

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DELIVERED ON : 29.11.2017

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.20020 of 2017

and

W.M.P(MD)Nos.16299 and 16300 of 2017

M/s.M.R.M.Ramaiya Enterprises Private Limited,
represented by its
Managing Director,
M.R.M.Ramaiya ... Petitioner

Vs.

- 1.The District Collector,
Thoothukudi District,
Thoothukudi.
- 2.The Assistant Director of Geology and Mines,
Thoothukudi,
Thoothukudi District.
- 3.The Revenue Divisional Officer,
Revenue Divisional Office,
Thoothukudi,
Thoothukudi District.
- 4.The Tahsildar,
Thoothukudi Taluk Office,
Thoothukudi,
Thoothukudi District.
- 5.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.
- 6.The District Collector,
Tirunelveli District,
Tirunelveli.

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- 7.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
- 8.The Assistant Director of Geology and Mines,
Tirunelveli,
Tirunelveli District.
- 9.The District Collector,
Kanyakumari District,
at Nagercoil.
- 10.The Superintendent of Police,
Kanyakumari District,
Kanyakumari.
- 11.The Assistant Director of Geology and Mines,
Kanyakumari District,
Kanyakumari.
- 12.The V.O.Chidambaranar Port Trust,
represented by its
Chairman,
Tuticorin - 628 004.
- 13.The Union of India,
represented by its
Secretary,
Ministry of Mines,
Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi - 110 001.
- 14.The Union of India,
represented by its
Secretary,
Ministry of Environment, Forest and Climate Change,
New Delhi.
- 15.The Union of India,
represented by its
Secretary,
Ministry of Commerce and Industry,
Udyog Bhawan,
New Delhi - 110 107.

16.The Union of India,
represented by its
Secretary,
Ministry of Finance,
3rd Floor, Jeevan Deep Building,
Sansad Marg,
New Delhi – 110 001.

... Respondents

**(Respondents 13 to 16 are, suo motu, impleaded
vide order of this Court, dated 29.11.2017 passed in
W.P(MD)No.20020 of 2017)**

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus forbearing the respondents herein from insisting for licence, permit, transport slip, etc., under the Tamil Nadu Minor Mineral Concession Rules, 1959 during the transportation of the imported river sand from the New Harbour Stockyard at Tuticorin Port, wherein the imported river sand is presently stored, to the premises of the petitioner's customers against proper invoice, bill of entry along with proof of payment of GST [Goods and Service Tax] on import, within the State of Tamil Nadu and to pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.M.Vallinayagam,
Senior Counsel for
Mr.N.Viswanathan

For Respondents : Mr.Vijay Narayan,
Advocate General
&
Mr.B.Pugalenth,
Additional Advocate General
assisted by
Mr.T.S.Mohamed Mohideen
Additional Government Pleader for R.1 to R.11

Mr.S.Yaswant for R.12

* * * * *

ORDER

"The planet – Earth will become a sizzling fireball in less than 600 years" - A chilling warning from Stephen Hawking – a famous physicist. Obviously, the reason, thus, is, that natural resources being indiscriminately swindled would lead to irreparable negative effects on the lives of our planet. More particularly, illicit, indiscriminate and haphazard sand mining led to deepening of the riverbeds, widening of the rivers, damage to civil structures, depletion of ground water table, degradation of ground water quality, damages to the river system and reduction of bio-diversity. All that is, nothing but interruption into nature's course. To say, now-a-days, sand – a kind of mineral has become a rare commodity because of mindless quarrying and policies, thereby continuing to degrade the environment, affecting the agricultural activities and also in the process resulting in scaling up the price and now, we are in the days to import sand/river sand from abroad like other commodities.

2. Here is a case, wherein the petitioner – Managing Director of a Private Limited Company, doing business in import and export, claims to have imported river sand from abroad and failing in his attempt to transport the same to his customers within the State of Tamil Nadu, invokes the jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of Mandamus, to forbear the respondents herein

from insisting for licence, permit, transport slip, etc., under the Tamil Nadu Minor Mineral Concession Rules, 1959 during the transportation of the imported river sand from the New Harbour Stockyard at Tuticorin Port, wherein the imported river sand is presently stored, at the premises of the petitioner's customers against proper invoice, bill of entry along with proof of payment of GST [Goods and Service Tax] on import, within the State of Tamil Nadu and to pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

3. By consent, the writ petition itself is taken up for final disposal.

4. The case of the petitioner, succinctly stated, is as follows:

4.1. According to the petitioner, the petitioner Company is provided with Import and Export Code bearing No.0412018128 by the Additional Director General of Foreign Trade, Ministry of Commerce and Industry, Government of India, in terms of the provisions of the Foreign Trade (Development & Regulations) Act. The petitioner further stated that in order to meet out the high demand and to control the rise in the price of natural sand, the Union of India took a policy decision to permit import of sand from foreign countries. Thus, a notification was published in the Gazette of India Extraordinary Part-II, Section – 3, Sub-Section (ii), which reads as follows:

“Notification No.97 (RE-2013)/2009-2014New Delhi, Dated 7th November, 2014

Subject : Revision in Import Policy for Natural Sand.

S.O. (E): In exercise of powers conferred under Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 read with paragraph 1.3 of the Foreign Trade Policy, 2009 – 2014, as amended from time to time, the Central Government hereby makes the following amendments in Import Policy of Chapter 25 of ITC (HS), 2012, Schedule 1 (Import Policy):

Exim Code	Item Description	Existing	Revised
2505	Natural Sands of All Kinds, Whether or not Coloured, other than Metal-Bearing Sands of Chapter 26		
250510	Silica sands and Quartz sands:		
	Silica Sands:		
2505 10 11	Processed (White)	Free	Subject to Plant Quarantine (Regulation of Import into India) Order, 2003.
2505 10 12	Processed (Brown)	Free	Subject to Plant Quarantine (Regulation of Import into India) Order, 2003.
2505 10 19	Other	Free	Subject to Plant Quarantine (Regulation of Import into India) Order, 2003.
2505 10 20	Quartz sands	Free	Subject to Plant Quarantine (Regulation of Import into India) Order, 2003.
2505 90 00	Other	Free	Subject to Plant Quarantine (Regulation of Import into India) Order, 2003.

4.2. In the light of the same, the petitioner company decided to import natural sand from foreign countries, especially, from Malaysia, as it is fit for construction purposes. Accordingly, the petitioner entered into an agreement of sale and purchase of sand from Malaysia with M/s.All Works Trading Private Limited, Singapore, on 09.09.2017, as per which, the seller agreed to supply 1,00,000 MT of river sand from Sungai Pahang River, Kuantan City, Malaysia to the petitioner at Tuticorin Port.

4.3. After obtaining the Certificate of Plant Quarantine from Government of Malaysia, the seller dispatched the first shipment of 55,443.84 MT of river sand from Pekan Anchorage, Malaysia to Tuticorin, through Vessel Anna Dorothea. It reached Tuticorin Port on 14.10.2017

through indian waters by obtaining necessary permission from the Director General of Lighthouses and Lightships, Ministry of Shipping, Government of India.

4.4. On completion of all formalities with the Customs Department as well as the clearance from the Plant Quarantine authorities, the petitioner moved the goods to the stockyard at New Harbour, Tuticorin, on payment of appropriate Port Wharfage Charges, Port on-board Lev Charges, Port Royalty Charges, Port Levy for Shore Handling Charges, Port Royalty Charges for Shore, Labour Charges, Customs Bill Filing Charges, Transport Charges, Yard Plot Rent, etc., aggregating to the tune of Rs. 1,80,00,000/- (Rupees One Crore and Eighty Lakhs only) through the petitioner's clearing Agent, viz., M/s.Janaki Traders. The petitioner was permitted to stock the sand at New Harbour, Tuticorin, for seven days and thereafter, the petitioner is liable to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as demurrage charges per day. The petitioner also paid a sum of Rs.38,39,347/- (Rupees Thirty Eight Lakhs Thirty Nine Thousand Three Hundred and Forty Seven only) towards Goods and Service Tax.

4.5. It is the specific contention of the petitioner that there would be no bar under the Mines and Minerals (Development and Regulation) Act, 1957 as well as the Tamil Nadu Minor Mineral Concession Rules, 1959, to transport the imported river sand from the Harbour to the customers, as, according to the petitioner, the said Act and the Rules are only in respect of regulation of minerals quarried within the territories of India and the

State of Tamil Nadu, as the case may be.

4.6. Hence, the petitioner sold 96 Tons of imported river sand to M/s.T.K.Traders, who, in turn, sold the same to a customer at Marthandam, Kanyakumari District, for construction purposes and the petitioner hired six lorries bearing Registration Nos.TN-20-BD-3330; TN-74-K-6442; KL-20-5050; TN-74-AB-9306; TN-74-V-1150 and TN-74-V-7654, respectively, for transportation of the imported river sand. In that process, the Inspector of Police, Aralvoimozhi Police Station, Kanyakumari District, seized the said lorries along with the imported river sand and handed over the same to the Revenue Divisional Officer, Kanyakumari District, who, in turn, handed over the said lorries to the Assistant Director of Geology and Mines, Kanyakumari District. A case in Cr.No.450 of 2017 under Sections 4(1)(1A) and 21(1) of the Mines and Minerals Act, 1957, came to be registered against the drivers of the said lorries alleging that they had transported the river sands without any valid permits.

4.7. Therefore, the petitioner made a representation dated 25.10.2017 to the respondents seeking release of the vehicles. Meanwhile, the Chairman, V.O.Chidambaranar Port Trust, Tuticorin - 628 004, sent a communication to the clearing Agent of the petitioner, viz., M/s.Janaki Traders, stating that the Port shall not permit to transport away the sand until all permissions are obtained. But, the petitioner has not been served with any such communication till date and finding no action, the present writ petition has been filed.

5. On 01.11.2017, when this writ petition came up for admission, this Court, upon hearing the rival submissions and also considering the facts and circumstances of the case, as an interim measure, has passed the following order:

"Mr.B.Pugalendhi, learned Additional Advocate General, assisted by Mr.T.S.Mohamed Mohideen, learned Additional Government Pleader takes notice for R1 to R11. Notice to R12, returnable by 06.11.2017.

2. As a matter of policy, the Central Government has taken a decision to permit the import of sand, for which, Central Excise Duty and other taxes are being collected from the Importers. Now, restrictions of business operations have been imposed by the District Collector/R1, thereby prohibited the transportation of the imported sand, on account of which, the petitioner is forced to pay demurrage charges.

3. Under such circumstances, as an interim measure, there shall be an order of interim injunction, restraining R-12 from levying demurrage charges in respect of the imported sand stocked in the stock yard of the Port, until further orders. Notice.

Call on 06.11.2017."

6. Heard the submissions of Mr.M.Vallinayagam, learned Senior Counsel appearing for Mr.N.Viswanathan, learned Counsel for the petitioner; Mr.Vijay Narayan, learned Advocate General assisted by Mr.T.S.Mohamed Mohideen, learned Additional Government Pleader

appearing for the respondents 1 to 11 and Mr.S.Yaswant, learned Counsel for 12th respondent.

7. The gist and kernel of the arguments advanced by Mr.M.Vallinayagam, learned Senior Counsel appearing for the petitioner, are as follows:

7.1. The petitioner, being a Private Limited Company, is doing the business in import and export under IEC Door No.0412018128 issued by the Additional Director General of Foreign Trade.

7.2. Due to the high demand for river sand in the country, the Union of India took a policy decision to permit import of natural sand from foreign countries and accordingly, a notification came to be published in the Gazette of India.

7.3. In terms of the said notification, the petitioner entered into an agreement of sale with a company in Malaysia for import of river sand and after complying with all the formalities, the consignment reached the Port at Tuticorin.

7.4. The petitioner also paid the Goods and Service Tax to the tune of Rs.38,39,347/- (Rupees Thirty Eight Lakhs Thirty Nine Thousand Three Hundred and Forty Seven only) in respect of the consignment imported at the Port, including all other taxes.

7.5. At that juncture, the respondents prohibited the petitioner from transporting the imported river sand to the customers in the State of

Tamil Nadu, stating that there is a bar for transportation of the imported river sand as per the Mines and Minerals (Development and Regulation) Act, 1957 as well as the Tamil Nadu Minor Mineral Concession Rules, 1959.

7.6. It is the prime contention of the petitioner that there would be no bar for the petitioner to transport the imported river sand inside the State of Tamil Nadu, for the reason that Rule 38 of the Tamil Nadu Minor Mineral Concession Rules, 1959, does not deal with the imported sand and hence, the respondents have no jurisdiction to restrain the petitioner from transporting the imported river sand in the State.

7.7. Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, came to be inserted by G.O.Ms.No.95, Industries, dated 01.10.2003, in and by which, the quarrying of sand be carried out only by the Government and Rule 38-B prohibits transportation of the sand covered under Rule 38-A to the other States. Whereas Rule 38-C imposed a condition that no person shall transport sand without a valid transport permit issued by the Public Works Department or without a sale slip of Licensee duly authenticated by the authorities concerned of the jurisdiction from which the sand is transported.

7.8. The learned Senior Counsel further pointed out that Rules 38-A, 38-B and 38-C cannot be made applicable to the case of the petitioner as the petitioner had imported the river sand from Malaysia and thus, these Rules have no relevance at all and the respondents are not entitled to

restrain the petitioner from transporting the imported sand to his customers.

7.9. The petitioner is having all the documents in support of his claim that he has imported the river sand from Malaysia.

7.10. The import of river sand from Malaysia to India is perfectly valid, however, the District Collector sent a communication to the Port authorities not to permit the clearing Agent of the petitioner to transport the imported river sand, which, according to the petitioner, is not tenable.

7.11. The District Collector has no jurisdiction to interfere with the transportation of the imported river sand and in that process, six lorries hired by the petitioner were seized and they remained idle with the loads of imported river sand.

7.12. Drawing the attention of this Court to Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, the learned Senior Counsel contended that Section 15 of the said Act deals with quarrying alone and the powers have been given to the State Government to frame rules and accordingly, the Tamil Nadu Minor Mineral Concession Rules, 1959 came into existence. However, neither the Mines and Minerals (Development and Regulation) Act, 1957, nor the Tamil Nadu Minor Mineral Concession Rules, 1959, deal with the transportation of imported sand, rather, they deal only with the quarried sand.

7.13. Whereas Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, came to be incorporated to deal

with the sand already quarried and its main object is to prevent illegal mining, transportation and storage of minerals.

7.14. The learned Senior Counsel also brought to the notice of this Court the Explanation (iv) to Rule 38-C of the Tamil Nadu Minor Mineral Concession Rules, 1959, which defines 'sand' thus:

"(iv) "sand" means ordinary sand used for construction purpose which includes processed and filtered sand other than industrial sands like silica sand or Garnet sand."

and contended that Section 23-C of the the Mines and Minerals (Development and Regulation) Act, 1957, does not confine to sand alone like that of Rule 38-C , transport permit or transit pass is not applicable to imported sand.

7.15. By virtue of Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, private quarrying operations are completely prohibited in the State of Tamil Nadu and therefore, the State Government is empowered only to prohibit the illegal transportation of sand quarried in the State and in case of imported sand , the State Government is not entitled to have jurisdiction.

7.16. The attention of this Court has also been drawn to Rule 2(xiii) of the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, which defines 'minerals' as follows:

"2(xiii). "Minerals" means all minerals and minor minerals except sand."

and submitted that since the sand is excluded, the said Rules cannot be made applicable to the case on hand and hence permits and passes under the state rules cannot be insisted upon.

7.17. The learned Senior Counsel also contended that the provisions of either the Tamil Nadu Minor Mineral Concession Rules, 1959 or the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, are not applicable as to the case of the petitioner for transporting the minerals through the State of Tamil Nadu and he placed reliance on the judgment of this Court in ***K.P.Enterprises v. District Collector, Salem*** reported in ***AIR 2004 MADRAS 151***, wherein, this Court, held that the provisions of the Tamil Nadu Rules do not apply in respect of inter-state transportation of granite block of Kerala origin, to Andhra Pradesh and further held that the order for payment of seigniorage fee and levy of penalty under the Tamil Nadu Rules, are illegal.

7.18. It is argued by the learned Senior Counsel appearing for the petitioner that the State Government has no power to impose control over the imported sand for being sold in any part of the country and to support the same, he relied on the decision of the Honourable Supreme Court in ***St o Tami Nadu v. M.P.P.Ka Chett*** reported in ***(1995) 2 Suprem Co Ca 402***, wherein it is held as follows:

"24. There is no power conferred upon the State Government under the said Act to exercise control over minor minerals after they have been excavated. The power

of the State Government, as the subordinate rule-making authority, is restricted in the manner set out in Section 15. The power to control the sale and the sale price of a minor mineral is not covered by the terms of clause (o) of sub-section (1-A) of Section 15. This clause can relate only to the regulation of grant of quarry and mining leases and other mineral concessions and it does not confer the power to regulate the sale of already mined minerals."

7.19. Further, the learned Senior Counsel appearing for the petitioner contended that the purpose of introduction of Rule 38-C of the Tamil Nadu Minor Mineral Concession Rules, 1959, is to prevent sand dealers from selling the quarried sand at an escalated price by way of stocking it in their stockyards, by creating an artificial demand of sand and the main objective of the State Government for introducing the said provision is to make sand available to the common man at a reasonable rate.

7.20. "*Doctrine of pari materia*" is also pressed into service by the learned Senior Counsel to point out that "*Statutes are considered to be in pari materia to pertain to the same subject-matter when they relate to the same person or things, or to the same class of persons or things, or have the same purpose or object.*"

7.21. Thus, the learned Senior Counsel contended that the State Government does not have jurisdiction to impose restrictions over the river sand imported by the petitioner from Malaysia and hence, prayed for appropriate orders.

8. On the contrary, Mr.Vijay Narayan, learned Advocate General as well as Mr.B.Pugalenthi, learned Additional Advocate General assisted by Mr.T.S.Mohamed Mohideen, learned Additional Government Pleader appearing for the respondents 1 to 11, refuted the contentions of the petitioner, the crux of which, could be stated thus:

8.1. The State Government is having the absolute right to insist for licence for transportation and for storage of the river sand imported by the petitioner from abroad.

8.2. As per the notification issued by the Government of India, the mineral imported by the petitioner comes under the Item Description 'Other' having the Exim Code - 2505 10 19, viz., Silica sand.

8.3. The import policy of natural sand will be subject to Plant Quarantine (Regulation of Import into India) Order, 2003, wherein, it is clearly stated that the pure sand may be allowed in any form without a Phytosanitary Certificate or an import permit.

8.4. Exim Code - 2505 and the item allowed on free import include the natural sand of all kinds except the metal bearing sand as prescribed under Chapter 26 of the Import Policy.

8.5. However, the petitioner failed to prove that the river sand imported by the petitioner does not contain any metal as prescribed under Chapter 26 and hence, the same has to be chemically analysed to ensure that it does not contain any hazards or heavy metals, etc., in public interest.

8.6. As per Rule 7(vi) of the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, the District Collector is empowered to issue any orders for inspection to be caused and for proper implementation of the Act and Rules within the jurisdiction of the concerned District.

8.7. It could be seen that as per the Invoice furnished by the petitioner, what the petitioner has imported, is silica sand and it would come under the Exim Code - 2505 10 19, under the item description 'Other', viz., silica sand.

8.8. Thus, the petitioner has to register as a mineral dealer under the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 and in the event of non-compliance of such condition, appropriate penal action would be initiated against the petitioner.

8.9. Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, gives power to the State Government to make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

8.10. As far as minor minerals are concerned, including ordinary sand, the State Government is having power to make rules and accordingly, the State Government decided to take over the entirety of quarrying operations in respect of sand and thus, Rules 38-A, 38-B and 38-C were introduced to prevent illegal mining, transportation and storage

of minerals.

8.11. The learned Advocate General also drew the attention of this Court to Rules 4, 5 and 6 of the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 and contended that the petitioner has to comply with the aforesaid Rules for grant of registration and its renewal.

8.12. Since the sand has already been covered under Rule 38-C of the Tamil Nadu Minor Mineral Concession Rules, 1959, it has been excluded in the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 and since silica sand is notified to be a minor mineral, the petitioner has to abide by the 2011 rules.

8.13. Thus, the contention of the petitioner that the State Government does not have jurisdiction to impose restrictions on the river sand imported from abroad, is untenable.

8.14. Both these Rules have been framed by the State Government to prevent illegal mining, transportation and storage of minerals and hence, they have to be treated as a part of a single scheme.

8.15. The Learned Advocate General also, invoking Article 304 of the constitution of India, submitted that it is well within the powers of the state to impose restrictions to regulate the mining activities within the state and therefore, the state is well within its powers to mandate procedures for mining, transportation, stocking and sale of sand within

the state to prevent illegal mining and that the State is taking steps to curb the illegal mining and sale within the state and in the absence of proper check mechanism, the import policy could be misused and the illegally mined sand within the state could be sold as imported sand and therefore, to prevent such a hazard in the remedial measures, the action taken by the respondent must be sustained.

8.16. Silica sand though has been excluded in Rule 38-C of the Tamil Nadu Minor Mineral Concession Rules, 1959, the same has been included in Rule 2(xiii) of the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 and hence, the claim of the petitioner lacks merit. It has also been contended by the Learned Advocate General that the relief of Mandamus cannot be granted and the petitioner must be relegated only to avail the statutory remedies under the Rules.

9. In reply, the learned Senior Counsel appearing for the petitioner, reiterating his arguments, submitted that the only condition imposed by the Central Government on importers is to get a Clearance Certificate from the Plant Quarantine Authority and what has been imported is only river sand and Certificate from Plant Quarantine is also available and therefore, it is the duty of the Central Government to verify the quality of the sand imported and once, they are satisfied and cleared the goods, the State Government cannot raise any issue or doubt as to the quality of the

sand imported. Further, it is also urged by the learned Senior Counsel appearing for the petitioner that if the sand is used for a specific purpose, then, it will not be considered as 'ordinary sand' and hence, the Tamil Nadu Minor Mineral Concession Rules, 1959 will not be applicable and it is, for that reason, industrial sands are excluded in the Explanation thereunder.

10. While pointing out that since the definition of 'Minerals' under the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, excludes 'sand', all kinds of 'sand' stand excluded, the learned Senior Counsel appearing for the petitioner contended that taking into account the unrestricted and uncontrollable illegal mining, which has been prevalent in the State depleting the ecology, the import of sand has to be encouraged and the State must not be permitted to interfere with the absence of specific rules to deal with the imported sand and prayed for appropriate orders.

11. After some elaborate arguments, the learned Senior Counsel appearing for the petitioner made an alternate plea to the effect that since the consignment has been kept idle in the Tuticorin Port from 21.10.2017, the petitioner is being put to irreparable loss and hence, the petitioner intends to shift the consignment of the imported river sand to the State of Kerala and he also undertakes that the petitioner will not unload or sell

the imported river sand within the territories of the State of Tamil Nadu during the process of shifting the same from Tuticorin Port to the State of Kerala. An affidavit of undertaking, dated 15.11.2017, has also been filed by the petitioner to that effect. Paragraph 4 of the same, reads as under:

"4. We hereby undertake that we will not unload or sell the imported River Sand within the territory of Tamil Nadu State, during the process of shifting the same from Tuticorin Port Trust to Kerala State."

12. However, the said plea is stoutly refuted by the learned Additional Advocate General appearing for the State reiterating the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959 as well as the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 and contended that in the absence of registration and transport permit, the petitioner cannot be permitted to transport the imported sand.

13. I have carefully considered the rival submissions and meticulously scrutinised the materials available on record.

14. The dispute on hand is significant not only in terms of the legal implications, but also in terms of impact on the environment, need to preserve ecological balance, duties of the State, public interest and wellbeing. Needless to state that the preservation of the environment and

ecology by adopting to the principle of 'sustained development' will preserve the rivers and in turn, the eroding agricultural activities in the State also be preserved and obviously, it will have a positive impact on the climate change.

15. The importance and the emergent need to preserve the environment and curb the illegal mining has been reiterated by the Honourable Supreme Court as well as by this Court in the following judgments:

15.1. In ***M.C. Mehta v. Kamal Nath***, reported in **1997 (1) *Suprem Co Ca 388***, the Honourable Supreme Court elaborately discussed about the doctrine of Public Trust and the need to protect the environment, drawing parallel lines with the Courts in United States and observed as follows:

"33. It is no doubt correct that the Public Trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the Concept of the Public Trust Doctrine. The observations of the Supreme Court of California in *Mono Lake case*, 33 Cal 3d 419 clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in *Mono Lake case*, 33 Cal 3d 419 to the effect that the protection of ecological values is among the purposes of Public Trust, may give rise to an argument that

the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the Public Trust Doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the Public Trust to encompass new types of lands and waters. In *Phillips Petroleum Co. v. Mississippi*, 108 S.Ct 791 (1988) the United States Supreme Court upheld Mississippi's extension of Public Trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. *Phillips Petroleum case*, 108 S.Ct 791 (1988) assumes importance because the Supreme Court expanded the Public Trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the Public Trust Doctrine should not be expanded to include all ecosystems operating in our natural resources.

34. Our legal system "based on English common law" includes the Public Trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who,

under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the Courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the Doctrine of Public Trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the Courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

15.2 In ***Karnataka Industrial Areas Development Board v. C.Kenchappa*** reported in **2006 (6) Suprem Co Ca 371**, the Honourable Supreme Court, following the *ratio* laid down in *M.C. Mehta's case* (supra), held as follows:

"83. The Concept of Public Trusteeship may be accepted as a basic principle for the protection of natural resources of the land and sea. The Public Trust Doctrine (which found its way in the ancient Roman Empire) primarily rests on the principle that certain resources like air, sea, water and the forests have such a great importance to the

people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the Government and its instrumentalities to protect the resources for the enjoyment of the general public.”

15.3. In ***Deepak Kumar and others v. State of Haryana and others*** reported in **2012 (4) Suprem Co Ca 629**, the Honourable Supreme Court held as under:

“25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive instream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

26. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long-term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on

biodiversity as loss of habitat caused by sand mining will affect various species, flora and fauna and it may also destabilise the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48-A and Article 51-A(g) read with Article 21 of the Constitution.

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29. We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF. Ordered accordingly."

15.4. In ***T.N.Godavarman Thirumulpad v. Union of India***, reported in **(2002) 10 Suprem Co Ca 606**, it is held as follows:

"25. Progress and pollution go together. As this Court observed in *M.C. Mehta v. Union of India* [(1986) 2 SCC 176 : 1986 SCC (Cri) 122 : AIR 1987 SC 965] when science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. We can only hope to reduce the element of hazard or risk to the community by taking all necessary

steps for locating such industries in a manner which would pose least risk of danger to the community and maximizing safety requirements. As observed in the United Nations Conference held at Stockholm in June 1972, economic and social development was essential for ensuring a favourable living and working environment for man and for creating conditions on earth that were necessary for the improvement of the quality of life.

26. The tragedy of the predicament of the civilized man is that

“Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee.”

There is increase in awareness of the compelling need to restore the serious ecological imbalances introduced by the depredations inflicted on nature by man. The state to which the ecological imbalance and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. In his foreword to *International Wildlife Law*, M.R.M. Prince Philip, the Duke of Edinburgh said:

“Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that.... As usual with all legal systems, the crucial requirement

is for the terms of the conversions to be widely accepted and rapidly implemented.... Regretfully progress in this direction is proving disastrously slow." (See *International Wildlife Law* by Simon Lyster, Cambridge, Grotius Publications Ltd., 1985 Edn.)"

15.5. In ***M.Palanisamy v. The State of Tamil Nadu*** reported in **2012 (4) CTC 1 (Mad)**, the Honourable First Bench of this Court has observed as under:

"21. In order to appreciate the issue involved in these Writ Petitions, we may have to look at the larger picture - the impact of indiscriminate, uninterrupted sand quarrying on the already brittle ecological set up of ours. According to expert reports, for thousands of years, sand and gravel have been used in the construction of roads and buildings. Today, demand for sand and gravel continues to increase. Mining operators, instead of working in conjunction with cognizant resource agencies to ensure that sand mining is conducted in a responsible manner, are engaged in full-time profiteering. Excessive in-stream sand-and-gravel mining from river beds and like resources causes the degradation of rivers. In-stream mining lowers the stream bottom, which leads to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers and estuaries and enlargement of river mouths and coastal inlets. It also leads to saline-water intrusion from the nearby sea. The effect of mining is compounded by the effect of sea level rise. Any volume of sand exported

from stream-beds and coastal areas is a loss to the system. Excessive in-stream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river. Further, according to researches, in-stream sand mining results in the destruction of aquatic and riparian habitat through wholesale changes in the channel morphology. The ill effects include bed degradation, bed coarsening, lowered water tables near the stream-bed, and channel instability. These physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction of sand from river beds may also cause the entire stream-bed to degrade to the depth of excavation.

22. The decisions on where to mine, how much and how often require the definition of a reference state, *i.e.*, a minimally acceptable or agreed upon physical and biological condition of the channel. The present understanding of alluvial systems is generally not sufficient to enable the prediction of channel responses quantitatively and with confidence; therefore, reference states are difficult to determine. Still, a general knowledge of fluvial processes can provide guidelines to minimize the detrimental effects of mining. Well-documented cases and related field data are required to properly assess physical, biological, and economic tradeoffs.

23. The most important effects of in-stream sand mining on aquatic habitats are bed degradation and sedimentation, which can have substantial negative effects on aquatic life. The stability of sand-bed and gravel-bed

streams depends on a delicate balance between stream flow, the sediments supplied from the watershed and the channel form. Mining-induced changes in sediment supply and channel form disrupt the channel and the habitat development processes. Furthermore, movement of unstable substrates results in downstream sedimentation of habitats. The affected distance depends on the intensity of mining, particles sizes, stream flows, and channel morphology.

24. Apart from threatening bridges, sand mining transforms the riverbeds into large and deep pits; as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry. Bed degradation from in-stream mining lowers the elevation of stream flow and the floodplain water table, which in turn, can eliminate water table-dependent woody vegetation in riparian areas and decrease wetted periods in riparian wetlands. So far as locations close to the sea are concerned, saline water may intrude into the fresh waterbody.

25. It may sound disheartening, but the bitter truth is that such scenarios are evident in almost every State of the Indian territory, irrespective of its climactic and ecological background. Experts, activists and many a politicians realized the environmental problems posed by unchecked sand mining, which resulted in bringing about various legislations to curb mining. But despite legal barriers on exploitative sand mining, institutional framework and enforcement mechanisms are insufficient and mining does persist, unabated. In the southern States, especially in Tamil Nadu, the Government and the media vigorously

attack illegal miners. According to the Chennai India Times, a state-run inspection revealed a complex, organized, and efficient network, enacting mining in the States of Kerala and Tamil Nadu. This network operates so far outside the legal boundaries that in the last ten years, there have been numerous reports of the blatant murders of Revenue officials. This type of organized, indiscriminate mining could sound the death-knell not just for Revenue officials, but also for the ecological system, the natural habitat and livelihood of many inhabitants. In the State of Karnataka, upright Government Officers, who had come down heavily on sand mining had been shunted out.

26. There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and safeguard the forests and wild life of the country. Similarly, Article 51-A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for all the living creatures.

27. In view of the Constitutional provisions, the Doctrine of Public Trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, waters and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership."

16. The State of Tamil Nadu had, at one point of time, agriculture as its main profession. Even today, the State contributes a lot to the country's agricultural contribution. However, the percentage is depleting every year as the State is dependent on water from neighbouring States. Even, when there is significant rain, the same is of no use as the State has not taken appropriate steps for several decades, despite the continuing dispute and demand for water from neighbouring States. The importance of preservation of rivers and the river beds and their direct impact on the underground water table and agricultural activity, is paramount. The removal of excess sand from the river beds causes erosion of the river banks and ultimately, affects the riparian habitats in many ways. The depletion will cause deepening of the rivers and thereby, it would also affect the aquatic habitat. The effects of the sand mining will affect the ecological balance, in such a way that the same cannot be retrieved forever.

17. The significance over the preservation of the environment and that too, agriculture has been reiterated in Tamil Nadu from the Sangam period onwards. The Kings gave importance to protect the water resources. The quality of soil fertility was considered as the country's assets and the yield of the country was considered as the tool of measurement of prosperity of the country. *King Karikala Cholan*, constructed the Kallanai Dam, on the banks of River Cauvery, which still

stands today. By allowing sand/river sand to be mined mindlessly, it ultimately not only affects the flow of the rivers, but also causes a problem of existentialism.

18. The history of the State of Tamil Nadu would reveal that it was highly prosperous and that it is one of oldest in the world to have widespread trading activity including import and export. Even before the advent of foreign rulers, even before the independence and the incorporation of Articles 48-A and 51 of the Constitution of India into the Directive Principles of State policy, which is not directive, but mandatory as it is the duty of the State to preserve the environment and ecology; so that, the future generation is not cursed to be born on this land. Godly Saint, Thiruvalluvar in his golden couplets in "Thirukkural", while dealing with the need of preservation of water resources and agriculture, has stated as follows:

737

இருபுனலும் வாய்ந்த மலையும் வருபுனலும்

வல்லரணும் நாட்டிற்கு உறுப்பு.

Waters from rains and springs, a mountain near, and waters thence;
These make a land, with fortress' sure defence.

739

நாடுன்ப நாடா வளத்தன நாடல்ல

நாட வளந்தரு நாடு.

Those are kingdom whose wealth is not laboured for, and those not,
whose wealth is only obtained through labour.

742

மணிநீரும் மண்ணும் மலையும் அணிநீழற்

காடும் உடைய தரண்.

A fort is that which has everlasting water, plains, mountains and cool shady forests.

1031

சுழன்றும் ஏர்ப் பின்னது உலகம் அதனால்

உழந்தும் உழவே தலை.

Agriculture, though laborious, is the most excellent form of labour for people, though they go about in search of various employments, have at last to resort to the farmer.

19. The Sangam Literature "Purananooru" which spells the recourses for a king to rule a country in Song 18 educates as follows:

நீர்இன்று அமையா யாக்கைக்கு எல்லாம்
உண்ட கொடுத்தோர் உயிர்கொடுத்தோரே
உண்ட முதற்றே உணவின் பிண்டம்

உணவெனப் படுவது நிலத்தோடு நீரே
நீரும் நிலனும் புணரீயோர் ஈண்டு
உடம்பும் உயிரும் படைத்திசீ னோரே.

19.1. *It implies that a king wanting to rule both the celestial and earthly worlds with timeless fame, should always remember that just like how humans cannot survive without water, the body cannot survive without food and those who feed the humans are giving life to them, without land and water there is no food, that is why whoever protects the land and water bodies, will be famed as life saviours. Even a huge landscape is useless, if there is no rain.*

19.2. The poet so observed, *"Hey pandiya king Neduchezhiya, never forget what I told you, it is they who dig reservoirs and preserve water bodies, will attain the immortality and enjoy unfettered fame of ruling the celestial world, even when they are in this earthly world and those who do not save the waterbodies and help in increasing the yield, will fade away without any fame."*

20. Thus, the importance of rivers/water bodies has been clearly explained. If the rivers, water bodies and the belts are not saved, people will be forced to starve. In a developing economy and with such development in science and technology and with need of more infrastructure, the demand for sand cannot be undermined. But at the same time, it cannot be at the risk of endangering the existence itself. When the mines and minerals are available in abundance and when there is a demand, it has been permitted to be mined. However, keeping in mind the mining policy and the need of the hour to protect the environment, the Mines and Minerals (Development and Regulation) Act, 1957 was enacted by the Parliament, by virtue of the fact that the power to enact was retained under Entry 54 of Union List under Seventh Schedule to the Constitution of India. The rule making power was delegated to the States, following Entry 23 of State List. Such rule making power is to be exercised in consonance with the scope of sections delegating the power. The power to deal with the import and export is

within the domain of the Union List under Entry 41 of Union list of the Seventh Schedule.

21. The Central Government, by notification, dated 07.11.2014 as extracted above, has taken a policy decision to permit imports. Under the facts and circumstances of the case pleaded by either of the parties, this Court is of the opinion that the appropriate Ministries of the Central Government must be made as party-respondents in the writ petition for proper adjudication and enforcement of the order in the interest of public. Hence, (i) The Union of India represented by its Secretary, Ministry of Mines, Shastri Bhawan, Dr.Rajendra Prasad Road, New Delhi – 110 001; (ii) The Union of India represented by its Secretary, Ministry of Environment, Forest and Climate Change, New Delhi; (iii) The Union of India represented by its Secretary, Ministry of Commerce and Industry, Udyog Bhawan, New Delhi – 110 107; and (iv) The Union of India, represented by its Secretary, Ministry of Finance, 3rd Floor, Jeevan Deep Building, Sansad Marg, New Delhi – 110 001, are, *suo motu*, impleaded as respondents 13 to 16 in this writ petition.

22. Under the above circumstances, the issue that arises for consideration, is:

“Whether the State Government has powers under the existing Tamil Nadu Minor Mineral Concession Rules, 1959 and the Tamil Nadu Prevention of illegal Mining,

Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 framed in exercise of powers under Section 15 and 23-C of the Mines and Minerals (Development and Regulations) Act, 1957 to insist the petitioner for the registration under the above Rules and to obtain a licence for stocking and sale of the imported sand, as well as a transport permit/transit pass for transporting the imported sand?"

23. Before going into the rival contentions, it is necessary to point out as to the relevant provisions of the Mines and Minerals (Development and Regulations) Act, 1957, as under:

Section 3(e):

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

Section 4:

GENERAL RESTRICTIONS ON UNDERTAKING PROSPECTING AND MINING OPERATIONS

4. Prospecting or mining operations to be under licence or lease.-

(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the

case may be, of a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, [the Atomic Minerals Directorate for Exploration and Research] of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited., a Government company within the meaning of [clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), and any such entity that may be notified for this purpose by the Central Government]:]

[Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease mining concession or by any other name) in force immediately before the commencement of this Act in the Union territory of Goa, Daman and Diu.]

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

(2) No reconnaissance permit, prospecting licence or mining lease] shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rule made under section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease.

Section 15:

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

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

(a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;

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

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

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

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

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

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

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

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

(j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral

concessions may be transferred;

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

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

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

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

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

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

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay [royalty or dead rent, whichever is more, in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed

by the State Government in respect of minor minerals.

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

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

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

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

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

Section 23-C:

"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 licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;

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

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

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

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

(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 authorised officers or any authority under the rules made under sub-sections (1) and (2)."

23.1. A cursory perusal of the aforesaid provisions throws lime-light on the issue that revolved around for consideration before this Court and

thus, the following could be culled out for better appreciation:

- The Mines and Minerals (Development and Regulation) Act, 1957 deals with reconnaissance, prospecting and mining operations within the country of India. The scope and object of the act is spelled out in Section 4 extracted above. The Act does not contemplate or deal with imports.
- Section 13 of the Act enables the Central Government to make rules and exercising the power, the Minor Concession Rules, 1960 were framed.
- Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, enables the State Government, by notification in the Official Gazette, to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for the purposes connected therewith.
- Similarly, by virtue of Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, 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.

23.2. Further, the above provisions of the Mines and Minerals (Development and Regulation) Act, 1957, make it amply clear that the State Government(s) is/are given with such powers 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 and also to make rules for preventing illegal mining, transportation and storage of minerals. The words "transportation and storage" will have to be read harmoniously with the object of the enactment or empowerment of the states to enact rules, viz-a-viz to prevent illegal mining, quarrying or reconnaissance or prospecting operations. The words "transportation and storage" can only mean the transportation and storage of illegally mined minerals. When the parent act from which powers are derived does not deal with imports, the rules cannot framed in 1959 and 2011 cannot contemplate such a preposition when the import of natural sand has been permitted with a condition to obtain plant quarantine certificate from 2014 onwards.

24. Now let us examine the Mineral Concession Rules, 1960, which has been framed in exercise of powers conferred under Section 13 of the Mines and Minerals (Development and Regulation) Act, 1957. The rules lay down the procedure for granting, renewing, transferring and cancellation of permits, licences and lease for reconnaissance, prospecting and mining operations.

Rule 2 (ii-a):

"illegal mining" means any reconnaissance or prospecting or mining operation undertaken by any person or a company in any area without holding a reconnaissance permit or a prospecting license or, as the case may be, a

mining lease, as required under sub-section (1) of Section 4 of the Act.

Explanation- For the purpose of this clause-

- Violation of any rules, other than the rules made under section 23C of the Act, within the mining lease area by a holder of a mining lease shall not include illegal mining;
- Any area granted under the reconnaissance permit or a prospecting licence or a mining lease, as the case may be, shall be considered as an area held with lawful authority by the holder of such permit or licence or a lease, while determining the extent of illegal mining.

Rule 70:

*"70. Sand not be treated as minor mineral when used for certain purpose.—*Sand shall not be treated as a minor mineral when used for any of the following purposes, namely:

- (i) purpose of refractory and manufacture of ceramic;
- (ii) metallurgical purposes;
- (iii) optical purposes;
- (iv) purposes of stowing in coal mines;
- (v) for manufacture of silvicrete cement;
- (vi) manufacture of sodium silicate; and
- (vii) for manufacture of pottery and glass.'

Additionally, the Central Government has declared the following minerals as minor minerals: (i) boulder, (ii) shingle, (iii) chalcedony pebbles used for ball mill purposes only, (iv) limeshell, kankar and limestone used in kilns for manufacture of lime used as building material, (v) murrum, (vi) brick-earth, (vii) fuller's earth, (viii) bentonite, (ix) road metal, (x) reh-matti, (xi) slate and shale when used for

building material, (xii) marble, (xiii) stone used for making household utensils, (xiv) quartzite and sandstone when used for purposes of building or for making road metal and household utensils, (xv) saltpetre and (xvi) ordinary earth (used for filling or levelling purposes in construction or embankments, roads, railways building).

From the above, it can be inferred that the Minor Concession Rules also does not deal with importing of sand from another country and such activity would certainly not amount to illegal mining.

25. In exercise of the powers conferred by Section 15 of the Mines and Minerals (Development and Regulations) Act, 1957, (Central Act LXVII of 1957) and in supersession of the Tamil Nadu Minor Mineral Concession Rules, 1956, the State Government framed the Tamil Nadu Minor Mineral Concession Rules, 1959 and in order to regulate the quarrying operations in the State as well as to prevent illegal mining, Rules 38-A, 38-B and 38-C have been inserted and it is relevant to extract the same as under:

Rule 38-A:

"38-A, Quarrying of sand by the State Government.- Notwithstanding anything contained in these Rules, or any order made or action taken hereunder or any judgment or decree or order of any Court, all existing lease for quarrying sand in Government lands and permissions / leases granted in ryotwari lands shall cease to be effective on and from the date of coming into force of

this Rule and the right to exploit sand in the State shall vest with the State Government to the exclusion of others. The proportionate lease amount for the unexpired period of the lease and the unadjusted seigniorage fee, if any, will be refunded.]"

Rule 38-B:

"38-B. Transport of sand outside the State not be made.- No transport of sand covered under Rule 38-A of these Rules shall be made across the border to other States."

Rule 38-C:

"38-C.Storage and transport of sand.-(1) (a) No person shall transport sand without a valid transport permit issued by the Public Works Department or without a sale slip of Licensee duly authenticated by the Taluk headquarters Deputy Tahsildar [or Assistant Engineer / Assistant Executive Engineer (Water Resources Department), Public Works Department or Assistant Director / Deputy Director of Geology and Mining Department] of the jurisdiction from which the sand is transported.

(b) No person shall stock sand for sale in any place without a valid licence.

(2) (a) No person shall transport sand in any vehicle from the quarry of the Public Works Department without a transport permit issued by the Public Works Department as in **Appendix – XVII.**

(b) No person shall transport sand in any vehicle from the stockyard without the sale slip issued by the

Licensee as in **Appendix – XVIII** and duly authenticated by the taluk headquarters Deputy Tahsildar [or Assistant Engineer / Assistant Executive Engineer (Water Resources Department), Public Works Department or Assistant Director / Deputy Director of Geology and Mining Department] as in **Appendix – XIX**.

(3) Any person who intends to store sand for sale make an application for grant of licence in the Form in **Appendix – XX** to the District Collector concerned.

Provided that if any person who has stored sand for the purpose of sale on the date of coming into force of this Rule shall apply to the District Collector in the said form for grant of licence for the purpose of this Rule within sixty days from the date of coming into force of this Rule.

(4) The person who makes an application as in **Appendix – XX** for the grant of licence, shall remit a non-refundable application fee of Rs.5,000/- (Rupees five thousand only) to the District Collector concerned.

(5) On an application made provided that where the application is not complete in all material particulars, or is not accompanied by the required documents, the District Collector shall return or by notice require the applicant to supply the omission or furnish the document as the case may be within a period of ten days from the date of receipt of such notice under sub -rule (3). The District Collector may refer the said application to the Assistant Director or the Deputy Director of Geology and Mining concerned in the district for inspection of the area and report.

(6) (a) On receipt of inspection report from the Assistant Director or the Deputy Director of Geology and Mining as the case may be, the District Collector may grant

a licence in the form in **Appendix-XXI** or for the reasons recorded in writing, refuse to grant such licence.

(b) The District Collector shall pass orders on the application within a period of thirty days from the date of receipt of the application:

Provided that the aforesaid period of thirty days shall be applicable only if the application for licence is complete in all respects. In respect of re-submitted applications, the said period shall be reckoned only from the date of re-submission of such application.

(7) The period of licence shall not exceed one year from the date of grant of licence.

(8) A licence may be renewed for a period of not exceeding one year from the date of expiry of licence granted under clause (a) of sub-rule (6). The application for renewal shall be submitted thirty days before the date of expiry of licence. The procedure specified for the grant of licence and fee shall apply for renewal mutatis mutandis.

(9) When the Licensee sells the sand from the stockyard, the Licensee shall submit the original transport permit issued by the Public Works Department to the concerned taluk headquarter Deputy Tahsildar [or Assistant Engineer / Assistant Executive Engineer (Water Resources Department), Public Works Department or Assistant Director / Deputy Director of Geology and Mining Department] along with the sale slip issued by him. The taluk headquarter Deputy Tahsildar [or Assistant Engineer / Assistant Executive Engineer(water Resource Department), Public Works Department or Assistant Director / Deputy Director of Geology and Mining Department] shall affix the seal as in **Appendix XIX** on the quantum of sale slip which

is equivalent of the quantum of sand transported with the Public Works Department transport permit slip and also make necessary endorsement on the original transport permit submitted by the Licensee.

(10) Every Licensee shall submit a monthly return as in **Appendix XXII** to the District Collector before the 10th of succeeding month.

(11) Non possession of transport permit or sale slip for transport of the sand shall be construed as illicit transportation of sand.

(12) Whenever any person stocks the sand or transports or causes to be transported the sand without any lawful authority, and for that purpose uses any tool, equipment, vehicle or any other thing, such sand, tool, equipment, vehicle or any other thing shall be liable to be seized by the competent authorities and shall also liable for confiscation of the same. For such confiscation, the competent authorities shall make a complaint in this behalf before the competent Court. Before making such complaint, the competent authorities shall obtain specific sanction of the District Collector, for making such a complaint.

(13) The taluk headquarter Deputy Tahsildar [or Assistant Engineer / Assistant Executive Engineer (Water Resources Department), Public Works Department or Assistant Director / Deputy Director of Geology and Mining Department] who authenticates the sale slip shall maintain a day book register, indicating date wise number of authentication made by him, to whom it has been made and the quantum of sand for which sale slips are issued and such other particulars as are required.

(14) The taluk headquarter Deputy Tahsildar [or Assistant Engineer / Assistant Executive Engineer (Water Resources Department), Public Works Department or Assistant Director / Deputy Director of Geology and Mining Department] at the end of each month shall prepare and submit a return on the number of sale slips authenticated, to whom it has been issued and the quantum of sand covered therein to the District Collector concerned and such return shall be submitted before 10th of succeeding month.

(15) If any violation of condition of licence is found, the District Collector concerned shall cancel the licence after affording an opportunity of hearing to the Licensee.

Explanation - For the purpose of this Rule:-

(i) "competent authority" means the person as authorised under the Mines & Minerals (Development & Regulation) Act, 1957;

(ii) "stockyard" shall mean a place where a Licensee stores the sand purchased from Public Works Department;

(iii) "sale slip" shall mean an authenticate proof for sale of sand from the stockyard;

(iv) "sand" means ordinary sand used for construction purpose which includes processed and filtered sand other than industrial sands like silica sand or Garnet sand."

26. A perusal of the above Rules, explicitly makes it lucid that the scope of the Rules was to regulate the quarrying of minor minerals, including sand and regulate the stocking, transportation and sale of such

quarried minor minerals, within the State of Tamil Nadu. After introduction of Rule 38-A, the mining activity is to be done only by the Public Works Department and when a person purchases sand from the Department, he has to obtain a licence for storage and transportation. The Rules does deal with the imported sand, be it ordinary sand or silica sand or any other form or for the matter of fact, it cannot deal as because in the first place, the Rules did not deal with the import, the Rules were framed in 1959 and the permission to import with a Plant Quarantine Certificate has been accorded in 2014. Also, The introduction of Rules 38-A, 38-B and 38-C did not alter the original position. At this juncture, it is to be borne in mind that the object of introduction of the Rules in 2003, was only to restrict the right of quarrying of private individuals and increase the role of the State, more particularly, the Public Works Department. The Rules, in the opinion of this Court, can apply only to the sand quarried by the Public Works Department and the restrictions imposed on transportation, stocking and sale of sand would apply only to the sand purchased from Public Works Department or licensee.

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27. A conjoint reading of Rule 38-C with other Rules and Appendixes will reveal that it deals with issuance of transport permit to the licensee by the Public Works Department or when the licensee effects a sale and when a sale slip is to be duly authenticated by the Taluk Head Quarters Deputy Tahsildar. A thorough scrutiny of various Forms in APPENDIX XII, XVII,

XVIII, XIX, XX and XXII would illustrate that the restrictions in Rule 38-C are applicable only to the sand quarried within the State and purchased from the Public Works Department and a licensee, as all the Forms contained columns only demanding the place, survey number, etc., where the sand was quarried and stored. The Explanation to the Rules also makes it very clear that 'stockyard' means the place where the licensee stores the sand purchased from the Public Works Department and 'sale slip' is to authenticate that the sand from such stockyard has been sold.

28. In the absence of such permits and sale slips, can it be taken for granted that all such sand without transport permit and sale slip to be illegal? It cannot be so, when the owner/transporter is able to produce the documents to show that the sand involved in transportation or stocking was imported from a foreign country. The provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959 do not deal with a situation when the sand is imported. In cases, where the sand is imported, the appropriate documents evincing such import would be documents prescribed under the Customs Act, namely, Sale Invoice, Bill of Lading, Bill of Entry, customs clearance Packing list, Customs Duty payment receipt, GST receipt, etc, i.e the documents prescribed by the Customs Department. Once, the above documents are available, the State will not have powers to prevent, seize or take any punitive action. It is only in the absence of such documents, the adverse inference can be drawn and

appropriate action can be initiated under the Rules. Therefore, this Court is of the view that the restrictions imposed under Rule 38-C are not applicable to the imported sand. Also, it would not be within the rule making power of the State as per Section 15 of Central Act as the same only permits the State to make Rules for regulation of quarrying of minor minerals and other procedures that flow with such grant of lease for quarrying.

29. Similarly, in exercise of the powers conferred by sub-sections (1) and (1-A) of Section 15 of the Mines and Minerals, (Development and Regulation) Act, 1957, the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 came to be enacted under Section 23(C)(1) of the Central Act 67 of 1957, for prevention of illegal mining and it is relevant to refer to the following provisions:

Rule 3 (xiii):

'Mineral' means, all minerals and minor minerals except sand.

Rule 6:

"6.Transport permit and Transit pass: (1) No person shall transport or otherwise remove or carry away any mineral from any place without obtaining a transit pass from the Deputy Director. Person desiring such passes should file an application before the Deputy Director in **Form 'F'** duly specifying all the particulars prescribed therein.

(2) The application shall be accompanied by a copy of the permit showing payment of royalty / seigniorage on such mineral or other adequate proof of such payment.

(3) On receipt of an application under sub-rule (1), the Deputy Director may grant transit pass in **Form 'F'** for such period and subject to such terms and conditions as may be imposed by him or may refuse to grant such transit pass for the reasons to be recorded in writing and communicated to the applicant.

(4) Any person who transports the minerals and who is required to carry transit shall produce pass on demand to the authorised officer or any officer or authority who has been empowered under sub-section (4), Section 21 of the Act."

Rule 7:

"7.Conditions.-The registration certificate shall be granted in **Form 'D'** subject to the following conditions:-

(i) "All trades in minerals should be registered as dealers. However in the case of Mineral Dealers who deal exclusively with imported minerals of a variety not available in Tamil Nadu, no inspection of the Units outside the State from which the minerals are secured will be done. The mineral traders however should file quarterly statement of their minerals imported into the State and produce proof of payment of any entry tax or other tax leviable by the State of Tamil Nadu whenever called upon to do so.

(ii) The grantee of registration shall maintain the details of minerals purchased and stocked and details of mineral transported from the stockyard and the balance of mineral available in the stockyard in **Form 'E'**. If the

grantee of registration having more than one stockyard, each stockyard shall be registered separately and **Form 'E'** shall be maintained separately for each stock yard. The stockyards are liable for verification at any time by the authority or authorised officer.

(iii) The grantee of registration shall allow any authorised officer at any time to inspect the stockyard, factories to verify the stock of ores or minerals and take sample of the abstract from the records maintained by him.

(iv) Every grantee of registration shall allow the Competent Authority or the authorised officer to enter and inspect the stockyard including the premises of the factories where such mineral is processed and he may weigh, measure or take measurements of the stocks of the minerals at such stockyard or factory.

(v) All Officers who have been authorised under Section 24 of the Act are empowered to search any place in which there is a reason to believe that offence is being committed and to seize any stock of minerals in respect of which the offence has been or is being committed.

(vi) The District Collector is empowered to issue any orders for inspections to be caused and for proper implementation of the Act and Rules within the jurisdiction of the concerned district. If any person is found to keep the mineral in the place other than in stockyard or if any grantee of registration is found to commit any offence or contravene any of the provisions of the Act or Rules including any discrepancies noted in **Form 'E'** in respect of any stockyard, the District Collector shall take suitable action."

30. A careful analysis of the scope, applicability, object and the Forms under the Rules would imply that it is applicable only in respect of minerals, excluding sand excavated/mined/secured from the State of Tamil Nadu and not to imported sand. Also, in the present case, though the import documents classify the sand as river sand, as pointed out by the learned Advocate General, the HSN Code inscribed by the petitioner is that of 'silica sand' and the Certificate issued by the Minerals and Geoscience Department also discloses the presence of silicon dioxide to the tune of 81.6%. But this Court finds that it would not make any difference in importing, because, the presence of high percentage of silicon in river sand cannot be ruled out and the petitioner has also mentioned the same in the documents. Nevertheless, the import of silica sand is also permitted in the very same notification just natural sand. Whether the sand could be used for construction activities is a completely different matter and this court is not inclined to go into the issue. Also, just because the definition of the "sand" under the Tamil Nadu Minor Mineral Concession Rules, 1959, exclude "Industrial Sand" like silica and garnet sand, it cannot not straight away become "mineral" to fall under the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 and even otherwise, 'silica sand' is a form of sand and the Rules specifically exclude "sand" from its purview.

31. Further, as per the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, the Transport Permit and Transit Pass in form "F", would show that it should indicate the payment of royalty / seigniorage fee. In case of importer, there is no question of payment of royalty /seigniorage. Hence, the said Form is not applicable. The Rules also do not deal with the imported minerals. As again, the object was only to curb illegal mining, transportation and storage of minerals, similar to the Tamil Nadu Minor Mineral Concession Rules, 1959, which was applicable for minor minerals secured within the state. The words "transportation and storage" will have to be read keeping in mind the object and the circumstances under which the Rules were framed. It only implies that not only mining must be legal, the transportation and storage of the mined mineral must also be legal.

32. Hence, the conditions prescribed in the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 cannot be imposed on the importers. The word 'import' used in Rule 7 is applicable in cases of minerals imported from other States as there is only a ban in movement of sand from one State to another. Similarly, the Rules came into force in 2011 and therefore, it cannot be extended to an import permitted by the import policy of the year 2012 and revised by the notification dated 07.11.2014 issued by the Department of Director General of Trade and Finance to obtain a Plant

Quarantine Certificate, under the Regulations which though was in vogue in 2003 itself. Therefore, this Court accepting the contention of the petitioner, rejects the stand of the State that the Rules are applicable to the imported goods and therefore, on this ground alone, the petitioner is entitled to succeed.

33. It was contended by the learned Advocate General appearing for the State that it would be within the powers of the State to frame the Rules tracing the power under Article 304 of the Constitution of India and once the power is available under the Parent Act, the same cannot be withered down. This Court is not in agreement with the said contention for the reason that the power is to be derived from the scope of the Act and the power delegated upon. At the cost of repetition, the powers granted under Section 15 and 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, are for the purposes discussed above and not to deal with an occasion of import. The Rules have been framed deriving the power from Sections 15 and 23-C of the Central Act and not from Article 304 of the Constitution of India.

34. At this juncture, it is relevant to refer to the judgments of this Court, when the validity of Sections 38-B and 38-C came up for consideration.

34.1. In ***M.Palanisamy v. The State of Tamil Nadu*** reported in **2012 (4) CTC 1**, the Honourable First Bench of this Court, tracing the history of the legislation and recording the prevalent illegal mining and transportation in the State, upheld the validity of Section 38-C, when the petition was filed by a licensee/lessee who had purchased sand from PWD observed as follows:

"35. It is to be noted that the then Joint Secretary to the Government, Industries Department, Government of Tamil Nadu, in his affidavit, stated that though the Public Works Department has been quarrying sand in the entire State, the Government has received reports of illicit quarrying and transportation of sand by unscrupulous elements. In order to curtail such activities of illicit quarrying in the State of Tamil Nadu, the offence of sand quarrying has been brought within the purview of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982. In order to strengthen the regulation of mineral administration, the Government has included the officials of the Police Department, not below the rank of Inspector of Police, to exercise the power contained in sub-section (4) of Section 21 of the Act.

37. The Principal Secretary to the Government, Industries Department, in his Affidavit, has stated that in exercise of such a power under the amended Rules, the illegal mining of sand and smuggling to neighbouring States has been brought under control to a great extent. It

is stated that over a period of one year, 4173 cases of illegal sand mining have been filed, 5033 persons have been arrested, 5501 vehicles have been seized and dozens of persons have been taken into preventive custody and a sum of Rs. 14 Crores has been collected as penalty from such offenders.

38. After giving our anxious consideration to the matter and after considering the relevant Constitutional provisions, the Act and the Rules, we are of the definite opinion that the statutory duty imposed upon the sand dealers under Rule 38-C of the Tamil Nadu Minor Mineral Concession Rules, 1959 for the purpose of preventing illegal mining, storage and transportation of sand, cannot be held as illegal, arbitrary, *ultra vires* the Constitutional provisions or any of the provisions of the Act. We hold that Rule 38-C of the said Rules is fully in conformity with the provisions of the Act and the Rules, and it cannot be held as an excessive exercise of power by the State Government."

34.2. In ***D.Sivakumar v. The Government of Tamil Nadu*** reported in **2009 (3) CTC 97**, a Honourable Division Bench of this Court, after considering catena of decisions, has upheld the validity of Rule 38-B of the Tamil Nadu Minor Mineral Concession Rules, 1959 and held as follows:

"We are not in agreement with the submission made by the learned counsel for the simple reason that the Rule 38-B has been introduced by the State as the delegate of the Parliament to carryout the purpose of Section 23-C of the Parent Act. In other words the contention raised by Shri

V.T. Gopalan does not arise for consideration, since Rule 38-B has been introduced not deriving the power under Article 304 of the Constitution of India but under Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957."

Further, in the above case, the Honourable Division Bench of this Court was dealing with a case, where the dealer who had a licence/lease wanted to move the sand acquired within the state to another state and in that process contended that once the licence/lease is available, the restriction under 38-B is applicable only for illegal transportation and illegal storage. Under the above circumstances, the Honourable Division Bench observing that *"Section 4 of the said Act provides for prospecting or mining operation to be licensed or lease. Therefore, it is very clear that power has been conferred on the authorisers to regulate the transport and storage of minerals. We are of the opinion that when in a case of a prospecting or mining operation given under a license or lease such a restriction could be made, Section 23-C should necessarily be construed giving power to the State Government to control and regulate the movement of the minerals"*, rejected the contention of the appellant. The restriction contemplated under Section 38-B would apply when either the licensee moves the goods without the Form or is in possession of excess quantity of mineral, mined or purchased and in case of movement with the Form, moves the goods elsewhere or stocks it at a place other than the authorised stock yard.

35. This Court is in full agreement with the decisions of the Honourable Division Benches of this Court regarding the validity of the power of the State to make Rules, when the quarrying or mining activity is taking place within the State. However, the circumstances and facts pleaded in that case, are different from the facts of the present case. Once a dealer, has purchased the sand from Public works Department or from a licensee, he has strictly to abide by the provisions of Rules 38-B and 38-C of the Tamil Nadu Minor Mineral Concession Rules, 1959. Even a dealer, who has purchased from the licensee is bound to follow the rules. However, in the absence of specific provision to deal with an importer, he cannot be refused to transport the sand, when he is in possession of all the relevant materials to show that the sand in his possession is imported, that he is registered under the provisions of GST Act which fact has not been disputed by the respondents.

36. Also, the Honourable Division Benches laying emphasis on the protection of the environment as a result of illegal sand mining and transportation to neighbouring States and invoking the Doctrine of Public Trust, upheld the validity of Rules 38-B and 38-C of the Tamil Nadu Minor Mineral Concession Rules, 1959. As stated above, the petitioner is an importer of sand from Malaysia, which has been permitted by the Customs authorities, based on a notification issued by the DGFT, a statutory authority under the 15th respondent and the goods have also

been cleared after payment of duty and GST. It is also pertinent to reiterate that the APPENDIX XX which is the prescribed Form of application, also deals with a situation, when the sand is purchased from the Public Works Department. Hence, the above decisions are not of any aid to the respondents.

37. The learned Advocate General appearing for the State has raised an issue regarding the hazards/dangers in imported materials and such import can be permitted only in the absence of metals as per Schedule I of Chapter 25. In the present case, the petitioner has produced appropriate Certificate, which this Court has no reason to disbelieve. Therefore, under the above circumstances, this Court is of the view that State does not have the power to restrict the petitioner to deal with the imported sand either under the Tamil Nadu Minor Mineral Concession Rules, 1959 or under the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011 and hence, the petitioner succeeds.

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38. At this juncture, it is necessary to state that the State is at liberty to bring in appropriate enactment/amendment to regulate the movement, stocking and sale of imported sand by exercising its rights under Article 304 of the Constitution of India, if so advised, keeping in mind that the liberal view to import sand from the foreign countries which

are viable for exporting will not only preserve the natural resources of the State, which have been depleting ever since the mining activities were permitted, but will also help the general public as the cost of such imported sand would only be 1/3rd of the cost of the sand prevalent in the State. The State of Kerala has already banned mining across six rivers. The Governments of Kerala and Karnataka are contemplating to import sand by themselves. It would not only be a cost effective, but also hopefully facilitate in rejuvenation from the damage. The illegal mining in the State of Tamil Nadu has gone to a rampant level where it is difficult to even assess the excess quantity of sand and minerals mined. This cannot happen without the connivance of some of the officials.

39. Here, it is necessary to point out that as per the report filed before the Honourable Division Bench of this Court, about 1,00,14.239 MT of sand has been illegally mined in 2013-14 alone in Kanyakumari, Tirunelveli and Tuticorin Regions. *The Rio Declaration on Sustainable Development (2012)* has accentuated the preservation of natural resources and natural eco-system for the benefit of the present and future generation. It is the duty of the current generation to develop and conserve the natural resources for the benefit of the succeeding generations. The natural resources constitute the nation's wealth. Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, permits the State Governments to create check posts and conduct

periodical check. However, this Court has not come across any permanent check-post by Mines Department, like the ones notified under the erstwhile Tamil Nadu Value Added tax Act, with permanent staffs.

40. The Honourable Supreme Court in ***G.Sundarrajan v. Union of India*** reported in **(2013) 6 Supreme Court Cases 620**, while emphasizing the role of a State and the welfare of the public to be supreme and deciding the challenge made to the commencement of Kudankulam Project, reiterated as follows:

"226. In *Charan Lal Sahu v. Union of India* [(1990) 1 SCC 613], this Court, while dealing with the constitutional validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, observed that the said enactment was passed as a sequel to a grim tragedy that occurred on the night of 2-12-1984. This Court treated it to be the most tragic industrial disaster in recorded human history. While discussing the concept of *parens patriae*, the learned Chief Justice observed that the conception of the *parens patriae* theory is the obligation of the State to protect and it takes into custody the rights and the privileges of its citizens for discharging its obligation. While dealing with the said concept, it has been opined that the maxim *salus populi (est) suprema lex* — regard for public welfare is the highest law.

227. I have referred to the said pronouncement solely to emphasise on the role of the State to act in the greater welfare of the collective and how the public welfare has been treated to be at the zenith of law.

229. Thereafter, the Court referred to the technology in agriculture that has given a big impetus to enterprises of chemical fertilisers and its serious problems. Thereafter, it has been stated thus: (*Union Carbide Corpn. case* [(1989) 3 SCC 38] , SCC p. 50, para 34)

"34. Indeed, there is also need to evolve a national policy to protect national interests from such ultra-hazardous pursuits of economic gains. Jurists, technologists and other experts in economics, environmentology, futurology, sociology and public health, etc. should identify areas of common concern and help in evolving proper criteria which may receive judicial recognition and legal sanction."

230. In *Pritam Pal v. High Court of M.P.* [1993 Supp (1) SCC 529 : 1993 SCC (Cri) 356] , the maxim *salus populi (est) suprema lex*, i.e. welfare of the people is the supreme law, was again emphasised upon, though in a different context.

231. At this juncture, I must also refer to the other maxim *salus reipublicae suprema lex*, i.e. safety of the State is the supreme law and in case of any conflict, an individual must yield to the collective interest. But, it should not be done at the cost of safety. At all times and at all quarters, sincere efforts are to be made to maintain and sustain the safety of the people. That has been spoken by the ancients when the Kings ruled and the same reigns supreme in a democratic set-up. True it is, there are exceptions, but the exceptions are to remain in the realm of exceptions only and should not be brought into play either at the whim or fancy of the executive. The purpose of saying is that the law has many a mansion and the mosaic of law covers many

spectrums so that both the maxims, namely, *salus populi (est) supreme lex* and *salus reipublicae suprema lex*, can harmoniously coexist. The present case is one where there is need for nuclear energy for the welfare of the public and for other welfare of the people of India and for peaceful purpose. Definitely, the interest of the economy and the interest of safety are to be the real concerns of a welfare State.

232. In this regard, I may usefully refer to the following observations made by this Court, though in a different context, in *State of Karnataka v. Praveen Bhai Thogadia* [(2004) 4 SCC 684 : 2004 SCC (Cri) 1387] : (SCC p. 694, para 9)

"9... Welfare of the people is the ultimate goal of all laws, and State action and above all the Constitution. They have one common object, that is to promote the well-being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well-being without communal harmony, love for each other and hatred for none. The core of religion based upon spiritual values, which the *Vedas, Upanishads* and *Puranas* were said to reveal to mankind seem to be: 'Love others, serve others, help ever, hurt never' and '*sarvae jana sukhino bhavantoo*'."

239. I have referred to the aforesaid pronouncements only to highlight that this Court has emphasised on striking a balance between the ecology and environment on one hand and the projects of public utility on the other. The trend of authorities is that a delicate balance has to be

struck between the ecological impact and development.

240. The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society. But, a pregnant one, the present case really does not fall within the four corners of that principle. It is not a case of the land oustees. It is not a case of "some inconvenience". It is not comparable to the loss caused to property.

241. I have already emphasised upon the concept of living with the borrowed time of the future generation which essentially means not to ignore the inter-generational interests. Needless to emphasise, the dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Ouster from land or deprivation of some benefit of different nature relatively would come within the compartment of smaller public interest or certain inconveniences. But when it touches the very atom of life, which is the dearest and noblest possession of every person, it becomes the obligation of the constitutional courts to see how the delicate balance has been struck and can remain in a continuum in a sustained position. To elaborate, unless adequate care, caution and monitoring at every stage is taken and there is constant vigil, life of "some" can be in danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the Constitution. It

would be guillotining the human right, for when the candle of life gets extinguished, all rights of that person perish with it. Safety, security and life would constitute a pyramid within the sanctity of Article 21 and no jettisoning is permissible. Therefore, I am obliged to think that the delicate balance in other spheres may have some allowance but in the case of establishment of a nuclear plant, the safety measures would not tolerate any lapse. The grammar has to be totally different.”

41. Therefore, in larger interest, for the welfare of the people of the State, to protect the environment, river beds, river bodies and the field of agriculture on which thousands of farmers are thriving, this Court finds it appropriate to issue the following directions to the respondents, as follows:

(a) The State shall stop all sand mining/quarrying activities in the State of the Tamil Nadu within six months from today and shall not open any new sand quarries/mines in future;

(b) The quarries of granites and other minerals, except, jelly, have to be periodically closed to maintain ecological balance;

(c) The respondents shall forthwith issue appropriate directions to the authorities concerned enabling the importers to transport and sell the the imported river sand with appropriate directions to the importers to produce all the import related documents and maintain proper records reflecting the quantity imported, sold, stock in hand and other necessary

particulars before the Mines and Commercial Taxes Departments respectively, to check evasion of taxes;

(d) The State shall depute a team with experts from the Geological Department to identify, process and import the sands and minerals from countries which permit export and display them for public and the 15th respondent shall cause to effect a publication as to the countries which permit export of sand and the procedures thereof to be complied with;

(e) The State shall also take a decision to import river sand by the State owned Corporation itself to meet out the short-supply of sand within the State, if there is no other legal impediments;

(f) The District Collectors and the Superintendents of Police of all the Districts concerned, in consultation with the officials of the Commercial Taxes Department, shall issue appropriate directions to their Subordinate Officers, to distinguish what kind of minerals, are permitted to be transported, inter-state or intra-state and what are the documents, required to be possessed and displayed to the officers, at the check posts, if any;

(g) The State shall establish permanent check-posts within the State with the officers equipped sufficiently to curb and prevent the illegal mining and transportation of sand; the check post officers shall maintain the record of all the vehicles crossing by; the State shall also fix camera at the check posts and connect the same with a common server to ensure that illegal mining and transportation is curbed;

(h) The State shall initiate appropriate and immediate action against the persons involved in illegal mining, transportation and storage in the State and proceed for the permanent confiscation of the vehicle involved in the illegal activities and cancellation of the Registration Certificate of the vehicle, without any scope for the owner of the vehicle to plead ignorance;

(i) The State shall constitute a Committee to ascertain the loss caused to the Government and take steps to recover the same from the Companies, individuals including the erring Government Servants, whose hand if found, be immediately suspended and prosecuted as per law;

(j) The imported sand must be tested before the goods are cleared, if Quality Certificate is not produced by the importer and for that purpose, scientific methods for testing be deployed;

(k) If any sale related to imported sand is proposed to be carried out, the same has to be done by strictly following the provisions as well as the Rules of local enactments, i.e., under the GST laws;

(l) The State shall be at liberty to bring in an enactment to regulate and handle such imported sand within the State, maintenance of records, etc;

(m) The respondents 13 to 16 shall issue appropriate guidelines specifying the quality of sand and its usage so as to enable the importers to get appropriate sand with Certificate from the exporter/authorities in

foreign soil, so that the life and property of the common public is not jeopardised and the natural wealth of the State is preserved; and

(n) A copy of this order be marked to all the parties concerned forthwith for strict compliance/adherence.

42. Accordingly, this Court feels, that the State will keep the public interest as paramount rather than any other interest and raise to the emergent occasion to protect and preserve the natural resources and environment of the State, which in turn, would pave way for a better life to our future generations.

43. With the above directions, the writ petition is allowed as above. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Index : Yes/No
Internet : Yes/No
rsb

29.11.2017

To

1.The District Collector,
Thoothukudi District,
Thoothukudi.

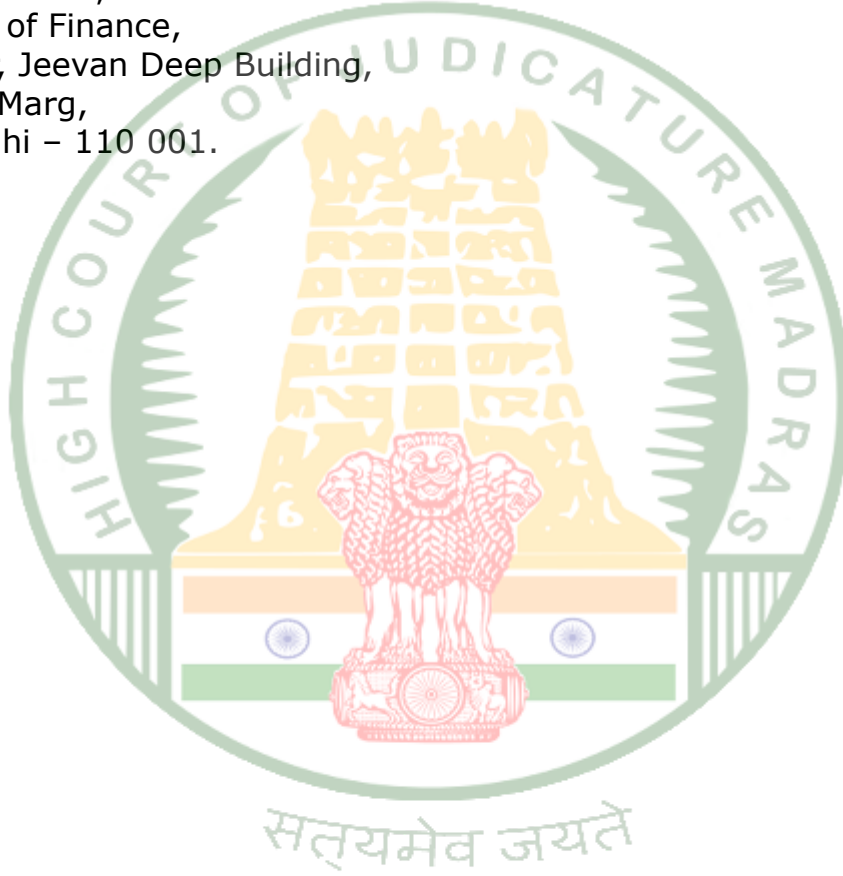
2.The Assistant Director of Geology and Mines,
Thoothukudi,
Thoothukudi District.

3.The Revenue Divisional Officer,
Revenue Divisional Office,
Thoothukudi,
Thoothukudi District.

4. The Tahsildar,
Thoothukudi Taluk Office,
Thoothukudi,
Thoothukudi District.
5. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.
6. The District Collector,
Tirunelveli District,
Tirunelveli.
7. The Superintendent of Police,
Tirunelveli District, Tirunelveli.
8. The Assistant Director of Geology and Mines,
Tirunelveli, Tirunelveli District.
9. The District Collector,
Kanyakumari District,
at Nagercoil.
10. The Superintendent of Police,
Kanyakumari District, Kanyakumari.
11. The Assistant Director of Geology and Mines,
Kanyakumari District, Kanyakumari.
12. The Chairman,
V.O.Chidambaranar Port Trust,
Tuticorin - 628 004.
13. The Secretary,
Union of India,
Ministry of Mines,
Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi - 110 001.
14. The Secretary,
Union of India,
Ministry of Environment, Forest and Climate Change,
New Delhi.

15.The Secretary,
Union of India,
Ministry of Commerce and Industry,
Udyog Bhawan,
New Delhi – 110 107.

16.The Secretary,
Union of India,
Ministry of Finance,
3rd Floor, Jeevan Deep Building,
Sansad Marg,
New Delhi – 110 001.



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R.MAHADEVAN,J.

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PRE-DELIVERY ORDER MADE IN
W.P(MD)No.20020 of 2017
and
W.M.P(MD)Nos.16299 and 16300 of 2017

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