

Himachal Pradesh
Public Works Department

No.PW/CTR/ 32-20/Gen-88/222-

Dated: - 1/-01-2022

To

23340.23440

All the Chief Engineers
i/c National Highway,
In HPPWD

Subject: - Hon'ble High Court of Himachal Pradesh judgement dated 5-1-2022 in CWP 2395 of 2020 (Royalty and W/X form issue)

The above writ petition raised the issue of carrying out various development activities in the state like construction of roads, buildings etc through contractors/companies for which transport/supply of minor mineral is required. The CWP addressed the issue of prevention of illegal mining/transport/storage of minor minerals in accordance with the Himachal Pradesh Minor minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules 2015.

In the above CWP, orders were passed by the Hon'ble Court on 16-7-2020 with the interim directions to restrain the respondents from clearing the bills of the contractors who have failed to produce the transit pass in form 'W' or supplementary pass in form- 'X' as mandatorily required under the provisions of Himachal Pradesh Minor minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules 2015.

Due to the above interim directions issued by the Hon'ble Court; the field units of the department were not clearing the bills of the contractor without production of W/X forms as required under the Rules 2015. This, however, witnessed an increase in the pendency of the contractor's bills for payment.

Thereafter, the department had moved an application before the Hon'ble High Court for vacation or modification of the interim orders dated 16-7-2020 to enable the department to make payments to the contractors who had transported /supplied the mineral after deduction of amount of royalty from their bills at the rate fixed by the department of Industry. The Contractor's Welfare Association had also moved application for vacation of interim order dated 16.07.2020.

The Hon'ble High Court has now decided the case on 5.1.2022 with the following conclusions and directions as under:-

"7(i) Conclusions:

7(i)(a) Under Sections 15 & 23-C of MMDR Act, State has the power to regulate transport of minor minerals to check and prevent illegal mining.

7(i)(b) 2015 Rules framed by the State in exercise of powers under Sections 15 and 23-C of MMDR Act, provide minor minerals concessions and inter-alia are aimed to prevent illegal mining, transportation and storage of minor minerals.

FFR.
11/01/2022
upload on official
website along
with judgement
copy.

JE(17)

- 7(i)(c) A full fledged mechanism is in place under the 2015 Rules to ensure that there is valid transportation of minor minerals. This is to ensure that minor minerals being transported can be related to legal source of generation. It is for the State to amend the 2015 Rules in case necessity is so felt.
- 7(i)(d) In case mineral is transported without complying with mandatory provisions of the 2015 Rules, the same will attract penal provisions of the Rules. Contractual obligations will not override mandatory provisions of the MMDR Act and 2015 Rules framed thereunder.
- 7(i)(e) Omission to implement 2015 Rules at the time of transport of minor minerals will not imply that the transported/supplied mineral was procured from a legal source.

7(ii) Directions

In view of above discussion, we direct that:-

- 7(ii)(a) Henceforth all concerned authorities will ensure due compliance of Chapter VII of 2015 Rules. No minor mineral will be allowed to be transported unless and until it is accompanied with transit pass, mandated under the Rules. In case of transport of minor mineral procured from outside the State, compliance of procedure mandated in 2015 Rules shall be ensured.
- 7(ii)(b) In case minor mineral generated at the worksite etc. is intended to be used at the worksite without transporting the mineral, then the concerned officials will ensure due compliance of Rule 33 and other applicable provisions of 2015 Rules before allowing such use.
- 7(ii)(c) In case the authorized officials detect transport of minor mineral in violation of 2015 Rules, prompt action in accordance with 2015 Rules shall be taken against the offenders. Responsibility and accountability of concerned officials shall also be fixed in case of omission to ensure compliance of the Rules.
- 7(ii)(d) No bill of the contractor for transport/supply of the minor mineral, which in terms of 2015 Rules is required to be carried with transit passes etc. shall be cleared by any State department/authority unless it is accompanied by transit pass- Form W/X etc. duly issued by the competent authority.
- 7(ii)(e) With respect to the bills of the contractors pending as on date, the State Public Works Department in consultation with the State Industries Department, will hold inquiry to ascertain the source of transported/supplied minor mineral. Within one week from today, the Principal Secretary, Public Works Department and Principal Secretary, Industries Department shall each nominate two officers of their department for conducting the aforesaid inquiry. The concerned contractor shall also be associated in the inquiry. The inquiry shall be completed by the officers within two months from today. On conclusion of the inquiry, in case the officials are satisfied that mineral in question transported and

supplied was procured from a legal source in accordance with law, then appropriate order shall be passed by the competent authority for releasing the payment or else action for violation of Rules as warranted under the 2015 Rules shall be taken against the offenders in accordance with law.

The official respondents shall ensure that copy of this judgment is circulated to all concerned quarters for compliance.

The writ petition stands disposed off in the aforesaid terms. The pending applications, if any, also stand disposed off.”


You are, therefore, directed to adhere to the above directions passed by the Hon'ble High Court strictly in future and to regulate the pending bills of the contractors accordingly. In case of mineral carried from other State, then the consignor should have proper document of that State indicating the place and address of firm or supplier who happened to be supplier of that mineral as per Rule 79(4) of Himachal Pradesh Minor Minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules 2015.

It is further emphasized that as per para 7(ii)(e) of the directions by the Hon'ble High Court, the inquiry regarding pending bills of the contractors has to be concluded within two months from the date of judgement for which committee is being constituted separately. You are therefore requested to direct all the Executive Engineers under your jurisdiction to keep all the record of pending bills of the contractors ready in comprehensive manner and respond to the queries of the nominated committee promptly.

The copy of the judgement dated 5.1.2022 has been made available on the HPPWD website for ready reference. For any other clarification in the matter, you are advised to go through the MMDR Act and Himachal Pradesh Minor Minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules 2015 and subsequent amendments thereof.

Engineer-in- Chief,
HPPWD Shimla-2.

- Copy to :-
- (i) The Principal Secretary (PW) to the GoHP for information.
 - (ii) All the Superintending Engineers in HPPWD for information and compliance.
 - (iii) All the Executive Engineers in HPPWD through e-mail for information and compliance.
 - (iv) Executive Engineer (IT) of this office to upload the judgement dated 5.1.2022 in CWP 2395/2020 on the departmental web site immediately.


Engineer-in-Chief
HPPWD Shimla-2.



IN HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 5th DAY OF JANUARY, 2022

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MS. JUSTICE JYOTSNA REWAL DUA

CIVIL WRIT PETITION No. 2395 OF 2020

Between :-

SH. DALJEET SINGH PATHANIA, S/O
SH. KUSHAL SINGH PATHANIA, AGED
55 YEARS, R/O VPO KANDWAL, WARD
No. 5, TEHSIL NURPUR, DISTRICT
KANGRA, H.P.

...PETITIONER

(BY MR. DEEPAK KAUSHAL, ADVOCATE)

AND

1. UNION OF INDIA THROUGH ITS
SECRETARY MINISTRY OF
ENVIRONMENT AND FOREST
PARYAVARAN BHAWAN, NEW
DELHI.
2. STATE OF HIMACHAL PRADESH
THROUGH CHIEF SECRETARY TO
THE GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-1.
3. SECRETARY (INDUSTRIES) TO THE
GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-1.
4. DIRECTOR INDUSTRY TO THE

- GOVERNMENT OF HIMACHAL
PRADESH, UDYOG BHAWAN,
SHIMLA, H.P.
5. STATE GEOLOGIST TO THE
GOVERNMENT OF HIMACHAL
PRADESH, UDYOG BHAWAN,
SHIMLA-1
 6. SECRETARY FOREST TO THE
GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-2.
 7. SECRETARY HP PWD TO THE
GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-2.
 8. SECRETARY I&PH TO THE
GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-2.
 9. SECRETARY PANCHAYATI RAJ TO
THE GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-2.
 10. SECRETARY HIMACHAL PRADESH
HOUSING AND URBAN
DEVELOPMENT AUTHORITY TO THE
GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-2.
 11. SECRETARY POWER TO THE
GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-2.
 12. STATE ENVIRONMENT PROTECTION
& POLLUTION CONTROL BOARD,
THROUGH ITS MEMBER SECRETARY
NEW SHIMLA, SHIMLA-171 009.
 13. MANAGING DIRECTOR H.P.SIDC
HIMACHAL SHIMLA.
 14. ENGINEER-IN-CHIEF, HP PWD TO
THE GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-2.
 15. ENGINEER-IN-CHIEF, I&PH TO THE
GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-2.
 16. STATE ENVIRONMENT IMPACT
AUTHORITY THROUGH MEMBER
SECRETARY U.S. CLUB, SHIMLA.
 17. CONTRACTOR WELFARE
ASSOCIATION THROUGH SHRI

RAJESH KUMAR SUMAN, RESIDENT
OF SHRI HARISHARNAM COMLEY
BANK, SHIMLA, H.P.

18. STONE CRUSHERS OWNERS
ASSOCIATION, DAMTAL THROUGH
SH. ONKAR SINGH, S/O SH. BIR
SINGH, PROP. M/S HAPPY STONE
CRUSHER UNIT-II, R/O MAJRA ROAD
DAMTAL, P.O. BHADROYA, TEHSIL
INDORA, DISTRICT KANGRA, H.P.
19. SH. ONKAR SINGH, S/O SH. BIR
SINGH, PROP. M/S HAPPY STONE
CRUSHER UNIT-II, R/O DHANGU
MAJRA ROAD DAMTAL, P.O.
BHADROYA, TEHSIL INDORA,
DISTRICT KANGRA, H.P.

...RESPONDENTS

(MR. BALRAM SHARMA, ASGI, FOR R-1

MR. ASHOK SHARMA, ADOVCATE
GENERAL WITH MR. NAND LAL THAKUR,
ADDITIONAL ADVOCATE GENERAL, FOR
THE STATE)

MR. JEEVESH SHARMA, ADVOCATE,
FOR R-10.

MR. MAAN SINGH, ADVOCATE, FOR
R-12.

MR. MEHAR CHAND THAKUR,
ADVOCATE, FOR R-13.

MR. B.C. NEGI, SENIOR ADVOCATE,
WITH MR. UDIT SHAURYA KAUSHIK,
ADVOCATE, FOR R-17.

MR. SHRAWAN DOGRA, SENIOR
ADVOCATE, WITH MR. BHARAT
THAKUR, TEJASVI DOGRA AND MR.
HARSH KALTA, ADVOCATES, FOR R-18
AND R-19.

Reserved on 27.12.2021

Decided on : 05.01.2022

Whether approved for reporting ? YES

This petition coming on for pronouncement this day,
Hon'ble Ms. Justice Jyotsna Rewal Dua, *passed the*
following :-

ORDER

‘A bad workman quarrels with his tools’, the saying aptly applies to the stand taken by the State in the instant case to justify omission of its officials for not ensuring compliance to the Statute and the Rules framed thereunder.

While allowing certain contractors to transport and supply minor minerals to it, the State-Public Works Department (State-PWD) forgot to ascertain whether the source of such minor minerals was legal or not. The Himachal Pradesh Minor Minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2015 (in short 2015 Rules) were given a go-bye. Having turned a blind eye to the 2015 Rules, the State-PWD now contests the writ petition seeking enforcement of these Rules by contending that there is a lacuna in 2015 Rules inasmuch as under these Rules, source of transported minor minerals could be determined only during

transit of minor minerals and not after the minerals reach their destination. The minor minerals now having reached the department/destination, no action penal or otherwise can be taken against the contractors as 2015 Rules do not empower the State to determine source of minerals after the minerals reach the site and are used. The State is now helpless and cannot determine source of transported/supplied minor minerals. In terms of its contractual obligations, the State-PWD is liable to release pending bills of contractors irrespective of legal or illegal source of minor minerals supplied by them. The State-PWD, therefore, has prayed for vacation of interim order dated 16.07.2020 which restrained the State from clearing the bills of contractors, who had failed to produce the transit pass in Form-W or Supplementary pass in Form-X.

2. Complaint in the Writ Petition

The petitioner alleges in the writ petition that :-

2(i) Various development activities in the State, like construction of roads, buildings, power projects etc. are being executed through private contractors/companies. These contractors/companies carry out rampant, illegal and indiscriminate mining and transport/supply minor minerals to the State Government. Bills for the minor minerals are submitted by

the contractors without disclosing legal source of minor minerals like sand, bajri, stone, gravel and boulders etc. The State departments clear such bills without asking the contractors to produce transport/other mining permits mandatorily required under the 2015 Rules.

2(ii) The State departments only charge royalty on the transported minor minerals without asking the contractors to show legal source of minerals. The contractors purchase the illegally extracted minor minerals on cheap rates. Such illegal operations cause huge financial loss to the public exchequer.

2(iii) The State has framed 2015 Rules to prevent illegal mining/transport/storage of minor minerals. Despite existence of deterrent provisions in these Rules, the State has not imposed any restriction on the contractors. The contractors with impunity do not produce transit passes Form-W/X, permits required under the 2015 Rules. The State does not insist upon production of such permits, resultantly illegally extracted minor minerals get transported and supplied without any check. This also causes loss to the State exchequer as only royalty is charged from the contractors on the transported minor minerals. Penal provisions for illegal transportation of minerals are not enforced. No effort is

made by the State to see whether the transported minerals are procured from legal source or not.

2(iv) The attitude of the State departments in ignoring the 2015 Rules only results in illegal and unscientific mining, unmindful exploitation of State's natural resources, adversely affecting the environment and ecology.

With the above submissions, the writ petition was filed for the following substantive prayers :-

"A) That a writ of mandamus may kindly be issued directing respondents to recover the penalty amount, as per the judgment dated 11.05.2010 in CWP No. 2632 of 2009 titled Harbhajan Singh Vs. State of H.P. of this Hon'ble Court, from the contractors, whosoever has deposited the royalty amount without enclosing alongwith their bills legal source of minerals used in the work executed by them that too from the date of the judgment i.e. 11.05.2010."

B) That the respondents may kindly be directed not to clear the bills of all the Govt. contractors who have failed to produce the transit pass in Form-W or Supplementary Pass in Form-X as mandated in Himachal Pradesh Minor Minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2015.

C) That it is humbly prayed that an independent investigation may kindly be conducted in the entire gamut of illegal mining by the contractors and the Govt. officials who have intentionally ignored the judgment of this Hon'ble Court dated 11.05.2010 in CWP No. 2632 of 2009 titled as Harbhajan Singh Vs. State of H.P. and rule and regulation while clearing the bills of the Contractors."

3. Interim order passed in the matter

3(i) Vide interim order passed in the matter on 16.07.2020, the respondents were restrained from 'clearing the

bills of the contractors, who failed to produce the transit pass in Form-‘W’ or Supplementary Pass in Form-‘X’ as mandatorily required under the provisions of Himachal Pradesh Minor Minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2015’.

3(ii) The above seemingly innocuous order directing the State not to act contrary to the legal provisions, has given rise to difficulties, not only to the contractors, but to the State as well. The Contractors’ Welfare Association was impleaded as respondent No. 17 in the matter vide order dated 10.03.2021. The Stone Crushers Owners Association and one individual Stone Crusher Owner were impleaded as respondents No. 18 and 19 on 26.11.2021.

3(iii) The State-PWD and the Contractors’ Welfare Association have moved applications for vacation of interim order dated 16.07.2020. Mr. Ashok Sharma, learned Advocate General, has forcefully argued that because of the interim order, the State-PWD is not in a position to clear the pending bills of the contractors for minor minerals transported and supplied by them. The reason given is that the respondent-PWD had been executing large number of public works. For execution of such public works, huge quantity of minor minerals was transported

and supplied by the contractors. A number of contractors did not produce W/X Forms. In such cases, the respondent-PWD charged royalty on the minerals at the rate fixed by the department of Industry on production of GST paid bills. Because of the interim order, State-PWD is not in a position to clear bills of the contractors who do not produce W/X Forms. It is the stand taken by the State that W/X Forms in respect of material which stands already utilized in execution of work cannot be procured at this stage. Due to non-payment of bills, the contractors are not expediting the work. Resultantly, the progress of large number of projects has been delayed.

Further, it has been submitted that contractors who transport the minor minerals from outside the State can only produce GST paid bills. They cannot be asked to produce transit pass-W/X Form. Respondent-PWD charges and intends to charge royalty from the contractors on the minor minerals on production of GST paid bills. In such manner, object of production of W/X Form that no illegal mining takes place is achieved as recovery of royalty is ensured to the Government.

Next reason submitted is that minor minerals are found in number of work sites. Such mineral is also used near the

work-sites. There is no transportation of mineral requiring W/X Forms in such cases.

Therefore, prayer has been made to vacate the interim order dated 16.07.2020 to enable the State-PWD to make payment to the contractors who had transported/supplied the mineral after deduction of amount of royalty from their bills at the rate fixed by the department of Industry.

3(iv) Similar prayer for vacation of interim order dated 16.07.2020 has been made by respondent No. 17 i.e. Contractors' Welfare Association. It has also been contended that non-production or non procurement of transit pass by a buyer/purchaser/contractor would not make the genuine purchase of processed product illegal. It has been further prayed that bills worth crores of rupees are not being cleared by the respondents, therefore, interim order dated 16.07.2020 needs to be vacated.

4. We have heard Mr. Deepak Kaushal, learned counsel for the petitioner, Mr. B.C. Negi, learned Senior Counsel for respondent No. 17, Mr. Shrawan Dogra, learned Senior Counsel for respondents No. 18 and 19 and Mr. Ashok Sharma, learned Advocate General for the State-respondents at length. The arguments have been addressed by the learned counsel for the parties on all the contours of the writ petition. We, therefore,

have taken up the writ petition for disposal in light of elaborate submissions made before us by all the learned counsel. Following two main points emerge for consideration in this case :-

- (i) Whether the State has power to make rules for regulating transport of minor minerals ?
- (ii) Whether 2015 Rules suffer from any lacuna as contended by the State PWD and, therefore, cannot be enforced upon the contractors ?

The above points are being separately considered hereinafter :-

5. Point No.1. Power of State to make Rules for regulating transport of minor minerals.

5(i) Contentions :-

Mr. B.C. Negi, learned Senior Counsel for the Contractors' Welfare Association submitted that power of the State Government under Rule 15 of Mines and Minerals (Development and Regulation) Act, 1957 (in short MMDR Act) does not include control over minor minerals after they are excavated. No power flows from Section 23-C of the Act to make Rules for regulating transportation of legally excavated minerals.

In support of submissions, reliance was placed on **(2019) 16 SCC 513**, titled **State of Gujarat and others Vs. Jayeshbhai Kanjibhai Kalathiya and others**. It was then contended that condition of production of W/X Form, transit pass or any other

The above contention of contractors has been vehemently opposed by learned Advocate General as well as by learned counsel for the petitioner and respondents No. 18 and 19. Their submissions are that State has ample power under Section 15 read with Section 23-C of the MMDR Act to prevent illegal mining activities in the State by making appropriate Rules for transportation of minor mineral.

5(ii)(a) Power of the State to frame rules in respect of minor minerals and for purposes connected therewith flows from Section 15(1) of MMDR Act which reads as under :-

(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:—

The amending Act No. 38 of 1999 inserted following Section 23-C in the MMDR Act, which empowers the State to make rules for preventing illegal mining, transportation and storage of minerals :- :-

“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).”*

5(ii)(b) Himachal Pradesh Mining and Mineral (Concession)

Revised Rules 1971 and the Himachal Pradesh Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules 2004 were repealed by the Himachal Pradesh Miner Minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules 2015. The 2015 Rules were framed in exercise of powers under Sections 15 and 23-C of the Act. Some rules from 2015 Rules concerning transportation of minor minerals need to be noticed at this stage.

Chapter VII of 2015 Rules is under the heading 'Prevention of Illegal Mining, Storage and Transportation of Minerals'. It contains Rules 72-82 which are as under :-

“72. Prevention of illegal mining.- No person shall undertake any mining operation in any area except under and in accordance with the terms and conditions of these rules.

73. Penalty provision for illegal mining.- Any contravention of rule 72 shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to Rs. 25,000/- (Rupees Twenty five thousand only), or with both: Provided that the contravention of rule 72 for the first and the second time may be compounded by an officer authorized by the Government under section 22 of the Act and the case in relation to the subsequent contravention shall be filed by the officer so authorized in the competent court of law. The manner of compounding of offence shall be as under:-

(i) In case of illegal mining carried out manually the amount of compounding fee shall not be less than Rs. 10,000/- if the mineral extracted is upto 25 metric tonnes; (ii) If the quantity of illegal mining carried out exceeds 25 metric tonnes, additional compounding fee @ Rs. 400/- per metric tonne shall be charged;

(iii) In case of second contravention a minimum compounding fee of Rs. 25,000/- shall be charged;

(iv) In case of illegal mining done mechanically in the river/stream beds, the amount of compounding fee shall not be less than Rs. 25,000/-.

74. Grant of registration for storage of mineral.- (1) Any person desirous of being registered as a dealer or for renewal of registration shall apply in Form-'S' to the Mining Officer. The application shall be submitted in quadruplicate in his office;

(2) Every application made under sub-rule (1) shall be accompanied by,-

(a) a fee as specified in the First Schedule payable through treasury challan under following Head of Account:- “0853-Non Ferrous Mining and Metallurgical Industries, 102-Mineral Concession Fees and Royalties, 81-Other receipts”;

(b) an affidavit to the effect that he had not been convicted in any offence relating to illegal extraction or transportation of minerals; and

(c) a copy of the certificate issued by the Industries Department or any other Department of Government for establishment of the mineral based factory or beneficiation plant or any industry, if any.

(3) On receipt of application for registration, the office of the Mining Officer shall acknowledge the receipt within a week in Form-'T'.

75. Prevention of illegal storage.- (1) No person shall store or cause to be stored any mineral by any means at any place without having valid permission or registration as a dealer with Department of Industries, Himachal Pradesh as per the provisions or these rules.

(2) All the dealers shall register themselves as dealer with Department of Industries Himachal Pradesh as per the procedure laid down in these rules: Provided that the holder of a mining lease or contract or tender or permit holder, as the case may be, in respect of a mineral for which he holds a minerals concession shall not be required to register himself as a dealer separately: Provided further that where the stock of mineral is less than 50 metric tonnes, the person shall not be required to register himself as dealer if the said mineral is stored for his bonafide use.

76. Processing of the application by the Mining Officer.- (1) The Mining Officer shall maintain a register in his office in Form-'U' wherein he shall make necessary entries about the application immediately after its receipt and its disposal in due course.

(2) The Mining Officer shall grant to a dealer registration in Form-'V' for a period of five years within thirty days from the date of receipt of the application. In case of refusal or rejection of the application, the reasons shall be recorded in writing and communicated to the applicant within thirty days from the date of receipt of the application.

(3) The application for renewal shall be made in Form-'S' to the Mining Officer ninety days prior to the date of expiry of the existing registration. If orders of renewal are not passed before the expiry, it shall be deemed to have been renewed for the further period subject to the final decision whenever communicated.

77. Conditions for the issue of registration.- The registration shall be granted in Form-'V' subject to the following conditions namely,-

(i) the dealer shall deposit a sum as specified in the First Schedule in the shape of fixed deposit receipt duly pledged in favour of Mining Officer as security for due observance of terms and conditions of registration;

(ii) the dealer shall maintain correct and legible monthly account of ores and mineral procured, processed and transported to different destinations;

(iii) any person who transports the mineral and who is required to carry a transit pass in Form-'W' or Supplementary Form-'X' on demand shall produce such pass to any authorized officer in this behalf;

(iv) every dealer shall submit a return in Form-'Y' to the Mining Officer by the 10th of succeeding month;

(v) while removing the ore or minerals from the stores or factories, the dealer shall obtain permission from the concerned authorized officer and transport the ore or mineral under transit pass Form-'W' or Supplementary Pass Form-X obtained from his office;

(vi) every dealer shall allow Director of Industries or State Geologist or Geologist or Assistant Geologist or Mining Officer or Mining Inspector to inspect the store and factories to verify the stocks of the minerals and take sample, abstract from the records maintained by him; and (vii) the registration shall be cancelled after serving a notice, if dealer commits a breach of any condition of this rule.

78. Penalty provision for illegal storage.- Any contravention of sub-rule (1) and (2) of rule 75 shall be punishable with imprisonment for a term which extend to two years, or with fine which may extend to Rs. 25,000/- (Rupees Twenty five thousand only), or with both:

Provided that the contravention of sub-rule (1) and (2) of rule 75 for the first and second time may be compounded by an officer authorized by the Government under section 22 of the Act and the case in relation to the subsequent contravention shall be filed by the officer so authorized in the competent court of law:

Provided further that the amount of compounding fee shall not be less than Rs. 25000/- plus the market sale price of the total material stored illegally at the spot.

79. Transportation of minerals.- (1) No person shall transport or cause to be transported any mineral otherwise than in accordance with the provisions of these rules.

(2) The holder of a mining lease or contract or permit or permission or store or a person authorized by him in this behalf shall issue a transit pass in Form- 'W' or Supplementary Pass in Form-'X' as the case may be duly countersigned by the concerned Mining Officer or any other Officer authorized by him in this behalf to every person carrying a consignment of minor mineral by a vehicle, animal or any other mode of transport.

(3) For transportation of any mineral to any place, the dealer or holder of mining lease or contract or permit or permission shall make an application to the authorized officer for issue of transit pass.

(4) The transit pass shall be in triplicate. Two copies of which shall be issued to the consignor while third shall remain with the dealer or holder of mining lease or contract or permit or permission and shall be produced before authorized officer as and when demanded by him. One copy of transit pass shall be retained by Inspecting Officer/In-charge of Check Post who shall endorse the second copy, which shall remain with the carrier during transportation and shall hand over the same to dealer or buyer, as the case may be: Provided that if mineral is being carried from other State, then the consignor should have proper document of that State, indicating the place and address of firm or supplier who happened to be supplier of that mineral.

(5) Every person carrying any minor mineral shall on demand at any place including check post/barrier by any Officer of the State Government authorized in this behalf show the said Transit Pass in Form-'W' or Supplementary Pass in Form-'X' to such Officer and allow him to verify the correctness of the particulars of the Transit Pass Form-'W' or Supplementary Pass in Form-'X' with reference to the quantity of the minor mineral.

(6) Every dealer shall provide all reasonable facilities to the authorized officer in this behalf to inspect verify and check the stocks and accounts of mineral and any other documents pertaining thereto.

80. Establishment of check posts and barriers for weighment and inspection of mineral in transits.-

(1) If the Government considers it necessary to do so with a view to check the transport and storage of minerals raised without lawful authority, it may direct, the setting up of check post or erection of barriers or both at any place or places within the State by notifying in the Official Gazette. (2) Any authorized officer may check any vehicle carrying mineral at any place and the person in-charge of the carrier shall furnish a valid transit pass on Form-'W' or Supplementary Form-

'X' as the case may be and other particulars such as bill or receipt or delivery note on demand by that Officer.

(3) At every check post or barrier or at any other place when so required by the Officer in-charge of the check-post or the barrier or any other authorized Officer, the person in-charge of the carrier shall stop the same for examination of the mineral in transit and also inspect all records and documents relating to minerals. The person in-charge of the carrier shall, if so required by the officer in-charge of the check-post or the barrier or any other authorized officer, furnish his name and address and also that of the owner of the carrier and the name and address of both consignor and the consignee. After checking the mineral and carrier, the officer in-charge of the check post or the barrier or any other authorized officer as aforesaid shall put his signature on the transit pass.

(4) The Officer-in-charge of the check post or the barrier or authorized Officer shall have the power to seize the mineral alongwith the carrier in transit, if the dispatch is not in conformity with Transit pass.

(5) Every Officer who initiates action for seizure of carrier or mineral or both as the case may be, under these rules shall prepare a list so seized and deliver a copy thereof signed by him to the person found in possession. He shall keep such property under his custody with proper official seal and with detailed information in Form-'Z'.

(6) The Officer-in-charge of the check post or the barrier or authorized officer, as the case may be, may direct the person in-charge of the carrier to carry the mineral to the nearest police station or check post or barrier of the concerned Department: Provided that if the person in-charge refuses to carry the mineral and the carrier to the nearest police station or check post or barrier of the department, the officer in-charge or any other Authorized Officer under the sub-rule(4) may seize the carrier and take the same in his possession.

(7) Whenever a carrier together with the mineral is seized under these rules, by an authorized officer, such officer shall give an option to the owner or in- charge of the carrier for compounding the offence as provided under these rules in lieu of such seizure. In case of failure of owner or person in-charge of the carrier to exercise such option legal action shall be initiated against him by the Officer authorized in this behalf.

81. Penalty provision for illegal transportation.- Any contravention of rule 79 and 80 shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to Rs. 25,000/- (Rupees Twenty five thousand only), or with both: Provided that the contravention of rule 79 and 80 for the first and the second time may be compounded by an officer authorized by the Government under section 22 of the Act and the case in relation to the subsequent contravention shall be filed by the officer so authorized in the competent court of law. The manner of compounding of offence shall be as under:- The amount of compounding fee shall not be less than 4500/- (Rs. Four thousand & five hundred) only for tractor, Rs. 7000/- (Rs. Seven thousand) only for medium truck/tipper having capacity upto 7 metric tonnes, Rs. 15,000/- (Rs. Fifteen thousand) only for trucks having capacity upto

10 metric tonnes and 25,000/- (Rs. Twenty five thousand) only for trucks with capacity more than 10 metric tonnes and Rs. 200/- (Two hundred) only for mule/horse.

82. Seizure and confiscation.- (1) *whenever any person raises or causes to be raised without any lawful authority, any mineral from any land and for that purpose, uses any tool, equipment or any other thing shall be liable to be seized by an official or authority especially empowered in this behalf by the Government under sub- section (4) of the section 21 of the Act.*

(2) *Any mineral, tools, equipment or any other thing seized under sub-rule (1), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under rules 73 & 78 and shall be disposed of in accordance with the directions of such court."*

Chapter VII of 2015 Rules aims to prevent illegal mining and contains penalty provisions for illegal mining. It also aims to prevent illegal storage and contains penalty provisions for illegal storage of minor minerals. The Chapter gives the mechanism for valid transport of minor mineral and stipulates penalty for violation of the provisions. The sum and substance of above Rules viz-a-viz transportation of minor minerals is that a holder of a mining lease or contract or a permit or permission or store or a person authorized by him in this behalf shall issue a transit pass in Form-'W' or Supplementary pass in Form-'X', duly countersigned by the Mining Officer or any other Officer authorized by him, to every person carrying the consignment of minor mineral by a vehicle, animal or any other mode of transport. The procedure to apply for transit pass, processing of the application, supply of transit pass are all detailed in the 2015 Rules. The transit pass is to be shown on demand at any place

including the check-post/barrier to the officials of the State for allowing them to verify the correctness of particulars of the transit pass more particularly with reference to the quantity of the minor mineral and its source of procurement. The procedure for checking the transit pass vis-à-vis the minerals carried at the check-posts/barriers has also been given in the Rules. Penal provisions for illegal transportation of mining minerals are also in place under Rule 81 for violation of Rules 79 and 80.

5(ii)(c) We may now consider **(2019) 16 SCC 513, State of Gujarat and others Vs. Jayeshbhai Kanjibhai Kalathiya and others** relied upon by learned Senior Counsel for the contractors to contend that State has no power to regulate the transport of excavated minor mineral. **Jayeshbhai's** was a case where State of Gujarat prohibited all lease holders, stockists, traders and exporters from exporting ordinary sand excavated in the State of Gujarat to other States within the country or other countries. Rule 44-BB inserted in Gujarat Minor Mineral Rules prohibiting movement of minor mineral beyond Gujarat border reads as under :-

"No movement of sand shall be allowed beyond the border of the State. In case any vehicle is found transporting sand to the neighbouring State, even with authorized royalty pass or delivery challan, it shall be treated as violation of the Act and the Rules made thereunder and the penal provisions as specified therein shall be applicable."

Rule 71 of Gujarat Minor Mineral Concession Rules,

2010 reads as under :-

“No movement of sand shall be allowed beyond the border of the State. In case any vehicle is found transporting sand to the neighbouring State even with authorized royalty pass or delivery challan, it shall be treated as violation of the Act and the rules made thereunder and the penal provisions, except compounding, as specified therein shall be applicable.”

Challenge was made to Rule 44-BB of the Amendment Rule as well as Rule 71 of the Concession Rules. The High Court stuck down both the Rules holding that the rule making power of the State Government does not empower and cannot be stretched to empower the State to make rules directly prohibiting movement of mineral so as to impinge upon the freedom guaranteed by Article 301 of the Constitution of India. The State of Gujarat challenged the decision of the High Court before the apex Court. Hon'ble apex Court noted the power given to State for framing Rules with respect to the minor minerals under Sections 15 and 23-C of the Act as under :-

“10. A perusal of Sections 15 and 23-C in relation to the aforesaid discussion would clearly suggest that the power of the State Government to make rules is restricted to:

10.1. making rules for grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for the purposes connected therewith; and

10.2. *making rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith."*

In paras 11 and 12 of the judgment, Hon'ble apex Court noticed the observations of the High Court that delegation of powers to the State Government under Sections 15 and 23-C of the Act does not include or envisage restrictions on inter-State trade and commerce which shall be free. The High Court had held the impugned Rules to be *ultra vires* of the provisions of Sections 15 and 23-C of MMDR Act as well as Article 301 of the Constitution of India.

The Hon'ble apex Court considered various precedents in timeline including the judgments in **1986 Suppl. SCC 20**, titled **D.K. Trivedi & Sons and others Vs. State of Gujarat and others** and **1995 (2) SCC 402**, titled **State of T.N. Vs. M.P.P. Kavery Chetty** delivered prior to insertion of Section 23-C in the Act. It was observed in para 40 of the judgment that prohibition on transport or sale of the already mined minerals outside the State has no direct nexus with the object and purpose of the MMDR Act which is concerned with conservation and prudent exploitation of minerals. The statement of objects and reasons for inserting Section 23-C in the Act was noticed in para 41 as under :-

"41 Insofar as [Section 23-C](#) of the MMDR Act is concerned, it was inserted by the [Amendment Act](#) of 1999 with the objective to prevent illegal mining. That is clearly spelled out in the Statement of Objects and Reasons. We may reproduce a portion thereof again:

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

In the following paragraph 42, it was further held that it is the transportation of illegal mineral and not the mining of minor minerals which is legal and backed by duly granted licence, which can be regulated under the rules and that no power flows from this provision to make rules for regulating transportation of legally excavated minerals.

"It is in this context the words 'transportation' and 'storage' in [Section 23-C](#) are to be interpreted. Here the two words are used in the context of 'illegal mining'. It is clear that it is the transportation and storage of illegal mining and not the mining of minor minerals like sand which is legal and backed by duly granted license, which can be regulated under this provision. Therefore, no power flows from this provision to make rule for regulating transportation of the legally excavated minerals."

It will also be appropriate to refer to judgment dated.

11.11.2021 passed by the apex Court in I.A. No. 29984 of 2021 in SLP (C) No. 10587 of 2019 titled **Bajri Lease Lol Holders Welfare Society through its President Vs. The State of**

Rajasthan and others wherein while referring to Section 23-C of MMRD Act and the Sustainable Sand Mining Management Guidelines 2016 framed pursuant to directions issued in **(2012) 4 SCC 629** titled **Deepak Kumar Vs. State of Haryana** and by the National Green Tribunal, following was observed in respect of transportation of minerals :-

'14. Section 23C of the MMDR Act empowers the State Governments to make rules for preventing illegal mining, transportation and storage of minerals. This Court in *Deepak Kumar (supra)* directed the State Governments / Union Territories to formulate rules in accordance with the Model Guidelines. Pursuant to the directions issued by this Court and the National Green Tribunal ("NGT"), the Sustainable Sand Mining Management Guidelines, 2016 were issued ("2016 Sand Mining Guidelines"). The responsibility for implementation of the said Guidelines was placed on the State Governments which had to create a mechanism to measure the mined-out mineral and its transportation and also to ensure that the amount of mineral mined does not exceed the quantity permitted in the EC. The 2016 Sand Mining Guidelines recommended use of Transport Permits with bar codes, for generation of reports showing the daily lifting of sand and user performance reports. Transport Permits with bar codes would also enable vehicles carrying sand to be tracked from source to destination. Dissatisfied with the ineffective monitoring mechanism, failure of the Mines Surveillance System as well as lack of an effective institutional monitoring mechanism not only at the stage of the grant of EC but at subsequent stages with respect to illegal sand mining, the NGT, in an order dated 05.04.2019 in *National Green Tribunal Bar Association v. Virender Singh* in OA No. 360 of 2015 and connected matters, directed the MoEFCC and the State Governments to review extant monitoring mechanisms and consider revision of the 2016 Sand Mining Guidelines. Consequently, the MoEFCC issued the 2020 Sand Mining Guidelines."

Reliance placed by Mr. B.C. Negi, learned Senior Advocate, upon the judgment in *Jayeshbhai's case (supra)* to contend that State has no power to regulate transportation of excavated minor mineral is misplaced. The State has no power to prohibit transport of legally excavated minor mineral, but in view

of Sections 15 and 23-C of the Act, State has the power to regulate mining, transportation and storage to check and prevent illegal mining of minor minerals. It is the transit pass Form-W/X which would determine whether the source of mineral being transported is legal or illegal. The transport of minor minerals is not prohibited in the instant case. It is only regulated to check the source of mineral being transported with the object that no illegal mining takes place in the State and no illegally mined mineral is transported. The object is to utilize the mineral in authorized manner and due revenue generation for the State. The point is answered accordingly in favour of the State.

6. Point No. 2. Transportation of Minor Mineral vis-à-vis Enforceability of 2015 Rules.

6(i) Minerals can be transported by the contractors by procuring from mining lease holders, by procuring the minerals generated at worksites and by procuring the minerals from outside the State etc.

The relevant rules Nos. 72 to 82 of 2015 Rules pertaining to transport of minor minerals have already been extracted earlier. There is no ambiguity in these Rules. Minor minerals can be transported alongwith transit pass, W/X Form duly issued by the competent authority. The word 'transit pass' has been defined in Rule 2(zn) of 2015 Rules to mean :-

“‘transit pass’ means a document issued by the Mining Officer or any other authorized officer to the mineral concession holder or dealer for lawful dispatch and transportation of any mineral(s) raised.”

The layout of W Form figuring in the above Rules as prescribed in the 2015 Rules is as under :-

**"FORM-'W'
IN TRIPLICATE
TRANSIT PASS
[See rule 77(iii) & 79 (2)]**

Sr. No.	Seal & Signature of Issuing Authority
---------	---------------------------------------

Date of Issue _____ *Date of Expiry* _____

1. Name of Contractor/Lessee/
Permit/Permission holder _____
2. Name and Location of Mine _____
3. Place where Mineral is being sent _____
4. Name of person/party to whom
Mineral is being dispatched _____
5. Name of Mineral _____
6. Volume/quantity of Mineral _____
7. Mode of Transport _____ Vehicle No. _____
8. Name of owner of vehicle _____
9. Name of Driver _____
10. Page No. of the Production Register
at which Transit Pass (Form-'W') has been
entered _____
11. Date of Dispatch _____
12. Time of Dispatch _____

Signature of the Driver Signature of the Mine Owner/Manager

Terms and Conditions:

1. All columns of Form-'W' should be properly filled in especially serial number 11 and 12 pertaining to date and time of Issuance of Form-'W' from Mining site.
2. This Form 'W' is valid for one trip only.
3. This Form 'W' is valid only if it has the seal and signature of the issuing authority.
4. Any person found to have contravened the above shall on conviction be punishable with imprisonment of either description for term which may extend upto two years or with fine which may extend upto 25,000/- rupees or both.
5. Under Rule 21(4) of Mines and Minerals (Development and Regulation) Act, 1957, any type of vehicle, involved in carrying/transporting the material without Form-'W' shall be seized and such vehicle shall be impounded and material shall be auctioned."

The layout of 'X' Form figuring in the above Rules as prescribed in the Rules is as under :-

**"FORM-'X'
IN TRIPLICATE
TRANSIT PASS**
[See rule 77(iii) & 79 (2)]

DEPARTMENT OF INDUSTRIES
(GEOLOGICAL WING)
Himachal Pradesh

SUPPLEMENTARY TRANSIT PASS
(In Triplicate)

Sr. No.	Seal & Signature of Issuing Authority
---------	---------------------------------------

Date of Issue _____ Date of Expiry _____

1. Name of Contractor/Lessee/
Permit/Permission holder _____
2. Name and Location of the
Stone Crusher/Stockyard _____
3. Name and quantity of finished _____

Product to be transported

4. Place where finished product of Mineral is being sent

5. Mode of Transport

6. Name and address of owner of vehicle

7. Name and address of Driver

8. Weight/volume of finished product

9. Page No. of the dispatch register at which Supplementary Transit Pass Form-'X' has been entered

10. Date and time of Dispatch

Vehicle No.

Signature of the Driver Signature of Stone Crusher Owner/Manager

Terms and Conditions:

1. All columns of Supplementary Transit Pass Form-'X' should be properly filled in especially serial number 8 pertaining to date and time of Issuance of Supplementary Transit Pass Form-'X' from Stone Crusher site.
2. This Supplementary Transit Pass Form-'X' is valid for one trip only.
3. This Supplementary Transit Pass Form-'X' is valid only if it has the seal and signature of the issuing authority."
4. Any person found to have contravened the above shall on conviction be punishable with imprisonment of either description for term which may extend upto two years or with fine which may extend upto 25,000/- rupees or both.
5. Under Rule 21(4) of Mines and Minerals (Development and Regulation) Act, 1957, any type of vehicle, involved in carrying/transporting the material without Form-'W' shall be seized and such vehicle shall be impounded and material shall be auctioned."

One such form issued by the Department of Industries has been appended at Annexure A-6 page 700 (40) of the paper book. The form apart from giving complete details viz. quantity of mineral, location of mine, person by whom it is being dispatched, mode of transport, vehicle owner's name, driver's name, vehicle number, destination, digital signature of authorized officer including the serial number etc., also has the QR code and is valid for one trip. The form has been issued under Rule 79 of the 2015 Rules. The object of issuing transit pass is to see that only legally extracted minor mineral gets transported. It is aimed to prevent illegal mining. Mandating production of transit pass- Form W/X for transportation of minor mineral is to prevent illegal mining and unauthorized use of minor mineral by any person.

6(ii). A contention has been raised by the State-PWD and the contractors that transport of minor mineral which is generated

at the worksites during execution of various developmental works does not require W/X Form-transit pass. This submission is contrary to Rule 33 of 2015 Rules, which runs as follows:-

“33. Permission for disposal of minor mineral generated due to non-mining activities.- (1) Notwithstanding anything contained in these rules, the Director or any Officer authorized by him in this behalf, may grant permission for lifting/transportation of minor minerals generated during various developmental activities and natural calamities for a specific purpose and period. The permission will be given after the site is inspected by a Committee consisting of Tehsildar, Assistant Engineer (Public Works Department) and Mining Officer which may also assess the availability of stock thereof.

Explanation:- For the purpose of this rule the developmental activities shall mean excavation of tunnel for hydro electric projects, construction of tunnels for connectivity of roads/railways track and construction of various National Highways/state highways, de-silting of reservoir, development of plots, excavation of fisheries ponds and any kind of other developmental activities.

Provided that in case of material generated from road cutting of National Highway Express way/State Highway/H.P.P.W.D. road/during execution of Hydel Projects the Contractor or concerned Agency shall have liberty to use such material after paying the royalty and after verification of the stock by the concerned Mining Officer alongwith representative of concerned Agency not below the rank of Assistant Engineer or equivalent.

Explanation:- For the purpose of this rule the developmental activities shall include the de-silting of reservoir, development of plots, excavation of fisheries ponds, construction/development of roads and any kind of other developmental activities.

(2) The aforesaid permission shall be subject to fulfillment of following conditions:-

(i) the royalty shall be charged on the saleable mineral in advance as per the rates specified in the second schedule;

(ii) the permission shall be granted on the forest land after getting specific clearance from the Forest Department;

(iii) the permission shall be granted only for lifting/transportation of such stock which has been assessed by the Committee; and

(iv) any other conditions as may be imposed by the sanctioning authority in this behalf.”

Rule 33 gives complete mechanism for determining quantity of minerals generated at worksites. The site concerned is to be inspected by a duly constituted committee, which will assess the availability of the stock. The material generated at the

worksite can be used by the executing agency after paying the royalty and after verification of stock by the authorized officers.

The Director or the Officer authorized by him may grant permission for lifting/transportation of minor mineral generated at worksites during developmental activities or natural calamities for specific purpose and period. However, permission can be given after the inspection and assessment by the Committee. The mineral thereafter can be transported in accordance with law. In case the mineral generated at worksite is intended to be used at that site, then transit pass will not be necessary, but quantity thereof will still be required to be determined and charged for in accordance with Rule 33 of 2015 Rules.

6(iii) W/X Form-transit pass issued by respondent-State will not be necessary where minor mineral is procured from outside the State of Himachal Pradesh. The contractor transporting the minor mineral procured from outside the State will have to show transit pass provided by the authorities of the State from where mineral has been procured. Rule 79(4) of 2015 Rules provides that if mineral being carried is from the other State, then the consigner should have proper documents of that State indicating the place and address of firm or supplier who happened to be supplier of that mineral.

6(iv). Learned Additional Advocate General has forcefully contended that there are lacunas in 2015 Rules. Once the minor mineral reaches the destination after being transported and is used, thereafter there is no power with the State to determine the source of that mineral and/or to penalize the contractor who transported the mineral. In cases where contractors transport/supply minor minerals without producing requisite W/X Forms, the respondent PWD charges royalty on the supplied minerals on GST paid bill. This ensures that no loss at least on account of royalty is caused to the State exchequer. Because of interim order dated 16.07.2020, contractors' bills worth crores of rupees cannot be cleared as they had not produced W/X forms-transit passes. State PWD is unable to fulfill its contractual obligations towards the contractors. Non release of payment to the contractors has adversely affected the progress of various development works.

The above contention lacks substance. 2015 Rules, in particular Rule 79 thereof stipulates that no person shall transport or cause to be transported any mineral otherwise than in accordance with provision of 2015 Rules. Rule 79 requires possession of W/X form-transit passes for transportation of mineral. These forms contain all the details about the minor

mineral being transported. From these forms, the department can ascertain total quantity of minor mineral authorized to the source, the quantity of mineral transported, the balance quantity etc. Insistence upon transit pass would ensure that source of mineral is known and legal. In case of violation of 2015 Rules with respect to transportation of mineral, the contractor is liable to pay penalty and face action as per penal provisions. The object of 2015 Rules is to curb illegal mining/transportation/storage of minor mineral. As noticed in previous paras, a full-fledged mechanism is in place to see the implementation of these rules. Additionally, various notifications have been issued by the State in exercise of powers under various provisions of MMDR Act including Section 21(4) empowering 20 categories of officers *'to seize any mineral raised or transported or cause to be raised or transported by any person without any lawful authority any mineral from any land and for that purpose uses any tool, equipment, vehicle or any other thing for this purpose with immediate effect'*.

“Unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in this field would adversely affect the public interest. Every holder of a public

office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good. With the diversification of State activity in a Welfare State requiring the State to discharge its wide-ranging functions even through its several instrumentalities, which requires entering into contracts also, it would be unreal and not pragmatic, apart from being unjustified to exclude contractual matters from the sphere of State actions required to be non-arbitrary and justified on the touchstone of Article 14." **[Re: Kumari Shrilekha Vidyarthi and others Vs. State of U.P. and others].**

".....what would happen when those entrusted by law to protect the rights of the citizens are themselves violators and/or abettors of the violations? The difficult task faced in such a situation was noted where, as a part of its constitutional duty, this Court is required to preserve the rule of law so that people may not lose faith in it and also point out violations of the rule of law by those who are supposed to implement the law. It was observed that the issue

is not one of an absence of law but of its implementation". [Re: (2018)

2 SCC 144, titled **M.C. Mehta Versus Union of India and others**].

It was for the concerned officers and the concerned departments to check compliance of the 2015 Rules to ensure that illegally extracted material does not get transported. It was for them to see that transported minor mineral was accompanied with W/X Form-transit pass. By simply charging royalty on the transported mineral, the source of mineral cannot be detected. In this way, the State cannot legalize the transported mineral without verifying the source of the extracted mineral supplied by the contractors. That 2015 Rules have lacuna, is an argument of desperation put forward by the State PWD to overcome its omission in adhering to the 2015 Rules. Individual contract will not override mandatory obligations under the Statute and the Rules framed thereunder. It will also be profitable to refer to the stand of Industries department to the writ petition. According to the Industries department, any consignment of minor minerals transported to some other destination, if not used for captive purpose near source of generation of mineral for which specific permission is granted by the Industries department, then such consignment should be supported by transit pass in Form W/X duly countersigned by the concerned mining officer or any

authorized officer to ascertain that the mineral is royalty paid and has been brought from the legal source. In case said forms are not produced by any person carrying any minor mineral on being demanded by any authorized officer of the State, then it would amount to either illegal transportation or illegal mining and accordingly the person concerned is liable to be proceeded as per law.

Absolutely, no justification is there as to why the concerned departments did not follow mandatory provisions of 2015 Rules while the mineral was being transported. Clearing the GST paid bills of contractors after charging royalty is not an evidence of legal source of mineral. Illegally extracted mineral after transportation on payment of royalty will not become legal. Point is answered accordingly against the respondent State PWD and the Contractors Welfare Association.

7 (i) Conclusions :

7(i)(a) Under Sections 15 & 23-C of MMDR Act, State has the power to regulate transport of minor minerals to check and prevent illegal mining.

7(i)(b) 2015 Rules framed by the State in exercise of powers under Sections 15 and 23-C of MMDR Act, provide minor

minerals concessions and inter-alia are aimed to prevent illegal mining, transportation and storage of minor minerals.

7(i)(c) A full fledged mechanism is in place under the 2015 Rules to ensure that there is valid transportation of minor minerals. This is to ensure that minor minerals being transported can be related to legal source of generation. It is for the State to amend the 2015 Rules in case necessity is so felt.

7(i)(d) In case mineral is transported without complying with mandatory provisions of the 2015 Rules, the same will attract penal provisions of the Rules. Contractual obligations will not override mandatory provisions of the MMDR Act and 2015 Rules framed thereunder.

7(i)(e) Omission to implement 2015 Rules at the time of transport of minor minerals will not imply that the transported/supplied mineral was procured from a legal source.

7(ii) Directions

In view of above discussion, we direct that:-

7(ii)(a) Henceforth all concerned authorities will ensure due compliance of Chapter VII of 2015 Rules. No minor mineral will be allowed to be transported unless and until it is accompanied with transit pass, mandated under the Rules. In case of transport

of minor mineral procured from outside the State, compliance of procedure mandated in 2015 Rules shall be ensured.

7(ii)(b) In case minor mineral generated at the worksite etc. is intended to be used at the worksite without transporting the mineral, then the concerned officials will ensure due compliance of Rule 33 and other applicable provisions of 2015 Rules before allowing such use.

7(ii)(c) In case the authorized officials detect transport of minor mineral in violation of 2015 Rules, prompt action in accordance with 2015 Rules shall be taken against the offenders. Responsibility and accountability of concerned officials shall also be fixed in case of omission to ensure compliance of the Rules.

7(ii)(d) No bill of the contractor for transport/supply of the minor mineral, which in terms of 2015 Rules is required to be carried with transit passes etc. shall be cleared by any State department/authority unless it is accompanied by transit pass-Form W/X etc. duly issued by the competent authority.

7(ii)(e) With respect to the bills of the contractors pending as on date, the State Public Works Department in consultation with the State Industries Department, will hold inquiry to ascertain the source of transported/supplied minor mineral. Within one week from today, the Principal Secretary, Public Works Department

and Principal Secretary, Industries Department shall each nominate two officers of their department for conducting the aforesaid inquiry. The concerned contractor shall also be associated in the inquiry. The inquiry shall be completed by the officers within two months from today. On conclusion of the inquiry, in case the officials are satisfied that mineral in question transported and supplied was procured from a legal source in accordance with law, then appropriate order shall be passed by the competent authority for releasing the payment or else action for violation of Rules as warranted under the 2015 Rules shall be taken against the offenders in accordance with law.

The official respondents shall ensure that copy of this judgment is circulated to all concerned quarters for compliance.

The writ petition stands disposed off in the aforesaid terms. The pending applications, if any, also stand disposed off.

(Tarlok Singh Chauhan)
Judge

5TH January, 2022 (K)

(Jyotsna Rewal Dua)
Judge