*** THE HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY**

+ WRIT PETITION No.5871, 5950, 5964, 6178, 6180, 6188 6210, 6440, 6563, 13321, 13470 and 13744 of 2001, 533 and 1729 of 2002 and 27640 of 2005

Between:

\# M/s. Novel Grnites Ltd.,
East Marredpally, Secunderbad & others.
... Petitioners
(in WP.No.5871 of 2001)

M/s. Murali Krishna Pulvarizes, rep., by its
Managing Partner Mr. M. Chandra Sekhar Reedy.
... Petitioner
(in WP.No.5950 of 2001)

Muralidhar Chemical Lines Co.,
Dhone, Kurnool District & others.
... Petitioners
(in WP.No.5964 of 2001)

Betamcherla Factory Owners Welfare Association,
Betamcherla, Kurnool District.
... Petitioner
(in WP.No.6178 of 2001)

M/s. Rajeshwari Granites Pvt., Ltd.,
Khanapuram, Mudigonda Mandal,
Khammam District & others.
... Petitioners
(in WP.No.6180 of 2001)

M/s. Hima Greesha Granites
Tilaknagar, Hyderabad & others.
... Petitioners
(in WP.No.6188 of 2001)

K. Govindu & others
... Petitioners
(in WP.No.6210 of 2001)

The Tandur Stone Merchants Welfare Association,
Tandur, Ranga Reddy District.
... Petitioner
(in WP.No.6440 of 2001)

Visakhapatnam Mineral Traders,
Visakhapatnam & another.
... Petitioners
(in WP.No.6563 of 2001)

Ananthapur District Stone Crusher Association,
Aravind Nagar, Ananthapur.
... Petitioner
(in WP.No.13321 of 2001)

Sri Amulya Enterprises "Amulvilla"
Aravinda Nagar, Dhone, Kurnool Dist. & another.
... Petitioners

(in WP.No.13470 of 2001)

L. Hassan Khan & Co., Pathapeta, Dhone, Kurnool.

... Petitioner

(in WP.No.13744 of 2001)

M/s. Siddardha Constructions (P) Ltd.,
Vishakapatnam.

... Petitioner

(in WP.No.553 of 2002

Muralidhar Chemical Limes Co.,
Dhone, Kurnool District & others.

... Petitioners

(in WP.No.1729 of 2002)

Sri Lakshmi Refractories,
Dwaraka Tirumala, W.G. Dist., & others.

... Petitioners

(in WP.No.27640 of 2005)

Verses

$ The Govt., of A.P., rep., by its
Secretary, Industries & Commerce (M.I) Dept.,
Secretariat Buildings, Hyderabad & others.

... Respondents

(in all writ petitions)

! Counsel for the petitioners : Sri E. Ayyapa Reddy

Smt. N. Shoba
Sri M.R. Chakravarthy
Sri S. Satyam Reddy

^ Counsel for the respondents: Sri G. Manohar, Special GP

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> Head Note:

? Cases referred:

1. (2006) 4 SCC 327
2. (2004) 1 SCC 256
3. (2003) 3 SCC 122
4. (2000) 2 SCC 254
5. (2005) 2 SCC 555
6. (1969) 3 SCC 838
7. AIR 1964 SC 922
8. 1996 (2) ALD 1180 (DB)
9. 2000 (7) Supreme 220
10. AIR 1995 SC 858
11. AIR 1978 SC 1587
12. (2003) 9 SCC 534
13. AIR 1964 SC 1037
21. (2005) 5 SCC 598
22. (2006) 3 SCC 434
23. (2006) 4 SCC 327
24. AIR 1952 SC 115
25. AIR 1954 SC 630
26. AIR 1955 SC 188
27. AIR 1980 SC 1612
28. AIR 1976 SC 1393
29. (1902) 47 Law Ed. 575

14. AIR 1998 SC 3076
15. 1996 STC Vol.XVII 313
16. (1996) 3 SCC 709
17. (1997) 2 SCC 453
18. (2003) 4 SCC 104
19. (2008) 2 SCC 254
20. (2008) 4 SCC 720

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF OCTOBER, TWO THOUSAND EIGHT ONLY

PRESENT:
THE HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY

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AND

The Govt., of A.P., rep., by its
Secretary, Industries & Commerce (M.I) Dept.,
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... Respondents
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Counsel for the petitioners : Sri E. Ayyapa Reddy
Smt. N. Shoba
Sri M.R. Chakravarthy
Sri S. Satyam Reddy

Counsel for the respondents: Sri G. Manohar, Special GP

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This Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.5871, 5950, 5964, 6178, 6180, 6188 6210, 6440, 6563, 13321, 13470 and 13744 of 2001, 533 and 1729 of 2002 and 27640 of 2005

COMMON JUDGMENT:-

In this batch of writ petitions, the petitioners called in question the legality and validity of the Andhra Pradesh Mineral Dealers Rules, 2000 (for short, 'the Rules') notified by respondent No.1 vide G.O.Ms.No.537, Industries and Commerce (M.I) Department, dated 11.10.2000.

The petitioners, most of whom are industrial units involved in the processing and pulverizing of mineral and some of them who are lessees to extract mineral such as Granite, Dolamite, White Shale, Lime Stone, steatite have mainly felt aggrieved by the definition of 'Mineral' contained in Rule 2(1)(h) of the Rules as amended by G.O.Ms.No.330 dated 14.06.2001.

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THE PETITIONERS' CASE:-

The case of the petitioners in short is that the definition of 'Mineral', which enlarged the scope of mineral as defined in Section 3(a) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, 'the Act') is far beyond the delegated power of respondent No.1. The petitioners averred that by enlarging the scope of the definition of Mineral, the respondents have brought the processed minerals and the finished products within their regulatory control, which resulted in violation of their fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India.

THE RESPONDENTS' STAND:-

The Act as it stood before its amendment introduced with effect from 20.11.1999, contained Section 21, which provides for penalties for contravention of the rules made under the Act. The Andhra Pradesh Minor Mineral Concession Rules, 1966 framed by respondent No.1 contained Rule 26, which provides for penalties for unauthorized quarrying. These provisions were found insufficient to check the illicit mining, storage, transport and trading of the mineral. In order to take measures for arresting the illegal mining, transportation, storage and processing, the Ministry of Mines, Government of India, constituted a Committee to suggest necessary measures. On the recommendations of the Committee, several amendments were introduced to the Act to curb illicit mining. The amendments have been introduced with effect from 20.11.1999 by inserting certain

provisions, which *inter alia* include Section 23-C. The said provision empowered the State Governments to make Rules for preventing illegal mining, transportation and storage of minerals. In exercise of its rule making power, the Government of Andhra Pradesh framed the Rules, which came into force with effect from 01.04.2001. The main features of these Rules include bar on persons other than lease holder or a holder of Dealers Registration to stock, sell or offer for sale any minerals in any place except under Dealers Registration issued by the competent authority; to transport, carry by any means or cause to transport or carry any mineral from the places of raising or sell at any place without a valid permit. If these Rules are contravened, the mineral shall be liable to be seized along with whole equipment, vehicles etc., either at the mine head or in transit or point of storage or at the place of consumption. The main aim and objective of these Rules was to curb the illicit mining, transportation of minerals and to prevent the leakage of the mineral revenue to the State Exchequer and they have facilitated the dealers and processors to procure and trade minerals with the legal documents apart from getting free transit passes on production of valid proof of payment of royalty/seigniorage fee of raw/processed mineral.

CONTENTIONS:-

Sri E. Ayyapu Reddy and Smt. N. Shoba, who advanced arguments on behalf of the petitioners,

submitted that the State Government, being a delegate, cannot add to, amend or vary in any manner the definition of 'Mineral' contained in Section 3(a) of the Act. The expanded definition of the 'Mineral' under the Rules resulted in bringing the processed mineral under the States' regulatory control for the first time, which is far beyond the delegated powers of the State Government. In support of their contentions, the learned counsel referred to and relied upon the following decisions; **Kerala Samasthana Chethu Thozhilali Union vs. State of Kerala and others**[1], **S. Samuel, M.D. Haririsos Malayalam and another vs. Union of India and others**[2], **Tej Bahadur Dube (Dead) by LRs., vs. Forest Range Officer F.S. (S.W.), Hyderabad**[3], **Kunj Behari Lal Butail and others vs. State of H.P. and others**[4], **O.K. Play (India) Limited vs. Commissioner of Central Excise-II, New Delhi**[5], **Baijnath Kadri vs. State of Bihar and others**[6], **A. Abdur Quader and Co., vs. Sales Tax Officer**[7], **Ranjana Granites (P) Limited vs. State of Andhra Pradesh**[8], **Saurashtra Cement and Chemical Industries and another vs. Union of India**[9], **State of Tamilnadu vs. M.P.P. Kavery Chetty**[10], **M/s. Banarasi Dass Chadha and Bros vs. LT. Governor, Delhi Administration**[11], **V.P.**

Pithupitchai and another vs. Special Secretary to the Govt., of Tamilnadu[12], **Bhopal Sugar Industry Limited, M.P., and another vs. D.P. Dube Sales Tax Officer, Bhopal Region, Bhopal and another**[13], **M/s. Siel Limited and others vs. Union of India and others**[14].

Sri G. Manohar, learned Special Government Pleader, while opposing the contentions of the learned counsel for the petitioners, submitted that the State Government has not expanded the scope of the definition of 'Mineral', but it has merely made explicit what is implicit in the definition of 'Mineral' in Section 3(a) of the Act. While distinguishing the judgments relied upon by the learned counsel for the petitioners, he relied upon the judgments of the Supreme Court in **The State of Madhya Bharat (Now the State of Madhya Pradesh) and others vs. Hiralal**[15] and **M/s. Banarsi Dass Chadha and Bros (11 supra)**. He further submitted that either the Rules in general or the definition of Mineral in particular do not in any manner affect the interests of the petitioners, because they were intended only to check the illicit mining, which escaped the revenue to the Government and that they do not impose any additional obligations on the petitioners except obtaining necessary licenses and getting registered as Dealers. He denied harassment of the petitioners in the course of enforcement of these Rules.

THE LEGAL ENVIRONMENT:-

Entry 54 of List-I of Seventh Schedule to the Constitution empowers the Union of India to regulate mines and mineral development by enactment of law by the Parliament.

Entry 23 of List-II also concerns itself with regulation of mines and mineral development subject to the provisions of List-I with respect to regulation and development under the control of the Union.

In order to provide for regulation and development of mines and minerals, the Parliament enacted the Act in the year 1957. In this context, it is useful to refer to the relevant provisions of the Act.

In Section 2, it is 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 provided under the Act.

Section 3(a) defined 'Minerals' as including all minerals except mineral oils.

Section 4 prohibits reconnaissance, prospecting or mining operations in any area, except under and in accordance with the permit, license or the lease as the case may be granted under the Act and the Rules made thereunder.

Section 5 envisages restrictions on the grant of licenses, leases and permits.

Section 9 provides for payment of royalty in respect of any mineral removed or consumed by the holder of a mining lease to the Agent, Manager, Employee, Contractor or sub-lessee from the leased area at the rates as specified in the Second Schedule.

Under Section 9(a), the holder of a mining lease shall pay to the State Government every year dead rent at the rates as prescribed in the Third Schedule.

Under Section 13, the Central Government is empowered to make rules for regulating the grant of reconnaissance permits, prospecting licenses and mining leases.

Section 15 empowered the State Government to 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. The Rules so made *inter alia* may relate to matters such as fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the procedure for obtaining quarry leases, mining leases or other mineral concessions.

Section 21 prescribes penalties including imprisonment to be imposed on persons, who contravened the provisions of the terms and conditions of reconnaissance permits, prospecting licenses or mining leases and persons who transport or store or cause to be raised or transported or stored any mineral other than the mineral in accordance with the

provisions of the Act and the Rules made thereunder as provided under Section 4(1) and (1)(a) of the Act.

Section 23 deals with offences by companies and identifies the persons responsible for commission of offences by the companies.

The pivotal provision, which requires a specific mention, is Section 23-C, which was introduced by Amendment Act 38 of 1999 with effect from 20.12.1999. It is useful to reproduce this provision hereunder:

> "**23-C. Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals:-** (1) The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.
>
> (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
>
> (a) establishment of check-posts for checking of minerals under transit;
>
> (b) establishment of weigh-bridges to measure the quantity of mineral being transported;
>
> (c) regulation of mineral being transported from the area granted under a prospecting license or a mining lease or a quarrying license or a permit, in whatever name the permission to excavate minerals, has been given;
>
> (d) inspection, checking and search of

minerals at the place of excavation or storage or during transit;

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

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

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

(3) Notwithstanding anything contained in Section 30, the Central Government shall have no power to revise any order passed by a State Government or any of its authorized officers or any authority under the rules made under sub-sections (1) and (2).”

In exercise of the rule making power conferred by the above-extracted provision, the State Government framed the impugned Rules with effect from 01.04.2001.

Rule 2(1)(d) defined ‘Dealer’ as the person, who holds a Dealers Registration including the mining lease and or quarry lease to whom the leases have been sanctioned as per Mineral Concession Rules, 1960 and the Andhra Pradesh Minor Mineral Concession Rules, 1966 respectively and who intends to deal with

minerals other than the minerals sanctioned. Clause (h) of Rule 2(1) defined 'Mineral' as the minerals defined in clause (a) of Section 3 of the Mines and Minerals (Development and Regulation) Act and includes precious and semi-precious and uncut stones, all minor minerals as specified in the Andhra Pradesh Minor Mineral Concession Rules, 1966 and also processed pulverized and finished products.

The Rules were amended by the State Government and notified in G.O.Ms.No.330 dated 14.06.2001 in the Official Gazette of the State published on 21.06.2001. By the said amendment, the definition of 'Dealer' was substituted as under:

> "(d) 'Dealer' means any person who carries on the business of buying, selling, supplying, transporting, distributing or delivering for sale of minerals and mineral products and includes.
>
> (a) Person who buy and process mineral or mineral products for sale or for utilization for their own purposes.
>
> (b) Any person who holds a mining lease or a quarry lease granted under the Mineral Concession Rules, 1960 or the A.P. Minor Mineral Concession Rules, 1966 issued by the Government, framed under the Mines and Minerals (Development and Regulation) Act, 1957."

The definition of 'Mineral' in clause (h) has been amended as under:

> "(h) 'Mineral' means, minerals of all types and varieties including precious and semi-precious and uncut stones and minor minerals as specified in Section 3 (e) of the

Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) for the purposes of these rules.

Explanation:- Minerals shall not cease to be minerals by reason of being subjected to any process like crushing burning, breaking, drying, cutting, polishing, pulverizing or any other procedure intended to make the mineral fit or suitable for sale or consumption."

Rule 3, as it originally stood, was substituted to the effect that all dealers shall register themselves as dealers with the Mines and Geology Department of the Government of Andhra Pradesh as per the procedure indicated in the Rules. It also prohibits persons other than a dealer or a mining lease holder from buying or selling or offer for sale or engaging in any transaction of buying and selling any mineral at any place or transport mineral for purposes of sale or consumption without being registered as a dealer. Under proviso, the requirement of registration is exempted in favour of the persons, who purchase and transport minerals for use or consumption by himself and where the said use or consumption does not involve any commercial activity and also holder of a mining lease or a quarry lease in respect of the minerals for which he holds a lease.

Rule 6 envisages obtaining of transit passes by persons desirous of transporting or carrying away any mineral from any place from the Deputy Director of Mines and Geology concerned.

Rule 8 prescribes penalties for violation of any of the Rules.

Rule 9 empowers the competent authority to seize and confiscate the mineral in respect of which an offence is committed.

Rules 11 and 12 provide for the remedies of appeal and revision against the orders passed under the Rules.

ANALYSIS:-

Constitutionality of an Act can be challenged on two grounds, namely, (i) lack of Legislative competence and (ii) Violation of any of the fundamental rights guaranteed under Part-III of the Constitution or any other constitutional provision. (**State of Andhra Pradesh vs. Mc Dowell and Company Limited**[16]; **State of Bihar vs. Bihar Distillery Limited**[17]; **Public Services Tribunal Bar Association vs. State of Utter Pradesh**[18]; **Karnataka Bank Ltd. Vs. State of Andhra Pradesh & others**[19] and **Government of Andhra Pradesh and others vs. P. Laxmi Devi**[20]). The vires of Rules made under statutory enactments can be challenged on an additional ground, namely, substantive ultravires i.e., the delegated legislation goes beyond the scope of the authority conferred by the statute or it is in conflict with the parent Act. (See **Ashok Lanka vs. Rishi**

Dixit[21], **Bombay Dyeing and Manufacturing Co., Ltd., vs. Bombay Environmental Action Group**[22]; **Kerala Samsthana Chethu Thozhilali Union vs. State of Kerala**[23].

As regards the Legislative competence to make rules, the learned counsel for the petitioners concede existence of such Legislative competence in the State Government by virtue of power of delegation contained in Section 23-C of the Act. While a contention is raised that the explanation of the definition of 'Mineral' resulted in violation of fundamental rights of the petitioners guaranteed by Article 19(1) of the Constitution, the main thrust of their contention is on the State Government exceeding its delegated power as noted hereinbefore.

The main stay of the arguments of the learned counsel for the petitioners is that the State Government widened the definition of 'Mineral' contained in Section 3(a) by bringing within its fold the processed mineral and according to the learned counsel such a power is not inhered in the delegate. The legal proposition put forth by the learned counsel that a delegate shall always remain within the parameters of the delegated power is unexceptionable (**Mohamad Yaseen vs. Town Area Committees, Jalalabad**[24]; **Tahir Hussain vs. District Board, Muzafarnagar**[25], **Ganapathi Singhji vs. State of Ajmer**[26] and **Bar**

Counsel of Delhi vs. Surjeet Singh[27]). The question therefore here is whether the State Government wandered out side its designated area of delegated power? To answer this question, the statement of objects and reasons for introducing various amendments including Section 23-C, in the Act, the definition of Mineral in Section 3(a) and the definition contained in clause (h) of Rule 2 are required to be analyzed.

The statement of objects and reasons *inter alia* mentioned that in the conference of the State Ministers/Secretaries of Mines and Geology held in December, 1996, a Committee under the Chairmanship of the then Secretary, Ministry of Mines was constituted in February, 1997, to *inter alia* make recommendations regarding delegation of powers to the State Governments relating to grant and renewal of prospecting licenses and mining leases and other related approvals and to suggest measures to reduce delay in this regard, review of the existing laws and procedures governing the regulation and development of minerals to make them more compatible to the changed polices and measures of **prevention of illegal mining**. After considering the recommendations of the Committee, the Union of India decided to amend the Act. The statement referred to some of the important amendments, which included the amendment delegating the power to the State Government to make rules for preventing illegal mining,

transportation and storage of minerals and for purposes connected therewith. It is apt to reproduce the statement relating to this amendment hereunder:

> "(iii) A new provision is proposed to be inserted in the Act prohibiting transportation or storage or anything causing transportation of storage of any mineral except under the due provisions of the Act, with a view to preventing illegal mining. Further, the Act is proposed to be amended to cover the breach of the provisions of the proposed new provision of the Act to be punishable. It is also proposed to insert a new provision to provide for anything seized under the Act as liable for confiscate under Court orders. A new section is proposed to be inserted to empower the State Government to make rules for preventing illegal mining transportation and storage of minerals and for purposes connected therewith."

The question referred to supra is therefore to be examined in the light of the object with which rule making power is delegated to the State Government. Section 3(a), which defined 'Mineral' is couched in generic but not in precise terms. While defining the 'Mineral', it has neither restricted its width to the raw mineral nor included in its ambit processed mineral.

The Supreme Court in **M/s. Banarsi Dass Chadha (11 supra)** considered the definition of 'Mineral' and held that the word 'Mineral' is not a term of art, but a word of common parlance, capable of a multiplicity of meanings depending upon the context.

In **V.P. Pithupitchai (12 supra)** , the Supreme

Court, while considering whether seashells were 'Minerals' within the definition of Section 3(a) of the Act, held that though the Act did not define 'Mineral', it is judicially interpreted as to mean an inorganic substance found either on or in the earth, which may be generated and exploited for profit.

In **O.K. Play (India) Limited (5 supra)**, while dealing with the validity of central excise levy on the moulding powder derived from Low Density Polyethylene (LDPE) and High Density Polyethylene (HDPE) granules, the Supreme Court held that process of pulverization under which granules are converted into moulding powder constitutes 'Manufacture' and that the moulding powder produced by the said process was marketable. The Supreme Court further held that block and powder are two different primary forms and if the block is pulverized into the powder, the activity would amount to manufacture.

In **Bhagwan Dass vs. State of Utter Pradesh**[28] where the Supreme Court held as under:

> "It was urged that the sand and gravel are deposited on the surface of the land and not under the surface of the soil and therefore they cannot be called minerals and equally so, any operation by which they are collected or gathered cannot properly be called a mining operation. It is in the first place wrong to assume that mines and minerals must always be sub-soil and that there can be no minerals on the surface of the earth. Such an assumption is contrary to informed

> experience. In any case, the definition of mining operations and minor minerals in S.3 (d) and (e) of the Act of 1957 and R.2(5) and (7) of the Rules of 1963 shows that minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of "winning" any minor mineral. "Winning" does not imply a hazardous or perilous activity. The word simply means "extracting a mineral" and is used generally to indicate any activity by which a mineral is secured. "Extracting" in turn, means drawing out or obtaining. A tooth is 'extracted' as much as is fruit juice and as much as a mineral. Only that the effort varies from tooth to tooth, from fruit to fruit and from mineral to mineral."

The Supreme Court also relied on the judgment of the Supreme Court of United States in **Northern Pacific Railway Company vs. John A. Sedrbarg**[29] and extracted para 581, which reads as under:

> "The word 'mineral' is used in so many senses, dependent upon the context, that the ordinary definitions of the dictionary throw but little light upon its signification in a given case. Thus, the scientific division of all matter into the animal, vegetable, or mineral kingdom would be absurd as applied to a grant of lands, since all lands belong to the mineral kingdom, and therefore, could not be excepted from the grant without being destructive of it. Upon the other hand, a definition which would confine it to the precious metals – gold and silver – would so limit its application as to destroy at once half the value of the exception. Equally subversive of the grant would be the definition of

> minerals found in the Century Dictionary: as "any constituent of the earth's crust;" and that of Bainbridge on Mines: "All the substances that now form, or which once formed, a part of the solid body of the earth." Nor do we approximate much more closely to the meaning of the word by treating minerals as substances which are "mined" as distinguished from those which are "quarried", since many valuable deposits of gold, copper, iron, and coal lie upon or near the surface of the earth, and some of the most valuable building stone, such for instance, as the Caenstone in France, is excavated from mines running far beneath the surface. This distinction between underground mines and open workings was expressly repudiated in **Midland R.C. vs. Haunchwood Brick and Tile Co.** ((1882) 20 Ch. Div. 55) and in **Hext vs. Gill** ((1872) 7 Ch. 699)."

The following ratio could be culled out from the various judicial precedents referred to above:

a) The word 'Mineral' is judicially interpreted, more than it is statutorily defined.

b) The word 'Mineral' is not a term of art, but required to be understood in common parlance depending upon the context in which it is used.

c) The word 'Mineral', understood in common parlance is an inorganic substance found either on or in the earth, which may be garnered or exploited for profit, and

d) The mineral changes its character after it undergoes process such as pulverization.

Until Section 23 is introduced in the Act, the

State Government was empowered to make Rules in respect of minor minerals only. However, under Section 23-C, the State Government is now empowered to make Rules in respect of all minerals for the purpose of preventing illegal mining, transportation and storage of minerals. If we read the definition of 'Mineral' under Rule 2(h) *de hors* the offending explanation, we find nothing unusual, which can be said to either expand the intended meaning of 'Mineral' in Section 3(a) of the Act or militates against the meaning of the mineral understood in common parlance. But the explanation, which is added by the amendment takes within its sweep not only the raw mineral, but also the product derived from such raw mineral after it undergoes process such as crushing, burning, breaking, drying, cutting, polishing, pulverizing or any other procedure intended to make the mineral fit or suitable for sale or consumption. In effect, the impugned explanation has added to the definition products manufactured from out of the mineral garnered or exploited.

A close examination of the provisions of Section 23-C by which the rule making power is entrusted reveals that the said provision itself contains the key in understanding the parameters within which the State Government is empowered to exercise such power. Though I am mindful of the fact that sub-clauses (a) to (g) of Section 23-C (2) which enumerate the matters in respect of which the State Government can exercise its rule making power are illustrative and not exhaustive, still the intention of the Parliament on the broad scope

of the power delegated to the State Government is quite reflected from this provision. Since the Rules to be made by the State Government are intended to prevent illegal mining, transportation and storage of minerals, the abovementioned sub-clauses cover only such of those matters, which exclusively pertain to the said domain, eg; under sub-clause (d) Rules to be framed can provide for inspection, checking and search of minerals at the place of excavation, storage or during transit and clause (c) relates to regulation of mineral being transported from the area granted under a prospecting license or a mining lease or a quarrying license or a permit. These two sub-clauses cover the stage of excavation and extraction of mineral from the mining area from where the mineral is transported. Clauses (a) and (b) relate to regulation during transit and transportation by providing for establishment of check-posts and weigh-bridges to measure the quantity of mineral. Clause (e) deals with Rules to be made for maintenance of registers and forms for the purposes of these Rules. Even if these clauses are interpreted in the widest terms, it is not possible to understand them as empowering the State Governments to make Rules regulating the minerals after they underwent process such as polishing, cutting, burning, pulverizing etc. If that were to be the intention of the Parliament, it would not have been difficult for it to add one more sub-clause by bringing within the regulatory fold of the State Governments these activities also.

The reason for not making such a provision is not far to seek. The entire domain of regulation of mining activity is taken over by the Union of India as can be seen from the declaration contained in Section 2 of the Act, which is reproduced below:

> "**2. Declaration as to 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 hereafter provided."

Though the subject of mines and development of minerals is included in concurrent list as well, as power to legislate under this list is subject to declaration by the Central Government under entry 54 of List-I, the field is occupied, denuding the State Governments of the power to make law covering the areas, which are governed by the Act. The Act, however, empowered State Governments to regulate the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith by making rules in that regard. By inserting Section 23-C the Parliament also empowered State Governments to regulate activity of excavation, transport and storage of all minerals.

The three stages, namely, excavation, transport and storage, which alone find mention in Section 23-C, confine the area of rule making power only to control the illicit mining, storage and transportation of mineral. The Legislative intent behind this is very

clear, namely, to confine the State Governments' rule making power to the pre-processed stage of mineral in conformity with the definition of mineral in Section 3(a) of the Act and as understood by applying common parlance doctrine by the Courts in various decisions referred to above. To attribute any other intention to the Parliament would only lead to anomalous situations.

Learned Special Government Pleader relied on clause (g) of Section 23-C and contended that very wide power is conferred on the State Government by the said provision to cover any matter in the Rules to prevent illegal mining, transportation and storage of minerals. In my opinion, this clause has to be necessarily read in conjunction with clauses (a) to (f), but not in isolation. While undoubtedly any Rule aimed at prevention of illegal mining, transportation and storage of minerals is within the rule making power of the State Government, it is difficult to countenance the stand of the respondents that in order to carry out the abovementioned object, they can exercise jurisdiction over manufacturers of final products using the minerals as raw material. Though the respondents in their counter-affidavit have pleaded and the learned Special Government Pleader reiterated that insistence on the registration of the manufacturing units as 'Dealers' and subjecting the processed materials and final products to regulatory control was only aimed at checking whether the mineral used by them was subjected to levy

of royalty etc., and that no fiscal or other burdens are imposed on them, the issue is one of the existence of power and not the manner in which the power is exercised. If power to regulate the activities of manufacturing/processing of mineral is not conferred on the State Governments, no further question arises and it is not necessary for the petitioners to prove that in the guise of exercising control to check illegal mining, they are being harassed.

In **Tej Bahadur Dube (3 supra)** the Supreme Court interpreted Section 2(o) of the Andhra Pradesh Forest Act, 1967, which defines 'Sandalwood' and held that once sandalwood is subjected to certain process from which a sandalwood product is lawfully obtained, then such product ceases to be sandalwood as understood under Section 2(o) of the said Act. The said analogy applies with all its vigor to these cases and a fortiori a product obtained after subjecting the mineral to a process cannot be treated as mineral.

From the above perspective, if we examine the explanation to the definition of 'Mineral' in Rule 3(h), it is clear that the State Government far too expanded the scope of the definition of mineral by including in its definition processed mineral and final product emerging out of such process. While it is very much doubtful whether even the Parliament would have made any such rule without amending the definition of mineral in Section 3(a), in my view, surely the State Government is

not competent to stretch the definition of 'Mineral' to the extreme extent of subjecting the processed and finished product derived from the mineral to the regulatory control by including the same in the definition of 'Mineral'.

The contention of the learned Special Government Pleader that the purpose of including the processed mineral within the definition of Rule 2(h) was to prevent illegal exploitation of mineral, is without any merit. The object of delegating rule making power under Section 23-C being confined to arrest of illicit mining, transport and storage, there is no necessity to stretch the regulatory arm beyond these stages and interfere with processing and manufacturing activities. In fact, to prevent illegal mining, there is no need to make rules covering such activities, because no lessee can operate quarry and extract mineral clandestinely, without the knowledge of the departmental officials. Similarly, the mineral extracted cannot be transported and stored without the lessee or the purchaser obtaining necessary permits. If there is effective check and control at these three stages, there is no necessity whatsoever for the State Government or its officers to exercise control over the processed or finished product to find out whether royalty and dead rent were paid in respect of the mineral before it is processed. I n **Tej Bahadur Dube (3 supra)** the Supreme Court rejected a similar contention and set aside the conviction of the persons, who transported the sandalwood pieces without a transit permit.

The contention of the learned Special Government Pleader that the State Government merely explained what is implicit in the definition of 'Mineral' in Section 3(a) of the Act is difficult to be countenanced. There is nothing in the definition of 'Mineral' contained in the Act from which it can be inferred that the processed and finished product derived from mineral also falls in the said definition. There is therefore nothing implicit in the said definition in the Act, to justify the State Government to broaden the scope of the definition of 'Mineral' in purported exercise of its rule making power. As rightly pointed out by the learned counsel for the petitioners, a delegate cannot add to, amend or vary the definition contained in the parent Act.

The judgments relied upon by the learned Special Government Pleader are of no help to the respondents. The judgment in **The State of Madhya Bharat (15 supra)** dealt with the claim for exemption by purchaser of scrap iron from sales tax under a notification issued by the Madhya Pradesh Government. The revenue contended that as the purchaser converted the scrap into bars, flats and plates in his mills and sold them in the market, he was not entitled to the benefit of exemption. The Supreme Court negatived the contention of the revenue and held that the purchaser sold the scrap iron and steel in the shape of bars, flats and plates only to give them attractive and acceptable forms and that therefore the benefit of exemption notification was available to him. The said judgment

turned on its own facts and the same has no relevance on the issue involved in these cases.

Similarly, the judgment in **M/s. Banarasri Dass Chadha and Bros (11 supra)** is of no help to the respondents either in the context of the cases on hand. In that case, in exercise of the power conferred by Section 3(e) of the Act, the Central Government *inter alia* declared brick-earth as minor mineral. The Supreme Court, while repelling the contention that the Central Government exceeded its power in notifying brick-earth as minor mineral, held that the word 'Mineral' is not a term of art, but it is a term of common parlance, capable of a multiplicity of meanings depending upon the context. It held that the word 'Mineral' has no fixed but a contextual connotation. As the Supreme Court found that the word 'Mineral' is of sufficient amplitude to include brick-earth, the challenge made to its inclusion in the definition 'Mineral' was rejected. This judgment has not dealt with a case where a processed mineral or a final product derived from the mineral was included in the definition of 'Mineral'.

CONCLUSION:-

From the detailed discussion undertaken above, the conclusion is irresistible that the explanation to Rule 2(h) by which the processed mineral and final products are treated as 'Mineral' is ultravires the rule making power of the State Government and the same is accordingly struck down. Consequently, the definition

of 'Dealer' in Rule 2(1)(d) shall be read down as to exclude the persons, who undertake manufacturing/processing activity using mineral as raw material. It is, however, made clear that the State Government and its officials authorized for this purpose shall be free to inspect and check any premises or factory/industry where the mineral is stored before it is processed/ manufactured and exercise the power of seizure of mineral before it is processed and converted into a finished product, if it is found that such mineral has not suffered royalty and/or dead rent.

The writ petitions are accordingly partly allowed to the extent indicated above.

As a sequel to disposal of the writ petitions in the manner indicated above, WPMP.Nos. 7488, 7861, 7864, 7872, 7902, 8347, 8184, 16603 of 2001, 630 and 2051 of 2002 in WP.Nos.5871, 6178, 6180, 6188, 6210, 6563, 6440, 13321 of 2001, 553 and 1729 of 2002 respectively, WPMP.Nos.16673 of 2001 and 17137 of 2002 in WP.No.5950 of 2001, WPMP.Nos.7591 of 2001, 30 of 2002 and 21374 of 2003 in WP.No.5964 of 2001, WPMP.Nos.16790 of 2001 and 819 of 2008 in WP.No.13470 of 2001 and WPMP.No.17161 of 2001 and WVMP.No.71 of 2002 in WP.No.13744 of 2001 are disposed of as infructuous.

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C.V.NAGARJUNA REDDY, J

Date: 31.10.2008
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LR copies to be marked.

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[1] (2006) 4 SCC 327

[2] (2004) 1 SCC 256

[3] (2003) 3 SCC 122

[4] (2000) 2 SCC 254

[5] (2005) 2 SCC 555

[6] (1969) 3 SCC 838

[7] AIR 1964 SC 922

[8] 1996 (2) ALD 1180 (D.B.)

[9] 2000 (7) Supreme 220

[10] AIR 1995 SC 858

[11] AIR 1978 SC 1587

[12] (2003) 9 SCC 534

[13] AIR 1964 SC 1037

[14] AIR 1998 SC 3076

[15] 1996 STC VolXVII 313

[16] (1996) 3 SCC 709

[17] (1997) 2 SCC 453

[18] (2003) 4 SCC 104

[19] (2008) 2 SCC 254

[20] (2008) 4 SCC 720

[21] (2005) 5 SC 598

[22] (2006) 3 SCC 434

[23] (2006) 4 SCC 327

[24] AIR 1952 SC 115

[25] AIR 1954 SC 630

[26] AIR 1955 SC 188

[27] AIR 1980 SC 1616

[28] (1976) 3 SCR 869 : AIR 1976 SC 1393

[29] (1902) 47 Law Ed. 575