

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.6788 of 2023

1. M/s Aditya Enterprises, proprietorship firm, having Office at 54, Sarmara, Burnpur Road, Nakrashota, Burnpur, Burnpur Road, PO Chotodhinghari, PS Burnpur, Bardhaman (West Bengal), PIN Code 713326, represented through its proprietor namely Swarup Chatterjee, son of Aditya Chatterjee, resident of Nakrasota, Upar Para, Chhotodighari, Asansol, Bardhaman, PO Chotodhinghari, PS Burnpur, Bardhaman (West Bengal).
2. Om Enterprises, Proprietorship Firm, having Office at 34/12N, Shaw Para, Lithuria Road, Radha Nagar, PO PS Sunderchak, Bardhaman (West Bengal), PIN 713360, represented through its proprietor namely Surendar Shaw, son of Manohar Prasad Shaw, Radhanagar Cinema Hall, Bardhaman (West Bengal), Pin Code 713360.
3. Agarwal Enterprise, proprietorship Firm, having Office at Stall No.2/132, Mini Market, PO PS Burnpur, Asansol (West Bengal), PIN 713325, represented through its proprietor Nawal Agarwal son of Bajrang Agarwal, resident of Puranahat, Burman Bakery Road, PO PS Burnpur, Bardhaman, Asansol (West Bengal), Pin Code 713325.

... **Petitioners**

-versus-

1. The State of Jharkhand through its Secretary, Department of Mines and Geology, Government of Jharkhand, Office at Nepal House, Doranda, Ranchi.
2. The Director, Department of Mines and Geology, Nepal House, Doranda, Ranchi.
3. The Deputy Commissioner, Dumka.
4. The District Mining Officer, Dumka.

... **Respondents**

W.P.(C) No.7531 of 2023

1. Sarun Kumar Sah son of Bharat Sah, resident of Kajraili Bazar, PO PS Nathnagar, District Bhagalpur.
2. Lalan Kumar son of Surendra Singh, resident of Gaushala

Road, PO Dudhani, PS Dumka Town, District Dumka.

3. Jayanto Chand son of Durga Das Chand, resident of Behind National High School, PO Dumka, PS Dudhani, District Dumka.

... **Petitioners**

-versus-

1. The State of Jharkhand through the Principal Secretary, Department of Mines and Geology, Government of Jharkhand, Yojana Bhawan, Doranda, Ranchi.
2. The Director, Department of Mines and Geology, Yojana Bhawan, Doranda, Ranchi.
3. The Deputy Commissioner, Dumka.
4. The District Mining Officer, Dumka.

... **Respondents**

**CORAM : SRI ANANDA SEN, J.
SRI SUBHASH CHAND, J.**

For the Petitioners : Mr. Indrajit Sinha, Advocate
Mr. Rahul Kumar, Advocate
Ms. Richa Lal, Advocate

For the Respondents : Mr. Sachin Kumar, AAG II
Ms. Surbhi, AC to AAG II

J U D G M E N T

RESERVED ON 02.07.2024

PRONOUNCED ON 22.07.2024

Per Ananda Sen, J. In this batch of writ petitions filed under Article 226 of the Constitution of India, the petitioners herein have prayed to declare Rule 11(i) read with Rule 11(iv) and Rule 12 of the Jharkhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 as ultra vires the Mines and Minerals (Development and Regulation) Act, 1957 (which is the parent Act) to the extent it provides for seizure of mineral tools, equipments and vehicles. Further a prayer has been made to declare Rule 11(v) of the Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 which provides for confiscation of mineral tools, equipments and vehicles by the Deputy Commissioner of concerned district, as the same, according to the petitioners is ultra vires the Mines and Minerals (Development and Regulation) Act. Further declaration has been sought for from this Court to

the effect that the Deputy Commissioner of any district is not empowered to confiscate minerals, tools, equipment and vehicles under the Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017. Further a prayer has been made to quash the order dated 25.07.2023, whereby exercising powers under Rule 11(v) of the Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017, the Deputy Commissioner, Dumka in Confiscation Case No. 10 of 2022-23 has seized the vehicle of the petitioners bearing Registration No. JH 10CG 4140 along with 800 cft. of 5/8" stone chips [petitioner No.1 in W.P.(C) No. 6788 of 2023]; Vehicle No. JH 10CH 6777 along with 800 cft. 5/8" stone chips [petitioner No.2 in W.P.(C) No. 6788 of 2023]; JH 04X 8461 along with 800 cft. of 5/8" stone chips of [petitioner No.3 in W.P.(C) No. 6788 of 2023]; BR 10GB 8276, JH 15V 7205 and JH 04X 2825 [petitioners in W.P.(C) No. 7531 of 2023].

ARGUMENTS AND SUBMISSIONS OF THE PETITIONERS

2. Learned counsel appearing on behalf of the petitioners submits that the law relating to Mines and Minerals falls within the domain of Union Government as per Entry 54 of List 1 of the VIIth Schedule of the Constitution of India. Central Government is vested with the power to promulgate laws in relation to mines and minerals. Though the State Government has been obligated to frame Rules under the aforesaid Act, but the provisions of the said Rules cannot contravene or transgress any of the provisions of the said Act. Rule making power of the State should be confined within the four corners of the power vested upon the State by the Central legislation and any derogation or deviation should be declared ultra vires. In the instant case, by virtue of the rule making power under Section 23-C of the Mines and Minerals (Development & Regulation) Act, 1957, the State Government is authorized to frame Rules, on amongst others, to regulate illegal mining, transportation and storage. The said Rules, which has been promulgated by the State of Jharkhand provides for confiscation of vehicle, mineral tools and equipments etc., if the same is used for raising and transporting minerals illegally. As per the Rules, confiscating authority is the Deputy Commissioner of each of the districts. As per the counsel for the petitioners, this provision is ultra vires the parent Act, i.e., Mines and Minerals (Development & Regulation) Act as Section 21(4A) of the Mines and Minerals (Development & Regulation) Act empowers a different authority to confiscate the minerals tools and the

vehicles. Since there is a conflict between the parent Act, framed by the Parliament, and the Rules framed by the State, to the extent it is in derogation or is in excess of the parent Act, should be declared ultra vires. It is his contention that once it is held that the Deputy Commissioner has got no authority or power to confiscate, the process of confiscation should also be struck down. As per him, the Deputy Commissioner does not have any power to confiscate the mineral tools, equipments, vehicles etc.

ARGUMENTS AND SUBMISSIONS OF THE RESPONDENTS-STATE

3. Learned counsel appearing on behalf of the State submitted that the parent Act, i.e., Mines and Minerals (Development & Regulation) Act gives power to the State to frame Rules to check illegal mining and transportation of illegally mined mineral. By virtue of the power, which has been granted to the State by Section 23-C of the Mines and Minerals (Development & Regulation) Act, the Jharkhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 has been promulgated. Since the aforesaid Rules has been promulgated under the Mines and Minerals (Development and Regulation) Act, the State has been delegated a power to frame Rules under the Mines and Minerals (Development and Regulation) Act, it cannot be said that the power to confiscate given to the Deputy Commissioner of each district is ultra vires. Learned counsel for the State submits that the power of confiscation under the Act of 1957 is separate and independent of the Rule 11 of the Jharkhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017. Since the provisions of both, the Act and the Rules operate in different fields, there is no repugnancy. As per the State, both powers are different and cannot be equated. It has been further argued that if the seizure is under the provisions of Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, then it will be the Court taking cognizance, who can confiscate the vehicle, tools, ores and minerals, but if the confiscation is under the Jharkhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017, then it will be the Deputy Commissioner of each of the district under Rule 11(v) of the Jharkhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017, thus, there cannot be any confusion on this issue. It is the contention of the State that the Rule 11 is within the four corner of the Mines and Minerals (Development and Regulation) Act and there is no ground to declare them ultra vires.

FINDINGS AND ANALYSIS

(A) THE EXTENT OF POWER UNDER THE CONSTITUTION AND THE ACT

4. Part XI of the Constitution of India deals with relationship between Union and the States. Chapter 1 of the said part deals with legislative relations and provides for distribution of legislative power. Article 245 of the Constitution of India deals with the extent of laws, which have to be framed by the Parliament and by the legislature of the State. Article 245(1) of the Constitution of India provides that subject to the provisions of the Constitution, the Parliament may make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. Article 245(1) reads as under: -

*“245. Extent of laws made by Parliament and by the Legislatures of States. – (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.”*

5. Article 246 of the Constitution of India gives exclusive power to the Parliament to make laws with respect to any of the matters enumerated in List I of the VIIth Schedule of the Constitution. This list is referred to as the “Union List”. Similarly, List II of VIIth Schedule is the State List, which gives power to the State legislature to make laws in respect of subject mentioned therein.

Entry 54 of List I – “Union List” of the VIIth Schedule provides for regulation of Mines and Minerals and its development to the extent, which would be under the control of the Union, as declared by the Parliament by law to be expedient in the public interest. It is necessary to quote Entry 54 of List I of the VIIth Schedule of the Constitution of India: -

“SEVENTH SCHEDULE

(Article 246)

List I – Union List

1. ...

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

Similarly, Entry 23 of the List II also gives power to the State to

regulate mines and minerals and its development, but the said right is subject to the provision of List I with respect to the regulation and development under the control of Union. This clearly suggests that though the State has got some power but the same is subject to entry of List I. Thus, the power under Entry 23 List II (State List) is not an unfettered power rather it is restricted by Entry 54 of List I.

6. By virtue of the aforesaid power, the Parliament promulgated the Mines and Minerals (Development and Regulation) Act, 1957 (Act No.67 of 1957) [Amended in 2015] [hereinafter referred to as “the said Act” or “the parent Act”]. The said Act provides for development and regulation of Mines and Minerals under the control of the Union. Section 2 of the said Act is a declaration to the effect that in the public interest, the Union should take in its control the regulation of mines and development of minerals to the extent hereinafter provided in the Act. It is necessary to quote Section 2 of the said Act, which reads as under: -

“2. Declaration as to expediency of Union Control. – It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided.”

7. By virtue of the said declaration, regulation, control, development of mines and minerals to the extent provided in the said Act vests with the Union of India. Thus, by virtue of the said declaration, it is the Union of India, which gets authority to promulgate law to regulate mines and minerals for its development. By virtue of Section 2 of the said Act, mines and minerals and its control, thus, becomes an occupied field under the Union.

8. The field of legislation, so far as mines and minerals is concerned, is occupied by the Central Government, leaving no scope for the State Legislation to tinker with the same subject to the provisions made for that purpose in the Act itself. This legislature is comprehensive and falls within the exclusive domain of the Union, which cannot be interfered with nor can be encroached upon by the State Legislation. The division of power is defined and it is the Union of India which can only promulgate the law so far as it relates to development, regulation and control over Mines and Minerals.

(B) PROVISIONS OF THE ACT, THE RULES AND THE EXTENT OF DELEGATION

9. On the aforesaid backdrop, the parent Act has been promulgated.

Section 1 to 3 of the said Act is the preliminary chapter, Sections 4 to 9 deals with general restrictions on undertaking, prospecting and mining operations, Sections 10 to 12 deals with the procedure for obtaining Prospecting Licenses or Mining Leases in respect of land in which the minerals vest in the Government. Sections 13 to 16 deals with the rules for regulating the grant of Prospecting Licenses and Mining Leases. Section 17 deals with special powers of Central Government to undertake Prospecting or Mining operations in certain cases. Section 18 deals with development of minerals. Sections 19 to 33 are miscellaneous provisions.

10. For the purpose of deciding these writ petitions, it is the sections under the miscellaneous provisions, which would be of importance. Section 21 of the said Act provides for penalties. As per Section 21 penalties are to be imposed on whoever contravenes the provisions of Section 4(1) or Section 4(1-A) of the said Act. Be it noted that Section 4(1) and Section 4(1-A) of the Act restricts mining operations without authority, i.e., reconnaissance permit, prospecting license, lease, etc. and also prohibits transportation, storage of mineral otherwise prohibited under the Acts and Rules framed hereunder in the Act. Section 4(1) and Section 4(1-A) of the parent Act reads as under:-

4. Prospecting or mining operations to be under license or lease.

– (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting license or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder;

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

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

by the Central Government.

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

(1-A) 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.

12. For violation of the provisions of Section 4(1) or 4(1-A) of the Act, penalties are prescribed under Section 21 of the said Act. Section 21(1) of the said Act provides for punishment for contravention of the provisions contained in Section 4(1) and Section 4(1-A). Section 21(2) provides that any rule made under any provision of this Act may provide for punishment of imprisonment to be extended to 2 years or with fine, which may extend to five lakh or both. For continuing contravention, additional fine of Rs.50,000/- per day has also been prescribed. Section 21(3) provides for conviction of a tress-passer, who trespasses in contravention of Section 4(1) of the Act.

13. The next two provisions, i.e., Section 21(4) and Section 21(4-A) are important for the purposes of these writ petitions. Section 21(4) and Section 21(4A) of the said Act reads as follows: -

21. Penalties. – (1)...

(2) ...

(3) ...

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer of authority specially empowered in this behalf.

(4-A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such Court.”

14. Section 23-C of the Act gives power to the State Government to make rules for preventing illegal mining, transportation and storage of minerals. By virtue of Section 23-C, rule making power has been delegated by the Union to each State to make rules for preventing illegal mining, transportation and storage of mineral. Since by virtue of Section 2 of the Act,

as discussed in detail above in the foregoing paragraphs, the legislation, so far as the mines and minerals is concerned is occupied by the Union of India, unless there is an express delegation in favour of the State, States are denuded of the powers to make any laws / legislation. Thus, any Rules or subordinate legislation made by the State in this field, derive from Section 23-C. Section 23-C of the said Act reads as under: -

23-C. Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals. – (1) The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

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

(a) establishment of check-posts for checking of minerals under transit;

(b) establishment of weigh-bridges to measure the quantity of mineral being transported;

(c) regulation of mineral being transported from the area granted under a prospecting license or a mining lease or a quarrying license or a permit, in whatever name the permission to excavate minerals, has been given;

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

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

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

15. Thus, from perusal of Section 23-C(1) it is clear that the State Government has been delegated with the power to make rules to prevent illegal mining, transportation and storage of minerals. Section 23-C(2) provides for making rules without prejudice to the general provisions, which may also

include establishing of checkposts, weighbridges, maintenance of register etc.

16. In exercise of the powers conferred by Section 23-C(1) and Section 23-C(2) of the said Act, the State of Jharkhand promulgated the Jharkhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017. The said Rules has been framed to stop and prevent illegal mining, transportation and storage of minerals. The said Rules provides for, on amongst others, grant of registration and conditions to be abided by the dealers, fees to be paid etc. Rule 11 of the said Rules provides for search, seizure and confiscation. Rule 11(i) authorizes inspection of records by officials and their jurisdiction to stop, check, search and verify the place, truck and other vehicles carrying minerals or ore from mines or other storage and seize the same as required within their jurisdiction.

Rule 11(ii) provides that the dealers shall allow the competent authority to inspect the place where minerals are stored and also to verify the ore and minerals and take samples or the abstract from the records maintained by them.

Further, Rule 11(iii) provides that the every dealer shall allow competent authority to enter and inspect the premises where the mineral is kept or stored. Further inspection of such documents as desired in writing and furnishing of information as directed in writing shall be obligatory for such dealer.

Rule 11(iv) casts a duty upon the Officer, who is making seizure, to prepare a list of minerals, tools equipment, vehicles or any other article, so seized and deliver a copy thereof signed by him to the person found in possession of such mineral and such Officer should also keep such seized property under proper custody with proper official seal and with detailed information.

17. The important clause and the bone of contention so far as this writ petition is concerned is Rule 11(v), which provides for confiscation of mineral, tool, equipment, vehicle or anything which has been seized and the authority, who can confiscate. It is necessary to quote Rule 11(v), which reads as under:-

“11. Search, Seizure and Confiscation.-(i)...

(ii) ...

(iii) ...

(iv) ...

(v) Any minerals, tool, equipment, vehicle or any thing seized

shall be liable to be confiscated by an order of the court of the Deputy Commissioner of the concerned district and shall be disposed of in accordance with direction of such court.

(C) LAW ON ULTRA VIRES

18. These set of Rules, i.e., Jharkhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 are subordinate legislation. These only supplement the Act and are for implementing the Act. It is well settled principle that there is a presumption in favour of constitutionality or validity of a legislation. The burden to prove its un-constitutionality or invalidity is upon the person, who attacks it. It is he who has to show that the same is invalid. Further, what should be considered by a Court while deciding the validity of a Subordinate legislation is well settled. The entire object and the scheme of the Act have to be considered and also the area over which the power has been delegated under the Act needs to be scrutinized. It is also to be seen whether the subordinate legislation confirms to the parent statute. The Hon'ble Supreme Court in the case of ***State of T.N. versus P. Krishnamurthy*** reported in ***(2006) 4 SCC 517*** has held that where the rule is directly inconsistent with the mandatory provisions of the statute, the task of the Court is simple and easy. It is necessary to quote paragraphs 15 and 16 of the aforesaid judgment of the Hon'ble Supreme Court, which read as under: -

“15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules.”

19. It is now also well settled by the judgments of the Hon'ble Supreme Court that the rule making body must function within the four corners of the rule making power and authority conferred on it by the parent Act. The

rule making power is not an independent power, but the same is derived from the parent Act/statute. Thus, it should function within the boundaries laid down in the main statute itself. The delegated legislation cannot traverse beyond the boundaries so erected by the parent statute. There cannot be any transgression. If there is transgression, the same, to the extent of the transgression, becomes ultra vires the parent Act. There may be several causes how subordinate legislation may transgress one of them being inconsistent with the provisions of the parent Act or travelling beyond the scope of the parent Act. The Hon'ble Supreme Court in the case of **Kerala SEB versus Thomas Joseph** reported in **(2023) 11 SCC 700** at paragraph 71 thereof has held as under: -

“71. Delegated legislation has come to stay as a necessary component of the modern administrative process. Therefore, the question today is not whether there ought to be delegated legislation or not, but that it should operate under proper controls so that it may be ensured that the power given to the Administration is exercised properly; the benefits of the institution may be utilized, but its disadvantages minimized. The doctrine of ultra vires envisages that a rule-making body must function within the purview of the rule-making authority conferred on it by the parent Act. As the body making rules or regulations has no inherent power of its own to make rules, but derives such power only from the statute, it has to necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act. If it does, it is ultra vires and cannot be given any effect. Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act or statute law or the general law; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.”

20. In a very recent judgment rendered by the Hon'ble Supreme Court in the case of **Naresh Chandra Agrawal versus Institute of Chartered Accountants of India and Others** reported in **2024 SCC OnLine SC 114**, the Hon'ble Supreme Court has summarized the issue at paragraph 35 thereof, which reads as under: -

“35. From reference to the precedents discussed above and taking an overall view of the instant matter, we proceed to distil and summarise the following legal principles that may be

relevant in adjudicating cases where subordinate legislation are challenged on the ground of being 'ultra vires' the parent Act:

- (a) The doctrine of ultra vires envisages that a Rule making body must function within the purview of the Rule making authority, conferred on it by the parent Act. As the body making Rules or Regulations has no inherent power of its own to make rules, but derives such power only from the statute, it must necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act.*
- (b) Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.*
- (c) If a rule is challenged as being ultra vires, on the ground that it exceeds the power conferred by the parent Act, the Court must, firstly determine and consider the source of power which is relatable to the rule. Secondly, it must determine the meaning of the subordinate legislation itself and finally, it must decide whether the subordinate legislation is consistent with and within the scope of the power delegated.*
- (d) Delegated rule-making power in statutes generally follows a standardized pattern. A broad section grants authority with phrases like 'to carry out the provisions' or 'to carry out the purposes'. Another sub-section specifies areas for delegation, often using language like 'without prejudice to the generality of the foregoing power'. In determining if the impugned rule is intra vires/ultra vires the scope of delegated power, Courts have applied the 'generality versus enumeration' principle.*
- (e) The "generality versus enumeration" principle lays down that, where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power, and do not in any way restrict the general power. In that sense, even if the impugned rule does not fall within the enumerated heads, that by itself will not determine if the rule is ultra vires/intra vires. It must be further examined if the impugned rule can be upheld by reference to the scope of the general power.*
- (f) The delegated power to legislate by making rules 'for carrying out the purposes of the Act' is a general delegation, without laying down any guidelines as such. When such a power is given, it may be permissible to find out the object of*

the enactment and then see if the rules framed satisfy the Act of having been so framed as to fall within the scope of such general power confirmed.

- (g) However, it must be remembered that such power delegated by an enactment does not enable the authority, by rules/regulations, to extend the scope or general operation of the enactment but is strictly ancillary. It will authorize the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. In that sense, the general power cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.*
- (h) If the rule making power is not expressed as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.*
- (i) If the rule making power is not expressed in such a usual general form but are specifically enumerated, then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.”*

(D) REPUGNANCY

21. Considering the well settled law laid down by the Hon'ble Supreme Court, as taken note of above, it has to be decided as to whether the aforesaid provision of the Jharkhand Mineral (Prevention of Illegal Mining Transportation and Storage) Rules, 2017 is ultra vires the parent Act or not.

22. The grievance of the petitioners is that the Rule 11(v) so far as it relates to giving power to the Court of the Deputy Commissioner of each district to confiscate and dispose of the minerals, tools, equipments, vehicles or anything seized is ultra vires the parent Act, especially Section 21(4-A) of the parent Act.

When we read both the provisions, i.e., Rule 11(v) of the Rules and Section 21(4-A) of the parent Act together, we find that as per the Rules, it is the **Court of the Deputy Commissioner** of the concerned district, which has been bestowed with the power to confiscate the minerals, tools, equipments and vehicles, whereas the parent Act vide Section 21(4-A) provides that any mineral, tools, equipments or anything seized under Section 21(4) shall be liable to be confiscated by an **order of the court competent to take cognizance of the offence under sub section (1) and Section 21 of the Act**. Further the power to dispose of those properties are also vested with the directions of such Court.

Thus, there is a clear difference between the parent Act and the Rules. Be it noted that by virtue of Section 21(6) the offences under sub section (1) of Section 21 is cognizable. As per Section 22 of the Act, cognizance of an offence under this Act or under Rules by a Court can only be taken upon a complaint made by an authorised person. Thus, the cognizance of an offence has to be taken by a Court.

(D)(i) WHAT IS "COURT" UNDER THE ACT

23. The word 'Court' is not defined in the Act though the word "Special Court" has been defined. Section 30-B of the Act provides for constitution of Special Courts by the State Government for the purpose of providing speedy trial of offence for contravention of the provisions of sub-section (1) or sub-section (1A) of Section 4 of the Act, if the State Government so feels necessary. The Special Court shall consist of a Judge, who shall be appointed by the State Government with the concurrence of the High Court and should be a person, who is qualified to become District and Sessions Judge. As per Section 30-C, the said Courts should be guided by the provisions of the Code of Criminal Procedure, 1973 and deemed to be Court of Sessions and will have all the powers of Court of Sessions. Constitution and establishment of these Special Courts are not mandatory as per the Act

24. Thus, where these Special Courts are constituted to try the offence for contravention of Section 4(1) or Section 4(1-A), those Courts are cognizance taking Courts. Where no Court has been constituted in terms of the provisions of the parent Act, the Courts to try the offence would be the Court established under the Code of Criminal Procedure, 1973 (and now after coming into force of the Bharatiya Nagarik Suraksha Sanhita, it would be established by the Bharatiya Nagarik Suraksha Sanhita).

25. The 1st Schedule of the Code of Criminal Procedure, 1973 deals with classification of offence. Part I deals with offence under the Indian Penal Code and the Part II deals with classification of offence against other laws. Part II of the 1st Schedule of the Code of Criminal Procedure, 1973 is quoted hereunder: -

II. CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

<i>Offence</i>	<i>Cognizable or non-cognizable</i>	<i>Bailable or non-bailable</i>	<i>By what Court triable</i>
<i>If punishable with death, imprisonment for life, or imprisonment for more than 7 years</i>	<i>Cognizable.</i>	<i>Non-bailable</i>	<i>Court of Session</i>

<i>If punishable with imprisonment for 3 years, and upwards but not more than 7 years.</i>	<i>Ditto</i>	<i>Ditto</i>	<i>Magistrate of the first class.</i>
<i>If punishable with imprisonment for less than 3 years or with fine only.</i>	<i>Non-cognizable</i>	<i>Bailable</i>	<i>Any Magistrate</i>

So far as offence under the Mines and Minerals (Development and Regulation) Act, 1957 is concerned, by virtue of Section 21(6) of the Act, the offence has been made cognizable and by virtue of the Schedule of the Code of Criminal Procedure the same is triable by a Magistrate of First Class. Thus, when all these provisions are read in conjunction, it is clear that Court which is competent to take cognizance of the offence, under the Mines and Minerals (Development and Regulation) Act, would be Special Court, and where there is no such Special Court constituted, the Judicial Magistrate First Class.

26. Thus, from what has been discussed above and on proper analysis of the Section 21(4A) of the parent Act and Rule 11(v) of the Rules, it is clear that the “Confiscating Authorities” under the Act and the Rules are not the same, rather they are distinct and different. As per the parent Act, it is the “Special Court” or the “Judicial Magistrate” and as per the Rules, it is the “Deputy Commissioner” of each district. There is a clear inconsistency.

(D)(ii) “CONFISCATION” WHETHER SAME OR DIFFERENT UNDER THE ACT AND THE RULES

27. A point has been raised by the counsel for the State that the confiscation proceeding under the parent Act and under the Rules are both separate and both operate in separate fields, thus, when the confiscation is done under the parent Act, the authority would be the Court taking cognizance, whereas if the confiscation is done under the Rules, it will be the Deputy Commissioner of each district. This argument of the learned counsel for the State cannot be accepted and has got no legs to stand. If we see the provisions of the parent Act, we find that Section 21 provides for the penalties. The penalties are for contravention of sub section (1) or sub section (1-A) of Section 4 of the parent Act. Section 4(1) and Section 4(1-A) of the parent Act have already been quoted hereinbefore at paragraph 10. Both these provisions prohibit undertaking of reconnaissance, prospecting or mining operations in any area except under the terms and conditions of the reconnaissance, prospecting or mining lease granted under the Act and also

prohibits transportation, storage of any minerals other than in accordance with the provisions of the parent Act and the Rules made thereunder. As per Section 4(1-A), transportation, storage of minerals has to be in accordance with the provisions of the parent Act and the Rules to be made under the aforesaid Act. By virtue of Rule making power under Section 23-C of the parent Act, the Rules of 2017 has been promulgated, which provides for such seizure and confiscation. Section 23-C(1) and Section 23-C(2)(g), if read in harmony, will lead to the only conclusion that the Rules of 2017 has been promulgated to stop illegal mining, transportation and storage of minerals. The power, thus, flows from Section 23-C of the Act. When the power flows from the parent Act, which provides for seizure and confiscation, the Rules made thereunder and especially Rule 11 providing seizure and confiscation does not derive any independent confiscating power. It has to be read along with Section 21 of the Act, which is the main source of power and authority for seizure and confiscation. Provision in Rule 11 of the Rules is only to supplement Section 21 of the parent Act and to implement the primary legislation, and thus, has to be read along with the said provision of the Act. Rule 11(v) cannot be read independently nor it can have independent parallel field, nor can operate independently. Confiscation for offence can only be under the Act.

CONCLUSION

28. From what has been discussed and held above, we find that there are two authorities prescribed as the Confiscating Authority : one under the parent Act and one under the Rules. As it has been held that the power search, seize and confiscate under the Act and the Rules are not different and rather are the same and the Rules derives power from the parent Act, thus, there is a clear inconsistency in the aforesaid provision. The parent Act does not confer the State to promulgate a Rule and empower a different authority than prescribed under the Act to be the Confiscating Authority. When under the Act the authority to confiscate is specified and is identifiable (as the Court taking cognizance), the Rules giving power to the Deputy Commissioner is nothing but an excessive delegation.

29. Further, this point is strengthened from the fact that as per Section 21(3) of the Act, the provision does not prescribe as to who would be the “authorised authority” or the “authority authorised” to inspect and seize. When

the authority is not specified, it is well within the ambit of delegated legislation to name and prescribe the authorised authority. The same has been done here in the Rules, when the authorised authority has been nominated/named as per Rule 11(i), but so far as the Confiscating Authority is concerned, Act specifies the same to be the Court taking cognizance, thus, the State legislature is denuded of its power to nominate the Deputy Commissioner of each district to be the confiscating authority.

30. Thus, the delegated legislation, i.e., the Rules herein, so far as nominating the Deputy Commissioner of each of the districts as confiscating authority, has travelled beyond the delegation of the parent Act. This legislation, i.e., the Rules, so far as this particular provision is concerned is inconsistent with the provisions of the parent Act and is an excessive delegation. Thus, considering the judgments of the Hon'ble Supreme Court as cited above, on the point of ultra vires, and in view of the principle of occupied field, we are of the opinion that Rule 11(v) of the Rules is ultra vires the Act and cannot stand the test of consistency with the parent Act. Thus, Rule 11(v) of the Rules, so far as it gives power to the Deputy Commissioner of each district to be the Confiscating Authority, is held to be ultra vires the parent Act and the Constitution and is thus, struck down.

31. So far as the prayer to strike down Rule 11(1) of the Rules is concerned, we find that the said Rule only classifies the authorities and their jurisdiction of operation for the purpose of search and seizure. They are not the authorities to confiscate. So far as search and seizure is concerned, in terms of Section 21 of the parent Act, power has been given to an Officer or authority or authorised authority, specially empowered on this behalf, which is evident from Section 21(3) and 21(4) of the parent Act. The parent Act does not specify as to who would be those authority. Since the parent Act does not envisage or specify any particular authority, we hold that there is no inconsistency with the parent Act so far as Rule 11(1) nominating the authorised officer is concerned.

32. Similarly, the authority to seize have also not been prescribed under the Act. Thus, the Officer nominated under Rule 11(1) of the Rules is empowered to search and seize tools, equipments, vehicles, but the confiscation proceeding is to be initiated and concluded by the Court, who is empowered to take cognizance, i.e., the Special Court or the Judicial Magistrate First Class as provided in the parent Act.

33. As we have already declared the Rule 11(v) as ultra vires, any confiscation proceeding by the Deputy Commissioner of any district within the State of Jharkhand under the Rules is illegal and is without any authority of law and is beyond jurisdiction. Similarly, in these cases, initiation of proceeding being Confiscation Case No.10 of 2022-23 for confiscation of Vehicle bearing Registration No. JH 10CG 4140 along with 800 cft. of 5/8” stone chips [petitioner No.1 in W.P.(C) No. 6788 of 2023]; Vehicle No. JH 10CH 6777 along with 800 cft. 5/8” stone chips [petitioner No.2 in W.P.(C) No. 6788 of 2023]; JH 04X 8461 along with 800 cft. of 5/8” stone chips of [petitioner No.3 in W.P.(C) No. 6788 of 2023]; BR 10GB 8276, JH 15V 7205 and JH 04X 2825 [petitioners in W.P.(C) No. 7531 of 2023] is hereby held to be without any authority of law and is accordingly quashed and set aside, with the liberty to proceed for confiscation before the Court having power to take cognizance of the offence.

SUMMARISED CONCLUSION

- i. Jharkhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 is a delegated legislation and cannot travel beyond the power delegated by the parent Act, i.e., the Mines and Minerals (Development & Regulation) Act, 1957.
- ii. The phrase “***court taking cognizance***” is the Special Court constituted in terms of Section 30-B of the Mines and Minerals (Development & Regulation) Act and where there is no such Special Court constituted, it will be the Judicial Magistrate First Class.
- iii. It is only the “court taking cognizance”, who is the “confiscating authority” under the Act and the Rules. The Deputy Commissioner of each District has got no power to initiate and decide a confiscation proceeding, as the same is in conflict with the parent Act, thus, Rule 11(V) is ultra vires to the parent Act.
- iv. “Confiscation” under the Mines and Minerals (Regulation and Development) Act and the Jharkhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 are same and cannot be

differentiated. "Confiscation" prescribed under the Rules cannot be read independently and the Rules does not give any independent power to any authority to confiscate.

- v. Rule 11(1) only nominates and identifies the authority authorised or authority authorized referred under Section 21(3) of the Mines and Minerals (Regulation & Development) Act.
- vi. The authority, to seize the minerals and other materials, tools including vehicles, is the authority prescribed under Rule 11(1) of the Jharkhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017.

34. Both these writ petitions are, accordingly, allowed. Pending interlocutory applications, if any, stand disposed of.

(Ananda Sen, J.)

Per Subhash Chand, J. I agree

(Subhash Chand, J.)

High Court of Jharkhand,
Ranchi, dated the 22nd July, 2024
Kumar/Cp-02

AFR