REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10373 – 10374 OF 2010

STATE OF GUJARAT AND OTHERS ETC. .....APPELLANT(S)

VERSUS

JAYESHBHAI KANJIBHAI KALATHIYA ETC. .....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

Two writ petitions were filed in the High Court of Gujarat under Article 226 of the Constitution of India. One writ petition was filed by a single person (respondent herein) who had been awarded contract for one year to extract, collect, gather and remove ordinary sand from river Tapi falling within certain area at village Amboli, Taluka Kamrej, Surat. The sand being a mine and mineral, it is the State Government which is empowered to grant such leases. After the excavation of sand, a part there of was subjected to further processing by addition of fly ash and the other part was sold as sand outside the State of Gujarat. Second petition was filed by ten petitioners (respondents in the second

appeal). They are in the business of processing ordinary river sand after buying it from leaseholders. The process involves washing, cleaning and mixing fly ash to convert it into IS-Zone-2-Sand, which is then sold in 50 kg. Bags under a brand name. These respondents supply that sand to builders in the State of Maharashtra.

2) As is clear from the aforesaid facts, sand, after processing, is sold outside the State of Gujarat. The challenge laid in the writ petitions was against the Resolution No. GMR-102010-1-S-CHH dated May 04, 2010 whereby all leaseholders, stockists, traders and exporters were prohibited from exporting ordinary sand excavated from the areas in the State of Gujarat to other States within the country or other countries by transporting such sand outside the State or the country. When these writ petitions were pending consideration, the Government of Gujarat issued a Notification on June 11, 2010 thereby amending the Gujarat Minor Mineral Rules, 1966 by making the Gujarat Minor Mineral (Amendment) Rules, 2010 with the insertion of Rule 44-BB, with immediate effect. This amendment was done in purported exercise of powers conferred under Section 15 read with Section 23-C of the Mines and Minerals (Development and Regulation)

Act, 1957 (hereinafter referred to as the 'MMDR Act'). By way of Rule 44-BB, movement of sand beyond the border of the State of Gujarat was prohibited. Rule 44-BB 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."

3) Within two months thereafter, i.e. on August 26, 2010, the State of Gujarat also notified the Gujarat Minor Mineral Concession Rules, 2010 so as to repeal the Gujarat Minor Mineral Rules, 1966. Rule 71 of the new Rules was to the same effect as Rule 44-BB and the same is as under:

> "**Rule 71. Prohibition to transport sand beyond border. –** 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."

4) This led the respondents to amend the writ petitions thereby incorporating challenge to Rule 44-BB of Amendment Rules as well as Rule 71 of the Concession Rules. The High Court has, vide impugned judgment, allowed the writ petitions and struck down the aforesaid Rules as *ultra vires* on the ground that the

rule making power of the State Government does not empower and cannot be stretched to empower the State Government to make Rules directly prohibiting movement of mineral so as to impinge upon the freedom guaranteed by Article 301 of the Constitution. It may be noted here itself that a Division Bench of the Andhra Pradesh High Court in ***C. Narayana Reddy and etc.*** v. ***Commissioner of Panchayat Raj and Rural Employment, A.P., Hyderabad and others***[1] had taken a contrary view. Likewise, the Madras High Court had also decided this issue vide its judgment dated April 27, 2009 in ***D. Sivakumar*** v. ***Government of Tamil Nadu***[2] by taking similar view as that of the Andhra Pradesh High Court. In the impugned judgment, the Gujarat High Court has, however, differed with the Andhra Pradesh and Madras High Courts. Having regard to the conflicting opinion of the High Courts, leave was granted in this matter. This is how the instant appeals came to be heard finally by this Court.

5) Before proceeding further, we would like to recapitulate, in broad, the scheme of the MMDR Act insofar as it relates to regulating minor minerals are concerned and the powers that are delegated by the Central Government to the State Governments in respect

1 AIR 2004 AP 234
2 Writ Petition Nos. 23317 and 24211 of 2008

of minor minerals. In this very hue, we also propose to take note of the relevant provisions of the MMDR Act.

6) The MMDR Act is enacted by Parliament to provide for the regulation of mines and development of minerals under the control of the Union, i.e. the Central Government. Section 2 provides a declaration to this effect with the stipulation that it is expedient in the public interest that Union should take under its control, the regulation of mines and development of minerals, to the extent provided in the Act. It is for this reason the Union took control insofar as regulation of mines and development of minerals is concerned. In order to exercise this control, no reconnaissance or mining operations in any area are allowed by any person except with the permission of the Central Government. Even transportation or storage is prohibited otherwise than in accordance with the provisions of the MMDR Act and the Rules made thereunder (Section 4).

7) Section 13 of the MMDR Act empowers the Central Government to make rules in respect of minerals.

8) It follows from the above that as far as minor minerals are concerned, limited powers are given to the State Government

inasmuch as under Section 15 of the MMDR Act the State Government is authorised to make rules in respect of minor minerals. Relevant portions of this Section read as under:

> "**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 –
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> xx xx xx
>
> (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;
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> xx xx xx
>
> (o) any other matter which is to be, or may be prescribed.
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> xx xx xx"

9) There was an amendment to this Act by way of Mines and Minerals (Regulation and Development) Amendment Act, 1999 (No. 38 of 1999) which became effective from December 18, 1999. By this Amendment Act, Section 4(1A), Section 23-A and Section 23-C were inserted. We would like to reproduce these sections along with the Statement of Objects and Reasons which prompted the Legislature to insert these provisions:

"

STATEMENT OF OBJECTS AND REASONS

The Mines and Minerals (Regulation and Development) Act, 1957 provides for the regular and development of minerals other than petroleum and natural gas. Consequent upon the decisions taken in the Conference of the State Ministers/Secretaries of Mines and Geology held in December, 1996, a Committee under the Chairmanship of the then Secretary, Ministry of Mines was constituted in February, 1997 to, inter alia, make recommendations regarding delegation of powers to the State Governments relating to grant and renewal of prospecting licences and mining leases and other related approvals and to suggest measures to reduce delay in this regard, review of the existing laws and procedures governing the regulation and development of minerals to make them more compatible with the changed policies and measures for prevention of illegal mining. The Committee in his report made wide-ranging recommendations in the area of delegation of powers to the State Governments, procedural simplifications, etc. which will go a long way to mitigate the problems faced by the States and the prospective investors while, at the same time, keeping the interests of the mining industry in particular and the national interest, in general, in tact. After careful consideration of the recommendations of the Committee, the Government has decided to amend the Mines and Minerals (Regulation and Development) Act, 1946.

2. Some of the more important amendments to be made are as follows:

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(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.

Section 4(1A)

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

Section 23-C

(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 mattes, 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)."

10) As noted above, the impugned Rules are made in exercise of the powers conferred under Section 23-C of the MMDR Act. Further, as Section 14 categorically states that provisions of Section 5 to 13 are not applicable in respect of minor minerals, rule making power of the Central Government contained in Section 13 does not extend to minor minerals. It is in this context Section 15 gives power to the State Government to make rules in respect of minor minerals. The State Government, thus, is given power under Section 15. It is also given power under Section 23-C.

11) 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:

(a) 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

(b) making rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

12) In the aforesaid context, question arose before the High Court as to whether in exercise of such powers delegated by the Legislature upon the State Government, could the State Government make a rule to the effect that the sand which is a minor mineral would not be allowed to be taken beyond the borders of the State of Gujarat and making such movement as punishable offence. According to the High Court, delegation of powers to the State Government under the aforesaid provisions does not include or envisage restriction on inter-State trade, commerce and intercourse which shall be free. Thus, the impugned rules are held to be *ultra vires* the provisions of Section 15 and 23-C of the MMDR Act. They are also held to be violative of Article 301 of the Constitution. Relevant discussion on this aspect by the Gujarat High Court in the impugned judgment runs as under:

> "14. As seen earlier, the provisions of section 4(1-A) and section 23-C were simultaneously added by the amendment of 1999, with the objective of prohibiting transportation or storage of any mineral, except in accordance with the provisions of the Act and the Rules made in that behalf, with a view to preventing illegal mining. Prohibition or restriction of inter-State trade of any mineral was neither intended nor provided or envisaged either expressly or by necessary implication. On the other

> hand, delegation of powers to make rules either in section 15 or in section 23-C of the Act is not couched in general terms as in section 18. Section 18 exclusively empowers the Central Government to make such rules as it thinks fit for the purpose of conservation and development of minerals in the whole country. Apart from delegation of such powers couched in wider terms, the Central Government is specifically authorized to make rules for regulation of excavation or collection of minerals from any mine as well as for storage of minerals. As against that, the State Government is empowered to make rules, in respect of all minerals, for regulation of minerals being transported from the area granted under a prospecting licence or a mining lease or a quarry licence or a permit. The context and the composite scheme of the Act contained in the provisions of sections 4(1-A), 15, 18, 21 and 23-C clearly indicate that the delegation of power to regulate or make rules for transportation or storage of minerals, including minor minerals, does not empower and cannot be stretched to empower the State Government to make rules directly prohibiting movement of minerals so as to impinge upon the freedom guaranteed by Article 301 of the Constitution. In fact, the State Government has admittedly made the Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2005 in exercise of the powers conferred by section 23-C of the Act for regulating transport, possession and storage of minerals in the State; and those rules are not under challenge. Although it is not significant, in light of the view being taken herein about validity of the impugned rules, it needs to be noted that the part of new Rule 71 taking away the facility of compounding is apparently repugnant to section 23-A of the Act. And, if validity of the impugned rules cannot be upheld, the impugned resolution cannot stand without the support of any legal, executive or legislative authority."

13) We may also, at this stage, refer to the reasoning given by the High Courts of Andhra Pradesh and Madras in support of their view, which is in conflict with the view taken by the Gujarat High

Court. The judgment of the Andhra Pradesh High Court proceeds to decide the issue in the following manner:

> "27. Sector 23-C of the Act authorises the State Government to make rules not only for the purpose of preventing illegal mining but also for transportation and storage of minor minerals, which power would imply that even after the minor mineral has been mined, the power is conferred on the State Government to frame Rules for such mined minor mineral as regards its storage and/or its transportation and also to frame rules to see that no illegal mining activity is carried on. Sub-clauses (a) to (g) of Clause (2) of Section 23-C are illustrative of the matters, which are covered under the rule making power. Sub-section (2) says that in particular and without prejudice to the generality of the powers conferred under Section 23-C, rules may provide for all or any of the said matters. Sub-clause (c) itself say that regulations can be framed of mineral being transported from the area granted under the licence or a mining lease. Rules can be framed on any of the matters including transportation of the excavated mineral. Section 23-C is the source of power under which Rule 9-W can be said to have been framed by the State Government. We have to keep in mind that the Parliament passed the Amendment Act, 1999 (Act No. 38 of 1999) thereby inserting Section 23-C in the Principal Act after the decision of the Supreme Court in Kavery Chetty's case (supra). By the said provision, power was specifically conferred on the State Government to make rules for preventing illegal mining, transportation and storage of minerals. The State Government has framed the Rules thereafter. Thus, there is ample power with the State Government to frame Rules regarding transportation of the excavated minor mineral, which would include restriction on the transport of the said minor mineral beyond the limits of the State borders. In this view of the matter, the challenge to Rule 9-W is without any substance."

14) Likewise, the Madras High Court has proceeded to discuss the issue as follows:

> "13. <u>Definition of the word 'Regulation'</u>

Shri V.T. Gopalan has contended that the word 'regulation' mentioned in Section 23-C of the Act should not be construed to mean prohibition. He further contended that a total prohibition is impermissible in law, violative of Article 19(1)(g) and, therefore, the impugned rule is liable to be declared as bad in law. We are of the opinion that the word 'regulation' has no fixed connotation. The said word will have to be given wider meaning when the public interest is involved. In the judgment reported in (1981) 2 SCC 205 (State of Tamil Nadu v. Hind Stone), the Hon'ble Supreme Court has held as follows:

> "10. One of the arguments pressed before us was that Section 15 of the Mines and Minerals (Regulation and Development) Act authorised the making of rules for regulating the grant of mining leases and not for prohibiting them as Rule 8-C sought to do, and, therefore, Rule 8-C was ultra vires Section 15. Well-known cases on the subject right from *Municipal Corporation of the City of Toronto* v. *Virgo* and *Attorney-General for Ontario* v. *Attorney-General for the Dominions* up to *State of U.P*. v. *Hindustan Aluminium Corporation Ltd*. were brought to our attention. We do not think that "regulation" has that rigidity of meaning as never to take in "prohibition". Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated regulation. It was observed by Mathew, J. in *G.K. Krishnan* v. *State of Tamil Nadu* : "The word 'regulation' has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied." In modern statutes concerned as they are with economic and social activities, "regulation" must, of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State. It was pointed out by the Privy Council in *Commonwealth of Australia* v. *Bank of New South Wales* — and we agree with what was stated therein — that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down that in no circumstances could the exclusion of competition so as to create a monopoly, either in a

> State or Commonwealth agency, be justified. Each case, it was said, must be judged on its own facts and in its own setting of time and circumstances and it might be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly was the only practical and reasonable manner of regulation. The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

Similarly, in (2000) 8 SCC 655 (Quarry Owners' Assocation v. State of Bihar) it has been held that the word 'regulation' will have to be given a wide interpretation taking into consideration of social, economic and political justice. We are of the opinion that while deciding as to whether the prohibition is reasonable, the Court has to take into consideration the greater public and social interest as against the fundamental right of the citizen. In (2003) 7 SCC 59 (Indian Handicrafts Emporium v. Union of India), the Hon'ble Supreme Court has held that prohibition of trade in ivory does not offend Article 19(1)(g) and the same is a reasonable restriction under Article 19(6) of the Constitution. It is also to be noted only sand is prohibited from taking outside the State in view of the overwhelming public interest. Therefore, we are of the opinion that the definition of the word 'regulation' is wide enough to cover the prohibition and movement of minerals outside the State.

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16. Environmental Perspective

The said rule has been introduced in view of the attempt made by the dealers of sand and contractors of building to transport the sand purchased from the Government

> outside the State. According to the Government, the said rule has been made in public interest and also taking into consideration of the hardship that caused to the consumers in the State of Tamil Nadu as well as the high rate of urbanisation in the State. In the counter affidavit, it is also stated by the Government that illegal, unaccounted sand is also transported outside the State. It is well known that sand in the present form has already undergone various changes over thousands of years. As found by the Expert Committee, due to over exploitation and indiscriminate mining of river sand, the environment and the eco-system got very much affected. The Expert Committee has also found out that the indiscriminate mining has resulted in deepening of the river beds, widening of the rivers, damage of civil structures, depletion of ground water table, degradation of ground quality, damage to the rivers system and reduction of bio-diversity. Therefore, what is important is to use the barest minimum of sand for developmental activities. If the sand is allowed to be transported due to the demands in various places outside the State it would only increase the demand for more sand. This in turn would affect the environment seriously. Hence, one has to see the impact on the natural resources. Whether it is authorized or not, legal or illegal what is important is the conservation and protection of the environment. The right to clean environment is a guaranteed fundamental right under Article 21. Article 48-A of the Constitution speaks about protection and improvement of environment and Article 51(A) of the Constitution deals with the fundamental duties to protect and improve the natural environment including forest, lakes, rivers and wild life. The Hon'ble Supreme has held in (2003) 7 SCC 589 (Indian Handicrafts Emporium v. Union of India) that the implementation of Directive principle is within the expression of restriction in the interest of general public. Hence, we hold that from the environmental perspective also the impugned rule has to be sustained."

15) The Court also took aid of the doctrine of public trust as enunciated in ***State of Tamil Nadu*** v. ***Hind Stone and Others***[3]

3 (1981) 2 SCC 205

as well as ***T.N. Godavarman Thirumulpad*** v. ***Union of India and Others***[4].

16) Mr. Pritesh Kapur, learned counsel appearing for the State of Gujarat submitted in the first instance that scope of language used in Section 15(1) of the MMDR Act was extremely wide as per which the Parliament had delegated to the States entire power 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. According to him, this Court, by a series of judgments, settled the following propositions:

(i) The power to regulate under Section 15(1) is plenary and the Parliament has delegated to the States complete control over the subject matter, namely, minor minerals, especially in view of the fact that power has been conferred for all purposes connected with the regulation of the minor minerals.

(ii) This power is not exhausted by the grant and continues to control activities even post grant.

(iii) In respect of minor minerals, Parliament has not retained any control under the Act. Historically as well as under the 1957 Act, complete control over minor minerals has been delegated by

4 (2006) 1 SCC 1

Parliament to the State Government since these minerals have always been viewed as being important for local development.

17) To support the above plea, he invited the attention of this Court to the judgment in ***D.K. Trivedi & Sons and Others*** v. ***State of Gujarat and Others***[5] wherein this Court considered the power of the State Governments to make rules under the said Section 15 to enable them to charge dead rent and royalty in respect of leases of minor minerals granted by them and to enhance the rates of dead rent and royalty during the subsistence of such leases – a power exercised by the State to govern conditions subsequent to the grant of the lease. After tracing the legislative history in respect of minor minerals, it was observed that by virtue of the Act the whole of the field was taken over by Parliament and thereafter all powers in respect of minor minerals had been delegated to the State Governments. The Court also observed, *inter alia*, that the power to regulate minor minerals under Section 15 is extremely wide; that control over minor minerals fell exclusively within the domain of the State Governments; that minor minerals have historically been viewed by the Legislature, both pre and post Independence, as being for the use of local areas and local purposes; and it is left to the State Governments

5 1986 Supp SCC 20

to prescribe such restrictions as they think fit by rules made under Section 15(1).

18) From the above judgment, his line of action was that if the power of regulation permits the States to utilise the minor minerals for the benefit of the State through its own agency, it would necessarily also encompass the power to ensure that even private parties utilise the sand within the State as a condition of the lease. Furthermore, the argument that sub-section (1) of Section 15 is for regulating the grant of leases and other mineral concessions in respect of minor minerals and that rules under that sub-section can be made only with respect to the time when such leases or concessions are granted and not with respect to any point of time subsequent thereto, was specifically considered and rejected in the case of ***D.K. Trivedi & Sons***.

19) Mr. Kapur also argued that a three Judge Bench of this Court in ***Uttar Pradesh Power Corporation Limited*** v. ***National Thermal Power Corporation Limited and Others***[6] has reiterated the view that the power of regulation conferred upon an authority is not spent or exhausted with the grant of permission. He relied upon the judgments in ***Hind Stone*** and ***K. Ramanathan*** v. ***State of***

6 (2009) 6 SCC 235

Tamil Nadu and Another[7] wherein this Court reiterated that the word 'regulate' must be given the widest amplitude. He submitted that in ***K. Ramanathan's*** case this Court was considering the validity of an order issued by the State Government under the Essential Commodities Act banning the transport of paddy outside the State. In that context, this Court has observed that:

> "19...At the same time, the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject...The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression…
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> 23...One of the ways in which such regulation or control over the production, supply and distribution of, and trade and commerce in, an essential commodity like foodstuffs may be exercised is by placing a ban on inter-State or intra-State movement of foodstuffs to ensure that the excess stock of foodstuffs held by a wholesale dealer, commission agent or retailer is not transported to places outside the State or from one district to another with a view to maximise the procurement of such foodstuffs from the growers in the surplus area for their equitable distribution at fair prices in the deficit areas. The placing of such ban on export of foodstuffs across the State or from one part of the State to another with a view to prevent outflow of foodstuffs from a State which is a surplus State prevents the spiral rise in prices of such foodstuffs by artificial creation of shortage by unscrupulous traders...These are nothing but regulatory measures."

20) Mr. Kapur further submitted that the above observations and the expansive interpretation given to the power of regulation in both

7 (1985) 2 SCC 116

the aforesaid cases have been approved by a Constitution Bench of this Court in ***U.P. Cooperative Cane Unions Federations*** v. ***West U.P. Sugar Mills Association and Others***[8]. In this case, the Constitution Bench was considering the competence of the State Government to fix the State advised price for purchase of sugarcane by an occupier of a sugar factory over and above the minimum price fixed by the Central Government. The relevant section, i.e. Section 16, also provided merely a power of regulation and the power to provide for terms and conditions and did not grant the power to fix prices. Discussing that aspect, it was observed as under:

> "..."Regulate" means to control or to adjust by rule or to subject to governing principles. It is a word of broad impact having wide meaning comprehending all facets not only specifically enumerated in the Act, but also embraces within its fold the powers incidental to the regulation envisaged in good faith and its meaning has to be ascertained in the context in which it has been used and the purpose of the statute."

21) On the basis of the aforesaid judgments, submission of Mr. Kapur was that this Court has consistently held that power to regulate was of widest amplitude and, therefore, it would encompass power to regulate the movement of minor minerals as well, including the condition not to transport the excavated sand outside the State of Gujarat in the lease itself. He submitted that

8 (2004) 5 SCC 430

this Court in ***State of Tamil Nadu*** v. ***M.P.P. Kavery Chetty***[9] held that there is no power conferred upon the State Government under the MMDR Act to exercise control over the minor minerals after they have been excavated. His submission was that this is the only judgment which has taken discordant note and while deciding this, the earlier judgment in ***D.K. Trivedi & Sons*** was not brought to the notice of the Court.

22) Another submission of Mr. Kapur was that power to frame such a rule can be traced to Section 15(1A)(d) of the MMDR Act. This section empowers the State Government to impose conditions in a mining lease and, therefore, would include the power to impose all such conditions as flown from the ownership of the minerals. Since it is the State Government which is the 'owner of the minerals' and the minerals that 'vest' in it, as held in ***Amritlal Nathubhai Shah and Others*** v. ***Union Government of India and Another***[10], while granting the licence, it can put conditions pertaining to movement and flow of such minerals as well. He also took support from the following observations in ***Monnet Ispat and Energy Limited*** v. ***Union of India and Others***[11]:

> "86...The judgment of this Court in *Amritlal Nathubhai Shah* establishes the distinction between the power of

9 (1995) 2 SCC 402
10 (1976) 4 SCC 108
11 (2012) 11 SCC 1

> reservation to exploit a mineral as its own property on the one hand and the regulation of mines and minerals development under the 1957 Act and the 1960 Rules on the other. The authority of the State Government to make reservation of a particular mining area within its territory for its own use is the offspring of ownership; and it is inseparable therefrom unless denied to it expressly by an appropriate law by the 1957 Act that has not been done by Parliament. Setting aside by a State of land owned by it for its exclusive use and under its dominance and control, in my view, is an incident of sovereignty and ownership."

23) in any case, argued Mr. Kapur, power to frame the impugned rule is conferred by Section 23-C of the MMDR Act as well. According to him, it would be erroneous to contend that the word 'illegal' occurring in Section 23-C (1) must qualify the words 'transportation and storage' as well. In any event, there are no such qualifying words in sub-section (2)(c) which grants a power 'without prejudice' to sub-section (1). Therefore, the two sub-sections must be construed independently and neither can cut down the width of the other.

24) He also argued that while construing a similar power to regulate transport of forest produce, this Court upheld a rule prohibiting transport beyond the borders of the State in the case of ***State of Tripura and Others*** v. ***Sudhir Ranjan Nath***[12] in the following words:

12 (1997) 3 SCC 665

> "...The object of the Act is to preserve and protect the forest wealth of the country and to regulate the cutting, removal, transport and possession of the forest produce in the interest of the States and their people. It is for achieving the above purpose that the Act provides for declaration of reserve forests, formation of village forests and declaration of protected forests. It is for achieving the very purpose that the Act vests, in the Government, control over forest and lands not being the property of the Government and controls even the collection and movement of drift and stranded timber. It is not a taxing enactment but an enactment designed to preserve, protect and promote the forest wealth in the interests of the nation. It must necessarily take within its fold catering to the needs of the people of the State and that is what sub-rule (8) provides. In our opinion, therefore, sub-rule (8) of Rule 3 is perfectly valid."

25) Last submission of Mr. Kapur was that once it becomes clear that power to regulate minor minerals conferred upon the State Government would include power to regulate its movements as well, there was no question of treating the same as violative of Article 301 of the Constitution. For this purpose, he relied upon certain judgments of this Court. Referring to the case of ***Hind Stone***, he submitted that in that case the Court specifically held that regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come under the purview of restrictions contemplated by Article 301. Likewise, according to him, in ***Sudhir Ranjan Nath's*** case, this Court had held that once a provision made by the State as the delegate of Parliament to carry out the purposes of the Act is saved by Article

302, it will not be hit by Article 301. Such a rule, therefore, would not offend the principle of federalism.

26) Having regard to the fact that it is the Union which can regulate and control the minerals in this country and States exercise power of minor minerals as delegates of the Union, this Court had deemed it fit to issue notice of these proceedings to Union of India as well in order to elicit its stand on this issue. The Union of India has filed its reply, taking a specific stand that there is no such power to frame rule like 44-BB of the 1966 Rules or Rule 71 of the 2010 Rules. Ms. Madhavi Divan, learned Additional Solicitor General, appeared for Union of India and pitched the case to even a higher level. Her argument was that there is no such power even with the Union of India to frame rules of the nature impugned in these proceedings as these would be offensive of Article 301 of the Constitution. Therefore, under no circumstances, such a power can vest with the State Government. She argued that Section 15 which empowers the State Government to make rules in respect of minor minerals does not extend to the regulation of already excavated minor minerals under the terms and conditions of a mining lease. This is made clear by the three Judge Bench in ***M.P.P. Kavery Chetty***

wherein this Court upheld the striking down of rules made by the State Government to fix minimum price for the sale of granite after its excavation. The Court emphatically held that the State Government had no power under Section 15 of the MMDR Act to exercise to control over minor minerals after they had been excavated. The power under Section 15 was restricted and did not empower the State to control the sale or sale price of minor minerals once they had been mined. The latter judgment has been followed in another three Judge Bench judgment in ***K.T. Varghese & Ors.*** v. ***State of Kerala & Ors.***[13]. In the latter case, one of the impugned conditions of the license was that minerals could be sold only within the State of Kerala, that too for domestic and agricultural purposes. The same was found impermissible. She also submitted that there is no conflict whatsoever between the judgments of this Court in ***Amritlal Nathubhai Shah*** and ***D.K. Trivedi & Sons*** on the one hand and ***M.P.P. Kavery Chetty*** on the other. Her contention was that in ***Amritlal Nathubhai Shah***, while it was emphatically stated that the State Government is the 'owner of minerals' within its territory and minerals vest in it, this was held in the context of a challenge to the reservation by the State Government of certain areas of exploitation of bauxite in

13 (2008) 3 SCC 735

the public sector. Private parties challenged the notification to that effect and the Central Government to whom they applied for revision held that the minerals vested in the State Government which was its owner and that the State Government had the inherent right to reserve any area for exploitation in the public sector. She did not quarrel with such a proposition. However, her caveat was that this was a matter where there were no leases in favour of private parties but rather the private parties were petitioning the government for the grant of leases.

27) Likewise, in ***D.K. Trivedi & Sons***, this Court held that minor minerals are used mostly in local areas and for local purposes while minerals other than minor minerals are those necessary for industrial development on a national scale. She submitted that it is totally different proposition. She also pointed out that in the said case the finding that the State Government could enhance dead rent even during the subsistence of a lease has no application in the present case. Such observations of this Court in ***D.K. Trivedi & Sons*** were in the context of enhancement of dead rent which is collected as a fixed amount in consideration for the grant of the lease by the lessor apart from royalty and is incidental to the regulation and development of mines and

minerals which is avowed object of the MMDR Act as stated in its Preamble. But, in the present case, what is sought is a blanket prohibition of the sale of minor minerals beyond the borders of the State of Gujarat. She argued that on the other hand, both ***M.P.P. Kavery Chetty*** and ***K.T. Varghese*** were matters wherein what was sought to be controlled post grant of lease was the sale of the excavated minerals. Such restrictions were found to be beyond the powers granted to the State as a delegate of Parliament and were accordingly struck down.

28) The learned Additional Solicitor General also rebutted the argument of the appellants that power to regulate would encompass power to restrict the movement beyond the State. She argued that while it is well settled that the expression 'regulation' has many shades of meaning and can refer to prohibition (***Sudhir Ranjan Nath*** and ***Hind Stone***), the issue in the present case is whether a prohibition on the transportation of legally mined materials can be imposed under the provisions of the MMDR Act. There is no doubt that a prohibition can be imposed on mining under certain circumstances or on the grant of leases under the aforesaid Act but not on transportation *de hors* illegal mining.

29) In this hue, the learned ASG submitted that Section 23-C was inserted with specific object to curb 'illegal mining'. Therefore, the words 'transportation' and 'storage' occurring therein would take their colour from the expression 'illegal mining' on the principle of *noscitur a sociis*. That was clear from the Statement of Objects and Reasons as well. On the aforesaid basis, Ms. Divan submitted that the High Court rightly concluded that there was lack of power with the State Government to make such a provision which could neither be traced to Sections 15, 15(1A) or 23 of the MMDR Act.

30) The learned Additional Solicitor General additionally argued that there was no question of public interest as well. On this aspect, her contention was that Parliament was wholly conscious of the environmental concerns impacted on account of mining activity, which concern is reflected in Section 4A of the MMDR Act. This provision provides for termination of prospecting licenses or mining leases on account of expediency in the interest of, *inter alia*, reservation of the natural environment and conservation of mineral resources. Further, Section 18 provides that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of

minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting mining operation. In this regard, the Central Government is empowered to make rules as it thinks fit. In other words, there are specific provisions empowering the Central Government to make rules in respect of conservation of minerals in the interest of the environment.

31) Ms. Divan also argued that the impugned rules are violative of Article 301 of the Constitution as they seek to fetter the freedom of trade, commerce and intercourse. Highlighting the purpose behind Part XIII of the Constitution which starts with Article 301, she emphasised that it was to achieve economic integration. Further, balancing development and economic equality of the country is equally vital facet of economic integration, stressed the learned Additional Solicitor General. She referred to various judgments of this Court on the aforesaid aspects and concluded her submissions with the submission that the conclusion of the High Court in the impugned judgment was correct on this aspect as well.

32) Mr. D.N. Ray, Advocate, appeared on behalf of the private respondents and made his submissions almost on the same lines

as argued by the learned Additional Solicitor General. Therefore, it is not necessary to repeat the same.

33) We have give our due consideration to the arguments advanced by the counsel for the parties on both sides.

34) From the subject matter of these appeals as well as arguments noted above, it clearly follows that the main issues that arise for consideration are as under:

(a) Whether the impugned rules framed by the State of Gujarat as a delegate of Parliament are beyond the powers granted to it under the MMDR Act? In other words, whether the impugned rules are *ultra vires* Sections 15, 15A and 23-C of the MMDR Act?

(b) Whether the impugned rules are violative of Part XIII of the Constitution of India?

35) The appellants have submitted that Section 15 gives such a power. Sub-section (1) of Section 15 empowers the State Government to make rules for 'regulating' the grant of quarry leases, mining leases or other concessions in respect of minor minerals and for the purposes connected therewith. This power of regulation pertains to granting of leases. It is the submission of Mr. Kapur that the expression 'regulating' is of widest amplitude

and would, therefore, confer power to make the rules of the nature made herein. He has referred to various judgments of this Court wherein the expression 'regulating' has been explained. He has also submitted that in any case under Section 15(1A) such a power is there and this provision has to be read independent of Section 15(1).

36) It is difficult to accept the aforesaid contention in view of the judgments of this Court in ***M.P.P. Kavery Chetty*** and ***K.T. Varghese***. In those judgments, it has been categorically held that power of the State Government under Section 15 of the MMDR Act does not include control over minor minerals after they are excavated. Following observations from the said judgment are extracted herein:

> "19. The High Court quashed Rules 8-D and 19-B principally on the ground that Section 15 of the said Act gave no power to the State Government to frame rules to regulate internal or foreign trade in granite after it had been quarried. Section 15 also did not empower the State Government to frame rules to enable a State Government company or corporation to fix a minimum price for granite.
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> 20. Learned counsel for the appellant State submitted that Rules 8-D and 19-B were valid having regard to the Preamble of the said Act and Section 18 thereof. He submitted that the rule-making power of the State under Section 15(*o*) was wide enough to encompass Rules 8-D and 19-B.
>
> 21. The said Act is enacted to provide for the regulation of mines and the development of minerals under the control of the Union. Section 2 of the said Act declares that it is

expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the said Act. Section 13 empowers the Central Government to make rules for regulating the grant of prospecting licences and mineral leases in respect of minerals and for purposes connected therewith. Sub-section (1) of Section 15 empowers the State Government to make rules for regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and for purposes connected therewith. Sub-section (1-A) of Section 15 states that such rules may provide for the matters set out therein, namely, the person by whom and the manner in which an application for a quarry lease, mining lease and the like may be made; the fees to be paid therefor; the time and the form in which the application is to be made; the matters which are to be considered where applications in respect of the same land are received on the same day; the terms and conditions on which leases may be granted or regulated; the procedure in this behalf; the facilities to be afforded to lease-holders; the fixation and collection of rent and other charges and the time within which they are payable; the protection of the rights of third parties; the protection of flora; the manner in which leases may be transferred; the construction, maintenance and use of roads, power transmission lines, etc. on the land; the form of registers to be maintained; reports and statements to be submitted and to whom; and the revision of any order passed by any authority under the said Rules. Clause (*o*) of sub-section (1-A) reads “any other matter which is to be or may be prescribed”. Section 18 of the said Act states that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of the environment by preventing or controlling any pollution which may be caused by prospecting or mining operations.

22. Rules 8-D and 19-B empower the State Government or its officers or a State Government company or corporation as the State Government may direct to control the sale by every permit-holder of quarried granite or other rock suitable for ornamental or decorative purposes. They also empower the State Government or its officers or a State Government company or corporation, as the case may be, to fix the minimum price for the sale thereof. The object, as is shown by the terms of Government Order No. 214 dated

10-6-1992, quoted above, is to conserve and protect granite resources.

23. It is difficult to see how granite resources can be protected by controlling the sale of granite after its excavation and fixing the minimum price thereof.

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 the 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."

37) Likewise, the condition of license granted by the State of Kerala to the effect that it could be sold only within the Sate, that too for domestic and agricultural purposes, was struck down in the following words:

"3. The appellants' complaint is that certain conditions in the form of restrictions have been incorporated while issuing the licences. One of such conditions which the appellants attack is that the minerals permitted to be stocked were to be purchased only from authorised quarrying permit-holders on that behalf. Another condition is that they are permitted to sell the minerals only within the State of Kerala, that too for domestic and agricultural purposes. The appellants' complaint is that as far as cooperative societies are concerned, they are not saddled with any such restrictions imposed in the case of the appellants. Thus, according to the appellants, there is a clear discrimination between the cooperative societies and the individuals in the matter of restrictions imposed in the licences granted to them. Apart from that there is no legal sanction for such restrictions."

38) Argument of Mr. Kapur that ***M.P.P. Kavery Chetty*** did not consider the earlier judgment in ***D.K. Trivedi & Sons*** is misplaced. In this behalf, we entirely agree with the learned Additional Solicitor General that judgment in ***D.K. Trivedi & Sons*** and other judgments cited by Mr. Kapur are clearly distinguishable as the context and the subject matters in those cases were entirely different. It is not necessary to point out the differences in two sets of cases, as we entirely agree with the argument of Ms. Divan in drawing the distinction between the two and pointing out that there is no conflict whatsoever. She is right that the two sets of cases can be read harmoniously.

39) In the cases of ***Amritlal Nathubhai Shah***, ***D.K. Trivedi & Sons*** and ***Hind Stone***, the measures in question had a direct nexus with the grant or the refusal to grant a lease. In the instant appeals, which concern the sale of already excavated minerals that belong to the lessee, a prohibition by the State Government on sale thereof outside the State is not permissible under the MMDR Act. In the case of ***Hind Stone***, this Court succinctly stated the scope and ambit of the MMDR Act, highlighting that the Act is aimed at the 'conservation and the prudent and discriminating exploitation of minerals'. Following passage from

the said judgment shows that as a method of regulation, prohibition is clearly permissible, provided, however, that it has a direct nexus with the conservation, exploitation and excavation of minerals:

> "10...The statue with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of the leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

40) On the other hand, the prohibition on the 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.

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 <u>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</u>

> 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.
>
> (emphasis supplied)"

42) 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.

43) As far as Issue No. (b) above is concerned, we are also of the considered opinion that the impugned rules violate Part XIII of the Constitution as the effect thereof is to fetter the freedom of trade, commerce and intercourse under Article 301 of the Constitution. Under this Article, the expression 'freedom' must be read with the expression 'throughout the territory of India'. Under Article 302, Parliament may impose restrictions on the freedom of trade,

commerce or intercourse between one State and another as may be required in the public interest. The expression 'public interest' may include a regional interest as well. However, Article 302 is qualified by Article 303 which prohibits Parliament and the State Legislatures from making any law that gives preference to one State over another or discriminates between one State and another. Situations of scarcity are to be dealt with by Parliament under Article 302(2). The power of State Legislature to impose reasonable restrictions on the freedom of trade, commerce or intercourse, as may be required in the public interest, requires such a Bill or amendment to be moved in the State Legislature only after receiving previous sanction from the President. The President, being the head of the State and the guardian of the federation, must be satisfied that such a law is indeed required and, thus, acts as a check on the promotion of provincial interests over national interest. Going by the aforesaid scheme of this Chapter, it becomes apparent that when there are such restrictions on a State Legislature, then the State Government could not have imposed such a prohibition under a statute whose object is to regulate mines and mineral development, and not trade and commerce *per se*.

44) That apart, we find force in the submission of the learned Additional Solicitor General that Part XIII of the Constitution is a code on checks and balances on the legislative power intended to achieve the objective of economic integration of the country. This was emphasised in ***Video Electronics Pvt. Ltd. & Anr.*** v. ***State of Punjab & Anr.***[14] wherein this Court held:

> "20. ...In our opinion, Part XIII of the Constitution cannot be read in isolation. It is part and parcel of a single constitutional instrument envisaging a federal scheme and containing general scheme conferring legislative powers in respect of the matters relating to List II of the Seventh Schedule on the States. It also confers plenary powers on States to raise revenue for its purposes and does not require that every legislation of the State must obtain assent of the President. Constitution of India is an organic document. It must be so construed that it lives and adapts itself to the exigencies of the situation, in a growing and evolving society, economically, politically and socially. The meaning of the expressions used there must, therefore, be so interpreted that it attempts to solve the present problem of distribution of power and rights of the different States in the Union of India, and anticipate the future contingencies that might arise in a developing organism. Constitution must be able to comprehend the present at the relevant time and anticipate the future which is natural and necessary corollary for a growing and living organism. That must be part of the constitutional adjudication. Hence, the economic development of States to bring these into equality with all other States and thereby develop the economic unity of India is one of the major commitments or goals of the constitutional aspirations of this land. For working of an orderly society economic equality of all the States is as much vital as economic unity."

14 (1990) 3 SCC 87

Freedom of movement of goods, services and the creation of a common market must be understood contextually and as necessary for creating an economic union.

45) It is also rightly contended by all the respondents that balanced development of the country is an equally vital facet of economic integration. No doubt, Part XIII permits some forms of differentiation, for example, to encourage a backward region or to create a level playing field for parts of the country that may not have reached the desired level of development. In this context, Part XIII envisions a two-fold object: (i) facilitation of a common market through ease of trade, commerce and intercourse by erasing barriers; and (ii) Regulations (or restrictions) which may have the effect of differentiating between States or regions which may be necessary not only in emergent circumstances of scarcity etc. or but even for development of economically backward regions or otherwise justified in the public interest. That Part XIII is not about “freedom” alone but is a code of checks and balances, intended at achieving economic unity and parity. Such a desired objective for economic integration through checks and balances was also articulated in ***Video Electronics Pvt. Ltd.***:

> "36. ...Economic unity is a desired goal, economic equilibrium and prosperity is also the goal. Development on parity is one of the commitments of the Constitution.

> Directive principles enshrined in Articles 38 and 39 must be harmonised with economic unity as well as economic development of developed and under developed areas. In that light on Article 14 of the Constitution, it is necessary that the prohibitions in Article 301 and the scope of Article 304(*a*) and (*b*) should be understood and construed. Constitution is a living organism and the latent meaning of the expressions used can be given effect to only if a particular situation arises. It is not that with changing times the meaning changes but changing times illustrate and illuminate the meaning of the expressions used. The connotation of the expressions used takes its shape and colour in evolving dynamic situations. A backward State or a disturbed State cannot with parity engage in competition with advanced or developed States. Even within a State, there are often backward areas which can be developed only if some special incentives are granted. If the incentives in the form of subsidies or grant are given to any part of (*sic* or) units of a State so that it may come out of its limping or infancy to compete as equals with others, that, in our opinion, does not and cannot contravene the spirit and the letter of Part XIII of the Constitution. However, this is permissible only if there is a valid reason, that is to say, if there are justifiable and rational reasons for differentiation. If there is none, it will amount to hostile discrimination…."

46) In order to justify any 'preference' or 'discrimination' under Article 303, a scarcity of goods would have to be made out. It is a matter of record that the Study Group's report on which reliance is placed by the appellant focuses on the need to restrict the export of sand outside India and not within India. In any case, nothing prevents the appellant from restricting the quantum of sand being excavated. However, once the appellant State permits sand to be excavated, neither can it legally restrict its movement within the territory of India nor is the same

constitutionally permissible. Likewise, there is no restriction on the State importing sand from other states. If it is the case that the demand of any State is not being met, it may purchase sand from other states. In any event, the market will dictate trade in sand inasmuch as it may make no business sense for mining company to transport and sell its sand in a far away destination after incurring large costs on transportation.

47) We, thus, answer both the questions against the appellants.

48) As a result, we do not approve the view of Andhra Pradesh High Court and Madras High Court. Rather, we affirm the impugned judgment of the Gujarat High Court and dismiss these appeals.

.....J.
(A.K. SIKRI)

.....J.
(S. ABDUL NAZEER)

.....J.
(M.R. SHAH)

NEW DELHI;
MARCH 01, 2019