:

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"Whenever any person raised, without any lawful authority, any mineral from any land, the State Government may, recover from such person the mineral so raised, or where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority."

18. Where, therefore, any person raises, without any lawful authority, any mineral from any land, the State Government may, recover from such person, the price thereof, and also recover from such person, rent,

royalty or tax, as the case may be.

19. Since Section 4(1A) has not been specifically excluded from the ambit of minor mineral, the provisions providing for a contravention of Sub-section (1) or sub-section (1A) of Section 4 would apply in the case of minor mineral. Section 22 of the Act provides that "no court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by a person authorised in this behalf by the Central Government or the State W.P.(C).NO.15847/08 & con.cases

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Government". Section 23A deals with the compounding of offences. Section 23C empowers the State Government to make Rules for preventing illegal mining, transportation and storage of minerals.

20. Reference, at this juncture, will have to be made to Minor Mineral Concession Rules, 1967 framed by the State Government under Section 15 of the MMRD Act. A detailed conspectus of the provisions of the Rules need not be undertaken. But reference will have to be made to Rule 48, 48A and 58 of the Rules.

21. Under Rule 48K any consignment of minor mineral, without a valid Cash Memorandum, shall be considered as illicit and the competent authority may recover the minor mineral from the person and also seize the receptacles in which the same is found and the carts, vehicles or other conveyances used for carrying the goods. Rule 58 of the Rules provides for punishment in case there is a contravention of the provisions of the Rules. The contravention would be punishable with imprisonment for a term which may extend to one year or with a fine, which may extend to W.P.(C).NO.15847/08 & con.cases

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Rs.5,000/- or with both. Obviously, since the sentence is punishable by imprisonment, such punishment could be imposed only by a competent court. Rule 60A deals with compounding of offences.

22. It is contended that storage and transportation of sand, which would include river sand, a minor mineral, is, therefore, regulated by the provisions of the MMRD Act and Rules framed thereunder. If that be so, the Central Act and the Rules framed thereunder legislatively cover each and every aspect dealing with the winning of river sand and transportation of sand. To that extent, the field is completely occupied by the Central Legislation sourced to Entry 54 of List I of 7th Schedule.

23. Expatiating on this, learned counsel for the petitioner submits that there is an ouster of competence of the State Legislature or abstraction of powers of the State Legislature, otherwise made available in Entry 23 of List II of 7th Schedule. Thus, any provision in the Sand Act, which purports to touch upon a field otherwise comprehended by the Central Act and the Rules W.P.(C).NO.15847/08 & con.cases

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framed thereunder, would be per se bereft of legislative competence. Particular reference in this regard is made to Section 23 of the Sand Act and Rules 27 and 28 of the Rules, as a typical illustration of the absence of legislative competence of the State Legislature.

24. Reference will have to be made to the relevant provisions of the Sand Act in this regard. As stated above, I consider it necessary to extract the preamble of the Sand Act as hereunder:

Preamble: WHEREAS it has come to the notice of the Government that indiscriminate and uncontrolled removal of sand from the rivers cause large scale river bank sliding and loss of property."

25. Sections 2(b), 2(c), 2(e) and 2(f) of the Sand Act are relevant and are extracted hereunder:

2(b)."District Expert Committee" means the District Expert Committee constituted under Section 3.

2(c)."Fund" means the River Management Fund maintained under Section 17.

2(e)."Kadavu" means river bank, or water body where removal of sand is carried out.

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2(f)."Kadavu Committee" means the Kadavu Committee constituted under Section

4."

26. Section 3 provides for the Constitution and composition of the District Expert Committee. Section 4 deals with the Constitution and composition of the Kadavu Committee. Section 9, which deals with the powers and functions of the District Expert Committee, is relevant and is extracted hereunder: "9. Subject to the other provisions of this Act and the rules made thereunder, the District Expert Committee shall have the following powers and functions, namely:-

(a) to identify the Kadavu or river bank in a District in which, sand removal may be permitted;

(b) to fix the total quantity of sand that can be removed from a Kadavu or river bank giving due regard

to the guidelines of expert agencies like the Centre for Earth Science Studies and Centre for Water Resources Development and Management.

(c) to control the transportation of sand from a Kadavu or river bank to another area;

(d) to close a Kadavu or river bank W.P.(C).NO.15847/08 & con.cases

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opened for sand removal;

(e) to ensure the protection of river banks and keep them free from encroachment;

(f) to consider the opinion of the Kadavu Committee and take suitable measures to achieve the objectives of this Act;

(g) to ensure that the Kadavu Committees of the District are performing their powers and functions conferred on them by this Act;

(h) to advise the Government on the measures to protect the biophysical environmental system of the river banks;

(i) to recommend to the Government the necessity to ban sand removal from any river or Kadavu during

any season of the year;

(j) to carry out the Directions given by the Government from time to

time;

(k) to exercise such other powers and perform such other duties as are conferred on it by this Act and

rules made thereunder;

(l) to advise on any other matter to carry-out the provisions of this Act.

27. Chapter III of the Sand Act deals with the Protection of River Bank and Biophysical W.P.(C).NO.15847/08 & con.cases

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Environment Systems. General conditions that could be imposed in the matter of sand removal are provided in Section 12. Section 13 empowers the State or the District Collector to order closure of a Kadavu opened for sand removal, notwithstanding anything contained in the Act or in any decree or order of any court. This would include the power of the District Collector to notify the ban on sand removal from any river or river bank during a particular period.

28. Section 14 empowers a Kadavu Committee, after taking into account the availability and accessibility of sand in any area to fix the price of sand for each Kadavu and such fixation shall be made by public auction. Section 15 is relevant and is therefore extracted. "15. Obligation of the Local Authorities to maintain the Kadavu or river banks in safe condition:

(1) Every Local Authority in the State having Kadavu or river

bank for sand removal shall maintain such Kadavu or river

bank in a safe condition and

protect its bio-physical environment system by taking effective steps to control river bank sliding.

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(2) Every local authority shall erect concrete pillars at the

Kadavu or river bank in such a

way that no vehicle shall have

direct access to the bank of

the river.

(3) The local authority shall establish a check post at each

Kadavu or river bank and maintain proper account of the

sand removed from the Kadavu.

(4) Bamboo and "Attuvanchi" may be planted on the river bank with

the help of Forest Department

to control river bank sliding."

29. Chapter IV dealing with the Regulation to Upkeep the Bio-Physical Environment, deals with the River Bank Management Fund and issue of Passes. The Director of Mining and Geology is also referred as the competent authority in this regard, by providing that the Department of Mining and Geology shall ensure that no pass is issued to the Local Authority without settling the accounts as provided in sub-section (5) of Section 17, which, in turn, provides that the amount payable towards contribution by a Local Authority shall be paid by means of a cheque or a Demand Draft.

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30. A conspectus of the provisions of the Act would, therefore, reveal that essentially a power to remove the sand from river banks and river beds is, in the first instance, made available to a Local Authority and it is the Local Authority, which in turn, carves out its right to different persons and such right is to be associated to a pass that is issued in that regard by the competent authority. The areas where the sand is removable from and the conditions that could be imposed for removal of sand are all matters which could be assessed, determined and comprehended by the recommendations made by the Kadavu committee and the District Expert Committee, as the case may be.

31. Mr.Babu S.Nair and Mr.Sunny Mathew, learned counsel for the petitioners, made elaborate submissions and they were adopted by Mr.Firoz and the other learned counsel for the petitioners. It is contended that the entire subject dealing with the removal of sand from River Beds like any other area, is comprehensively covered by the provisions of MMRD Act and the Minor Mineral Concession Rules, which are framed W.P.(C).NO.15847/08 & con.cases

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thereunder and therefore, there is no area or legislative territory which is otherwise available to a State Legislature when it seeks to exercise its legislative powers under Entry 23 of List II of 7th Schedule of the Constitution. Learned counsel for the petitioners essentially referred to the following decisions in substantiation of their contentions:

(1) Hinger Rampur Coal Co. Ltd. v. State of Orissa {AIR 1961 SC 459} (2) State of Orissa v. M.A.Tulloch {AIR 1964 SC 1284}

(3) Baijnath v. State of Bihar {AIR 1970 SC 1436}

(4) India Cement Ltd.

v. State of T.N. {1990(1) SCC 12} (5) Orissa Cement Ltd. v. State of Orissa [AIR 1991 SC 1676}

(6) Saurashtra Cement and Chemical Industries v. Union of India

{AIR 2001 SC 8}

32. I consider it advantageous to refer to the detailed discussion undertaken by the Constitution Bench in Baijnath case inasmuch as that the principles were laid down in the said decision either clarifying or reiterating the law which was discussed and espoused in the earlier W.P.(C).NO.15847/08 & con.cases

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decisions of the Supreme Court in Hinger Rampur Coal Co. Ltd. v. State of Orissa {AIR 1961 SC 459} and State of Orissa v. M.A.Tulloch {AIR 1964 SC 1284} and the subsequent decisions, by Benches with co-ordinate strength or larger strength, have only reaffirmed the principles eloquently laid down in Baijnath. Baijnath considered the validity of Section 10A of the Bihar Land Reforms Act, brought about by an amendment in the year 1963. The second proviso to section 10(2) of the Bihar Land Reforms Act provided that 'notwithstanding anything contained in the Act, where immediately before the date of vesting of the estate or tenure there is a subsisting lease of mines or minerals comprised in the estate or tenure or any part thereof, the whole or that part of the estate or tenure, comprised in such lease shall, with effect from the date of vesting, be deemed to have been leased by the State Government to the holder of the said subsisting lease." Section 10 was amended and a proviso was added thereto stipulating that the terms and conditions of lease relating to minor minerals shall, insofar as they are inconsistent W.P.(C).NO.15847/08 & con.cases

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with the Rules made by the State Government stand substituted by the corresponding terms and conditions prescribed by the Rules framed in that behalf by the State Government. In effect, therefore, the State Government purported to take over the regulation of the minor mineral, otherwise comprehended by the provisions of the Rules framed by the State Government under Section 15 of the MMRD Act and it is the validity of these provisions, which was challenged before the Supreme Court. The Supreme Court considered the relevant provisions of the MMRD Act and the relevant provisions of the State enactment.

33. What was essentially considered by the Supreme Court was the legislative competence of the State Legislature, to enact the proviso to Section 10 of the Land Reforms Act. Paragraph 14 of the judgment, dealt with this aspect, in the following manner:

"Although these supplementary arguments were raised it is obvious that they can arise according as the two main arguments are allowed or disallowed. Therefore, it is necessary to address ourselves to the first argument that the legislative competence to enact the W.P.(C).NO.15847/08 & con.cases

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amendment to S.10 of the Reforms Act was wanting. As the amendment was made after Act 67 of 1957 we have to consider the position in relation to it. Entry 54 of the Union List speaks both of Regulation of mines and minerals Development and entry 23 is subject to entry 54. It is open to Parliament to declare that it is expedient in the public interest that the control should vest in Central Government. To what extent such a declaration can go is for Parliament to determine and this must be commensurate with public interest. Once this declaration is made and the extent laid down, the subject of legislation to the extent laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the State after such declaration and trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State Legislature. This proposition is also self-evident that no attempt was rightly made to contradict it. There are also two decision of this Court reported in the Hingir-Rampur Coal Co. Ltd. v. State of Orissa 1961-2 SCR 537 = {AIR 1961 SC 459} and State of Orissa v. M.A.Tulloch & Co. 1964-4 SCR 461 = {AIR 1964 SC 1284} in which the matter is discussed. The only dispute, therefore, can be to what extent the declaration by Parliament leaves any scope for legislation by the State W.P.(C).NO.15847/08 & con.cases

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Legislature. If the impugned legislation falls within the ambit of such scope it will be valid; if outside it, then it must be declared invalid."

34. Thereafter, in paragraph 15 of the judgment, the Supreme Court referred to the earlier two judgments and then observed that the declaration as contained in Section 2 of Act 67/1957 speaks of the taking under the control of the Central Government the regulation of mines and development of minerals to the extent provided in the Act itself. The court observed that it is, therefore, not necessary to look outside Act 67/57, to determine what is left within the competence of the State Legislature. But, one will have to work it out from the terms of that Act itself. The court held that the declaration under the MMRD Act "would carve out a field to the extent provided in that Act and to that extent Entry 23 would stand cut down". The court further held that "to sustain the amendment, the State must show that the matter is not covered by the Central Act". It is here that the court mentioned that 'once a declaration is made by the Parliament in terms of Entry 54, there is abstraction of the W.P.(C).NO.15847/08 & con.cases

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legislative competence of the State Legislature, to that extent, it would, therefore, be a case where the State Legislature would be bereft of competence to enact any provisions touching upon the same subject'. On a conspectus of the provisions of the Act, the court held held that 'the entirety of the field of regulation of mineral and development of the same, was covered by the parliamentary declaration read with the provisions of Act 67/57, particularly section 15 and therefore, to that extent Entry 23 would stand cut down by Entry 54'. The whole of the topic of minor mineral became a union subject. Though the parliament allowed Rules to be made, that did not recreate a scope of legislation by the State Government. Consequently, the Supreme Court held that "the provisions in the second proviso to Section 10(2) of the Bihar Land Reforms Act and the Rules framed thereunder was beyond the scope of legislative competence of the State Legislature".

35. I refrain from undertaking a detailed reference to the other judgments of the Supreme Court referred to by the learned counsel for the W.P.(C).NO.15847/08 & con.cases

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petitioners, for the reason, which I have already mentioned above. It is the principles which have been laid down in Baijnath that have been reaffirmed or articulated or followed.

36. Suffice it to say that where there is a declaration by the Union, in any law enacted on a subject which is covered by Entry 54 of List I of the 7th Schedule, there is an eclipse of the legislative powers of the State Legislature otherwise delineated under Entry 23 of the 7th schedule. Insofar as the regulation and development of mines and minerals, the MMRD Act 'is a complete legislation' and occupies the legislative territory in its entirety. There is no scope left for the State Legislature to enact on the same subject. The minor Mineral Concession Rules enacted by the State Government, as has been mentioned above, is obviously as a delegate of the Central Legislature in exercise of the Rule making power under the MMRD Act. That does not lend any support to the State Legislature to exercise its legislative powers on those aspects which are covered by the declaration made by the Central Legislature as provided for in the MMRD Act. W.P.(C).NO.15847/08 & con.cases

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37. Mr.Sunny Mathew refers to the judgment of the Supreme Court in Saurashtra Cement and Chemical Industries v. Union of India {AIR 2001 SC 8} to contend for the position that management of the minerals would also be taken by the term "regulation" as it is understood in the context of MMRD Act. I have referred

to this essentially for the purpose of reiterating that except this aspect, in all the other judgments referred to above, the Supreme Court has only reiterated the principles laid down in Baijnath.

38. In this context, I consider it apposite to refer to the judgments cited by the learned Advocate General in support of the following propositions:

(i) A legislation could be a composite legislation as a "rag bag legislation" meaning thereby that the provisions could be sourced to different legislative entries. (AIR 1989 SC 560)

(ii) Legislative entries by themselves are not source of power for any legislature AIR 1957 SC 297, they only deal with the areas of legislation. Any legislative Entry must be given its widest meaning. The Act must be taken as a whole (AIR W.P.(C).NO.15847/08 & con.cases

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1957 SC 297 and AIR 1989 SC 560). It is the pith and substance of a legislation that should be looked (doctrine of pith and substance). If in substance the legislation could be brought within a legislative Entry, applicable to the legislature, then an incidental trenching upon a field, which occupied by another legislature is not forbidden. In fact an ancillary trenching upon is permissible. {Kartar Singh v. State of Punjab (1994 (3) SCC 569}.

(iii) The Sand Act in pith and substance is a legislation dealing with rivers, river banks and river beds. The legislation will, therefore, come within the scope of Entry 17 of List II of 7th Schedule.

(iv) The provisions contained in the Sand Act providing for offences and penalties for contravention of the provisions of the Sand Act are within the ambit of the legislative competence of the State Legislature. Under Entry 64 of List II of 7th Schedule.

(v) None of the provisions in the Sand Act are intended to regular mines or mineral or intended to deal with the development of minerals. There is no collision between the provisions of the Sand Act and the MMRD Act. The Sand Act falls completely within the legislative competence of the State W.P.(C).NO.15847/08 & con.cases

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Legislature reflected in Entries 5, 17, 18, 23 and 64 of List II of 7th Schedule.

39. I have referred to the declaration given by the Supreme Court in Baijnath in very categoric terms that the entirety of the field in relation to minor mineral, comes under Entry 54 of List II of 7th Schedule is covered by the MMRD Act.

40. With due respect, I find myself unable to accept the submission made by the learned Advocate General that the Sand Act could also be fitted in or sourced to the legislative powers of the State Legislature, otherwise comprehended by Entry 23 of List II of the 7th Schedule. Sand is a minor mineral and any aspect, which is dealt with by the MMRD Act, insofar as it relates to regulation of a minor mineral or development of the minor mineral would be comprehensively dealt with by the provisions of the MMRD Act and to that extent, there is an abstraction of the legislative power of the State Legislature in Entry 23 of List II of 7th Schedule. The constitutionality or the competence of the State Legislature to enact the Sand Act, therefore, cannot be defended under or sourced to Entry 23 of the State List. The MMRD W.P.(C).NO.15847/08 & con.cases

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Act results in abstraction of the legislative competence of the State Legislature to enact a law on the subject, dealing with the development and regulation of sand, a minor mineral. Does it, therefore, follow that the Act as such will, therefore, have to be treated as bereft of legislative competence? As stated above, this will depend upon essentially the objective of the Sand Act. Is it intended to regulate winning of sand? Is it intended to regulate the extraction, transportation and storage of sand, as a minor mineral? Or is it intended to deal with the biophysical environment of river banks and river beds. Do the provisions which deal with the prohibition of removal of sand from river banks and river beds intended only as a measure of preserving the biophysical environment of river banks and river beds.

41. If the answer to the latter is in the affirmative, then it will have to be concluded that in enacting the Sand Act, the State legislature was essentially exercising its legislative powers in relation to matters which are delineated under Entry 17 or for that matter Entry 18 of List II of 7th Schedule. W.P.(C).NO.15847/08 & con.cases

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42. The preamble of the Act may not be conclusive of its pith and substance. But, it would definitely be indicative. The preamble of the Sand Act makes it clear that the Act is intended to address the indiscriminate and uncontrolled removal of sand from the rivers, causing large scale loss of sand from river banks and river beds and loss of water. Chapter III of the Sand Act deals with the protection of River Banks and biophysical environment of river banks and river beds. Essentially, the right to remove sand from river banks and river beds is with the local authority, which is also to obtain a pass from the Geological Department. The recommendations of the District Expert Committee, which right is also vested in it under Section 9 of the Act, will constitute the basis for the action to be taken by the Geological Department. The latter may exercise statutory powers under the MMRD Act, even otherwise. But what is addressed by the Sand Act is the indiscriminate removal of sand from river banks and river beds and Section 9 would show that there is a duty cast on the District Expert Committee to fix a price for the W.P.(C).NO.15847/08 & con.cases

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sand removed from a kadavu or river bank giving due regard to the recommendations of the expert agencies like Centre for Water Development and Management. The Kadavu Committee also exercises its power, keeping in mind the parameters laid down in Section 11 of the Act. Section 13 of the Act enables the Government or the District Collector to order closure of a kadavu or river bank and there is an obligation on the local authority, more in the nature of a reiteration of what they are obliged under Section 15 of the Act to maintain the river bank in the same conditions. A River Bank Development Plan under Section 16 of the Act, is a regulatory measure for the upkeep the biophysical environment. Constitution of the River Bank Management Fund is only a step-in-aid of what are comprehensive measures that may have to be taken by the Government and the agencies and the other statutory agencies constituted under the Act to see that there is no indiscriminate or unscientific removal of sand from river banks and river beds. In other words, the prime motive of the legislation is the regulation of removal of sand from the river banks and river beds, not with W.P.(C).NO.15847/08 & con.cases

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the aim of regulating or winning of any minor mineral, but with the essential motive of maintaining the river banks and river beds.

43. Regulation of river banks and river beds is necessary for the "upkeep of the biophysical environment". Chapter 4 of the Act is an integral part of a pro-active measure to see that a river continues to flow as a river and that indiscriminate removal of sand does not lead to its premature death. The Supreme Court has, time and again, held that sources of water, either as rivers or lakes are so vital to the very upkeep and maintenance of

the ecological plans and the upkeep of its stability. Maintenance of river banks and river beds and its upkeep will have to be treated as one other step to achieve the said objective. Both an over-view and analytical approach to the provisions of the Act would indicate that the legislative intervention is intended essentially for the purpose of maintaining the continued existence of vital water resources in the State, which as it requires no mention, is vital for the very existence of the society. The Directive Principles of State Policy W.P.(C).NO.15847/08 & con.cases

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would obviously inform any legislative intent in the nature of the Sand Act. Though I agree with the submissions of the learned counsel for the petitioners Mr.Babu S.Nair and Sunny Mathew, that there are several provisions in the Act which might suggest that it is not a very well thought out legislation, one will have to ultimately look at the intention behind the legislation and determine whether, in pith and substance, it comes under a legislative Entry in the State List. This is the limited area where the court would step in. Suffice it to say that the Act, will have to be treated, in pith and substance, as one sourced to Entry 17 of List II of the 7th Schedule to the Constitution. Certain provisions would have the effect of interdicting the removal of a minor mineral, like sand. But this is intended only as a measure of regulating the upkeep and maintenance of vital water sources like rivers and lakes and it will not even amount to an incidental encroachment into a territory occupied by a Central legislation like the MMRD Act.

44. The MMRD Act, is obviously a legislation which regulates the development of W.P.(C).NO.15847/08 & con.cases

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minor mineral. It is in that context that the provisions in the MMRD Act providing for a levy and collection of different exactions like royalty, dead rent and cess on royalty will have to be construed. Fiscal exaction relatable to the extraction of a minor mineral is obviously a provision which directly interferes with the regulation of a minor mineral. Provisions relating to grant of prospecting licences, reconnaissance permits are intended to regulate the development of any mineral including a minor mineral, like sand. One will have to take note of the fact that the Sand Act does not contain any provision which assumes the character of any fiscal exaction relatable to the quantity of the mineral that is exacted. That the local authority or a Kadavu Committee is entitled to fix the price of the sand, that too by public auction (Section 15 of the Act) is only a measure of instilling discipline to correct indiscriminate removal of sand. It does not amount to an impost on the winning of a minor mineral or development of the minor mineral, as the case may be. W.P.(C).NO.15847/08 & con.cases

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45. Mr.Babu S.Nair and Mr.Sunny Mathew submit that there are provisions in the Sand Act which provide for confiscation of the vehicle that is found to have indulged in illegal transportation of a mineral. It is further pointed out that confiscation of a vehicle under the provisions of the MMRD Act is only a consequence of a conviction for an offence under the MMRD Act. In other words, the power of confiscation exercised under the MMRD Act, is only by a court of competent jurisdiction. Per contra, the power of confiscation under Section 23 of the Act is not only by a court, but also by the revenue authorities. Further, more importantly, the confiscation of the vehicle is not dependent on a successful prosecution for any offence under the Sand Act. This, learned counsel say, is a typical case of a conflict between one enactment passed by the State Legislature, and another enactment passed by the Central Legislature. This, it is contended, would be a case where there arises repugnancy within the meaning of Article 254 of the Constitution and at least, to the extent to which the Sand Act provides for W.P.(C).NO.15847/08 & con.cases

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confiscation of the vehicle, which is found involved in an offence under the Sand Act, the same must be held to be void in terms of Article 254 of the Constitution.

46. The contingency under Article 254 which deals with inconsistent laws made by the Legislature of a State arises in cases where there is a legislation made by the State in relation to a subject contained in the concurrent list and a legislation made by the Centre, in relation to the same subject, which is comprehended by an Entry in the concurrent list. Subject to the limited area carved out under Article 254 (2) of the Constitution, provisions of the Central Legislation would prevail.

47. But, it is apposite to recall what has been held by the Supreme Court on more than one occasion; that repugnancy as a state of affairs would arise only in relation to legislations which are passed by the State Legislature and the Central Legislature, on a subject, which is included in the concurrent list. Repugnancy would not arise eg. In the case of a legislation passed by the Parliament, covering a subject matter, W.P.(C).NO.15847/08 & con.cases

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which is included in List I and a legislation which passed by the State Legislature, comprehending a subject, which is included in List II. Reference may be made in this regard to the decisions of the Supreme Court in {1983 (4) SCC 45} and {2004(10) SCC 201}. Thus, the question of repugnancy, insofar as the provisions of the Sand Act are concerned, qua the provisions of MMRD Act really do not arise. Sand Act is comprehended by Entry 17 or 18 or for that matter Entry 64 of List II of the 7th Schedule. It is beyond doubt that the MMRD Act is sourced to Entry 54 of List I of the 7th Schedule.

48. There is yet another reason why an inference of repugnancy may not really be called for. Assuming that Sand Act would also, in a very remote sense, be comprehended by Entry 23 of List II of the 7th Schedule, it is a case where the provisions of the legislation sourced to Entry 23 will have to be treated as subjugated to the provisions of the law, which is comprehended by Entry 54 of List I of 7th Schedule. In other words, as has been held by the Supreme Court in Baijnath, once there is a legislation passed by W.P.(C).NO.15847/08 & con.cases

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the Parliament, in terms of Entry 54 of the 7th Schedule, there is an abstraction of the competence of the State Legislature, to legislate on the same subject matter. In other words, any legislation by the State Legislature, on the subject of regulation and development of a mineral, would straight away be ultra vires since it is a case where the field is completely occupied by the Central Legislature, without giving room for any residuary legislative power to the State Legislature, as the case may be. In such cases, what is involved is not a question of repugnancy within the meaning of Article 254 of the Constitution, but whether the competence of the State Legislature to enact a law on the subject, is abstracted by a law enacted by the Parliament on the same subject. If I were in a position to hold that the Sand Act is a legislation comprehended by Entry 23 of List II of 7th Schedule, then following the dictum in Baijnath, and the other two judgments of the Supreme Court, it has to be held that the legislation would be ultra vires the legislative competence of the State Legislature. But, it W.P.(C).NO.15847/08 & con.cases

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cannot be so held. As I held above, the Sand Act will have to be treated as a legislation, in pith and substance comprehended by Entry 17 of List II of the 7th Schedule of the Constitution. If that be so, the question of abstraction of the legislative competence does not arise. Nor does the question of repugnancy, within the meaning of Article 254 of the Constitution arise.

49. Even otherwise, what one will have to look into while dealing with the provisions relating to the confiscation of the vehicles in the Sand Act is the fact that it is intended only as a measure to discourage indiscriminate removal of sand; again keeping in mind the fact that such a provisions is only a part of the machinery provisions for enforcement of the prime objective behind the enactment. The power of confiscation under the Sand Act is, no doubt, made available concurrently to the court as also to the revenue officials. But, once it is found that the provisions of the Sand Act, as a whole, are within the legislative competence of the State Legislature, then the provisions in the Sand Act dealing with the confiscation of the vehicle will W.P.(C).NO.15847/08 & con.cases

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have to be upheld as provisions which provide for penal consequences for contravention of the provisions of an enactment. A State Legislature, enacting a law on a subject, which is comprehended by Entry 17 of List II of the 7th Schedule, could also provide for penal consequences relatable to certain actions which are in contravention of the provisions of the Sand Act. This, the State Legislature is competent in view of Entry 64 of List II of 7th Schedule.

50. For all these reasons, I am of the view that the challenge against the competence of the State Legislature to enact the Sand Act and the challenge to the constitutionality of the provisions of the Sand Act are liable to be repelled. I do so.

51. Apart from the challenge to the validity of the provisions of the Act, the petitioners also challenge the impugned orders passed by the District Collector under Section 23 of the Sand Act, read with Rule 27 and Rule 28 of the Rules in all these cases. It is inter alia contended that the orders have been passed in a mechanical way. It is vehemently contended in all W.P.(C).NO.15847/08 & con.cases

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these cases that the District Collector seems to have passed orders under Section 23 in a mechanical manner, merely accepting the report given by the Sub Inspector of Police or the Subordinate Revenue Officials, as the case may be. What is involved, it is contended, is the provision conferring a substantive power. Therefore, it cannot be exercised in a casual manner. I do not propose to analyse each and every order impugned in these cases, because, I have gone through the orders and I am satisfied that there is no application of mind by the District Collectors, while passing these orders, keeping in mind the objective underlying the statute and the fact that the power of confiscation is a substantive power and therefore, cannot be exercised in a casual or mechanical manner as such.

52. Section 23 of the Act provides that "whoever transports sand, without complying with the provisions of the Act, shall be liable to be punished and the vehicle used for the transaction is liable for seizure" by the Police or the Revenue Officials. It will have to be straight W.P.(C).NO.15847/08 & con.cases

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away noted that the word 'seizure' is to be construed as 'confiscation' vide the law laid down by the Bench of this Court in Alavi v. District Collector & Ors. {2007(4) KLT 473}. It has again been reiterated in Moosakoya v. State of Kerala {2008(1) KLT 538}. Learned counsel for the petitioners, at this juncture, relied on the decision of a learned Judge of this court in Ahammed Kutty v. State of Kerala {2008 (1) KLT 1068}. The learned Judge held in the said decision that confiscation of a vehicle for contravention of the Sand Act may be ordered, only if there is a successful prosecution for an offence. I am afraid, I am unable to follow the said dictum, in the light of the authoritative pronouncement made by the Division Bench in Alavi v. District Collector & Ors. {2007(4) KLT 473} and again reiterated in Moosakoya. I am bound by the law as espoused by the Division Bench. The Bench in Moosakoya categorically held that the revenue officials have the power

to order confiscation of the vehicle, and the same is not dependent on conviction of the person concerned in a criminal case for an offence under the said Act. W.P.(C).NO.15847/08 & con.cases

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53. But, having said so, what is noteworthy is that the power of confiscation made available to revenue officials under the Sand Act is concurrent with the same power that is made available to a court. In other words, the power exercisable by a District Collector under Section 23 read with Rules 27 and 28 of the Rules will have to be treated as not only statutory, which it obviously is, but also quasi judicial in character. Section 23 will have to be read along with Rules 27 and 28 of the Rules. Rules 27 and 28 read as follows:

Rule 27: Procedure for confiscation of vehicle:-

(1) The Police or Revenue officials shall seize the vehicle used for transporting sand in violation of the provisions of the Act and these Rules.

(2) In the case of seizure of vehicle under sub-section (1), a mahazar shall be prepared in the presence of two witnesses regarding the vehicle and one copy of the same shall be given to the person possessing the vehicle at the time of seizure and on copy to the District Collector.

(3) The vehicle may be returned if the W.P.(C).NO.15847/08 & con.cases

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owner of the vehicle or the possessor remits an amount towards River Management Fund equal to the price fixed by the District Collector with fine within seven days of seizure.

Rule 28: Sale of the vehicle seized: (1) The District Collector shall consider every objection submitted within seven days of

seizure of any vehicle under Rule 27 and the decision of District

Collector thereon shall be final. (2) In the case of sale of the vehicle under sub-section (1), if the fine and amount under sub-

section (3) of Section 27 of these rules has not been remitted, the District Collector shall sell the vehicle by auction.

(3) The amount received from auction under sub-section (2) shall be

credited to the River Management Fund after deducting the expenditure of auction."

54. Thus, under Rule 27(1), the police or the revenue officials are empowered to seize a vehicle which is used for transportation of sand in violation of the provisions of the Sand Act and W.P.(C).NO.15847/08 & con.cases

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the Rules. It requires to be mentioned in this context that the provisions in Rule 27(2) are mandatory. On seizure of a vehicle, a mahazar is to be drawn, in the presence of two witnesses and a copy of the same is to be straight away supplied to the person possessing the vehicle and a copy will have to be sent to the District Collector. I have no doubt that a violation of the procedure contemplated under Rule 27(2) would definitely

give rise to an attack against the seizure itself, as being illegal and this court would be certainly justified in upholding the contention raised by any person, who alleges the haphazard manner in which Rule 27(2) is violated in several cases.

55. Rule 27(3) enables a vehicle to be returned to the person, if the owner of the vehicle or possessor remits an amount equal to the price fixed by the District Collector. The determination of the price of the vehicle is contemplated under Rule 28(1) of the Rules. But, this, the District Collector does after considering the objections filed within 7 days of the seizure of the vehicle under Rule 27. In other words, an objection by the owner or W.P.(C).NO.15847/08 & con.cases

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possessor of the vehicle with regard to the seizure as such or with regard to the infraction of the procedure under Rule 27(2) is to be considered by the District Collector, who is obliged to do so, exercising a quasi judicial power. The question of sale of the vehicle, which is what a confiscation contemplates is resorted to only when there is a default in payment of the amount in spite of an opportunity granted under Rule 27(3) of the Rules. It is in the above background, that I have considered the orders impugned in these writ petitions and I am satisfied that these orders are not the products of a quasi judicial exercise of power by an officer of the rank of a District Collector.

56. In many cases, the orders are purely mechanical, referring only to the seizure of the vehicle and reporting to the District Collector. There is no consideration of the objections. No scientific or rational method has been adopted in fixing the price of the vehicle. It should also be remembered that a direction to the owner of the vehicle to remit an amount equal to the price of the lorry, does not mean that the amount to be so W.P.(C).NO.15847/08 & con.cases

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remitted is fixed irrespective of the question as to whether the offence detected is a first offence or whether a recurring one. It is here that the District Collector should remember that the power which is exercised under Section 23 of the Act read with Rules 27 and 28 is a substantive power that could result in a person forfeiting his property.

57. It is keeping in mind the impact of the power exercised by the District Collector that they should proceed to consider the objections and then pass the order in terms of Rules 27 and 28 of the Rules. I also take note of the submissions of the learned counsel for the petitioners that the Sand Act does not provide for an appeal against the order passed by the District Collector under Rule 27 or 28 of the Rules. Analogous provisions dealing with the infraction of the provisions under the Forest Act or the Abkari Act, which obviously have a similar kind of impact on the society, should be recalled. An order of confiscation passed under the Forest Act is vulnerable to an appeal before no less an authority than a District Judge and the same can W.P.(C).NO.15847/08 & con.cases

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be challenged in revision before this court under Section 115 of the Code of Civil Procedure. An order of confiscation under the Abkari Act is also vulnerable to an appeal and revision before the competent court. The absence of such a provision in the Sand Act obviously is no indication that the provision relating to confiscation under the Sand Act can be exercised in a casual manner. In fact, it should impress the authority, who is conferred with the power, that he is required to do so, applying his mind and acting as a quasi judicial authority.

58. Once it is accepted that the power under Section 23 of the Sand Act, read with Rules 27 and 28 of the Rules, is a substantive power and is also, therefore, quasi judicial in character, then it follows as a logical consequence that the District Collector should also have the power to direct a release of any vehicle which is seized and produced before him, by way of interim custody. Such power would obviously be ancillary to the substantive power exercised under Section 23 of the Act read with Rules 27 and 28 of the Rules. It is not for this court to exhaustively W.P.(C).NO.15847/08 & con.cases

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lay down the guidelines regarding the conditions that could normally be imposed, while releasing a vehicle on interim custody. But, going by the discussion made by me above and as a reflection of my own opinion, I feel the following safeguards may be taken by the District Collectors while passing orders for release of a vehicle on interim custody.

(1) Deposit of an appropriate amount as a pre-condition for the release of the vehicle on interim custody.

(2) A condition that the vehicle shall not be used for transportation of sand, pending final adjudication of the proceedings under Section 23 of the Act read with Rules 27 and 28 of the Rules.

(3) That the vehicle shall not be used within the precincts of the Taluk or even the District, pending final adjudication by the District Collector.

(4) A condition that the vehicle would be liable for immediate seizure and further proceedings if it is found involved in any other illegal transportation while it is entrusted to the owner on interim custody, pending final adjudication W.P.(C).NO.15847/08 & con.cases

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under Section 23 of the Act read with Rules 27 and 28 of the Rules.

59. The list mentioned above is, by no means exhaustive, but only indicative. If there is delay in passing final orders beyond a reasonable period from the date within which the objections could be filed, at any rate, where there is a motion by the aggrieved party for release of the vehicle on interim custody, it is necessary for the District Collectors to pass an order on such application, pending adjudication under Section 23 of the Act.

60. But, I also make it clear that where the District Collector deems it appropriate to release the vehicle on interim custody, it would be necessary that any one or all of the conditions mentioned above should be imposed at the time of release of the vehicle on such interim custody and obviously, conditions could be further imposed at the time of passing final orders under Section 23 of the Act.

61. Keeping in mind the above guidelines, I am of the view that the orders, which are impugned in all these writ petitions are liable to W.P.(C).NO.15847/08 & con.cases

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be set aside and the District Collectors are directed to reconsider the issue, keeping in mind the principles laid down by the Division Bench on more than one occasion and the observations contained in this judgment.

62. Accordingly, all these writ petitions are disposed of in the following manner: (1) The orders passed by the District Collectors impugned in these writ petitions shall stand set aside. (2) The District Collectors shall reconsider the issue regarding confiscation of the respective vehicles under Section 23 of the Act read with Rules 27 and 28 of the Rules.

(3) If objections have not been filed by the owner or the possessor of the vehicle so far, then such objections may be preferred within two weeks from the date of production of a copy of this judgment before the District Collectors.

(4) In the facts and circumstances of the case (not as a general measure), taking note of the pendency of most W.P.(C).NO.15847/08 & con.cases

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of these writ petitions, for quite some time before this court, and the passage of time after the vehicles were taken into custody, the vehicles involved in each one of these cases shall be released on interim custody on deposit of an amount of Rs.25,000/- with the concerned District Collector, to enable release of the vehicle on interim custody and consequential orders shall be passed by the respective District Collectors incorporating the above conditions and any other condition for appropriate use of the vehicle, within one week from the date of production of a copy of this judgment.

(5) It is made clear that this interim custody is intended to enable the petitioners to operate the vehicle till final orders are passed under Section 23 of the Act read with Rules 27 and 28 of the Rules.

(6) Such final orders shall be passed as aforementioned, within three months from the date of receipt of a copy of W.P.(C).NO.15847/08 & con.cases

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this judgment, after hearing the petitioners or their authorised representatives.

All these writ petitions are disposed of as above.

Sd/-

(V.GIRI)

JUDGE

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