

State Of Tamil Nadu vs M.P.P. Kavery Chetty on 19 January, 1995

Equivalent citations: 1995 AIR 858, 1995 SCC (2) 402, AIR 1995 SUPREME COURT 858, 1995 (2) SCC 402, 1995 AIR SCW 657, (1995) 1 SCR 441 (SC), (1995) 1 JT 537 (SC)

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Bench: S.P Bharucha, Jagdish Saran Verma, K.S. Paripoornan

PETITIONER:
STATE OF TAMIL NADU

Vs.

RESPONDENT:
M.P.P. KAVERY CHETTY

DATE OF JUDGMENT 19/01/1995

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
VERMA, JAGDISH SARAN (J)
PARIPOORNAN, K.S. (J)

CITATION:
1995 AIR 858 1995 SCC (2) 402
JT 1995 (1) 537 1995 SCALE (1) 297

ACT:

HEADNOTE:

JUDGMENT:

BHARUCELA, J.:

1. Leave granted.

2. In these appeals the State of Tamil Nadu impugns the judgment and order dated 23rd December, 1992 of a Division Bench of the High Court at Madras whereby Rules 8D and 19B of the Tamil Nadu Minor Mineral Concession Rules, 1959, ("the said Rules") made Under the provisions of the Mines & Minerals (Regulation & Development) Act, 1957, ("the said Act") were struck down as unconstitutional. The Government Orders by which these provisions were introduced into the said Rules were also quashed in part. A direction was issued to the appellant State to permit the respondents herein, being the petitioners upon whose writ petitions the judgments and orders were passed, to carry on quarrying operations and transport the material quarried without reference the aforementioned Rules, subject to the payment of royalty and seigniorage.

Rule 194

10. Prior to 10th June, 1992, Rule 19-A read thus:

" 19-A Permission for quarrying black, Pink. red, grey, green and other coloured granites and any other rock required for use for decorative and ornamental purpose in ryotwari lands:-

(1) Notwithstanding anything to the contrary contained in Section III to these rules the authority competent to grant permission for quarrying black, pink, red, grey, green and other coloured granites and other rock required for use for decorative and ornamental purposes in ryotwari lands shall be the State Government. The application shall be in the form specified in Appendix III to these rules:

Provided that the quarrying permission for the minerals above in ryotwari lands shall be granted only to an applicant who is having an existing industry in Tamil Nadu or distinct industrial programme to use the mineral in his proposed industry in Tamil Nadu:

Provided further that the permission holder for quarrying the above mineral shall remove or transport the mineral shall remove or transport the mineral from the specified land after payment of area assessment seigniorage, rates prescribed from time in Appendix II to these rules and after obtaining transport permit fawn the District Collector or the Officer authorised by him in the behalf;

Provided also that the transport permit shall be issued only to the industry for which the mineral is required to be supplied. The lessee shall keep correct accounts showing the quantity and other particulars of all minerals obtained at the factory site and despatched from the factory. The lessee shall also allow any officer authorised by the State Government in this behalf to inspect the industry and verify its records and accounts and furnish such information and returns as may be required by him."

4. On 10th June, 1992, the State Government issued Government Order NO. 214. It stated that under the said Rules as they stood, orders had been issued that leases be granted to industries which had already been established for cutting and polishing granite and to those who gave a definite industrial programme to set up such units within the appellant State a period of two years from the date of receipt of the letter of commitment. The Director of Geology and Mining at Madras had reported to the State Government that illicit mining and transportation was rampant in a number of districts, that the amount obtained as tender bids for granite leases was very meagre and that there was an alarming tendency for monopolies to be created in the granite trade. He had also reported that there was a lot of wastage in the granite cutting and polishing process.

He had suggested that the State Government should take steps for conservation and proper utilisation of the nonrenewable granite potential available in the appellant State with a view to safeguard the interest at large. Granite was a valuable mineral which earned valuable foreign exchange. It was, therefore, necessary that it should be conserved and properly used without waste. Considering all these aspects, the State Government had been examining the question of streamlining the procedure for utilising the valuable granite deposits available in the appellant State, and it had decided that:

"(1) henceforth no lease for quarrying granites on poramboke lands shall be granted to private persons except those who are holding letters of commitment. Fresh leases will be given only to a State Government Company or a Corporation owned or controlled by the State Government;

(2) in respect of quarrying Paradiso, Kashmir, White Kunnam, Paithur, Bavanur, Black, Blue Granite, Raw Silk and Red Granite, the lease in ryotwari lands will be granted preferably to a State Government company or a corporation owned or controlled by the State Government;

(3) the existing condition that the lessee who has been granted permission to quarry granite in ryotwari lands should have an existing industry in Tamil Nadu or distinct Industrial programme to use the mineral in his proposed industry in Tamil Nadu, shall be dispensed with;

(4) all trade relating to granite shall be canalised through the Tamil Nadu Minerals Ltd."

A notification amending the said Rules was appended to the said Government Order and, so far as is material for our purposes, it amended Rule 19A and introduced Rules 8B and 19-A, as amended, read thus:

" 19-A Quarrying lease for quarrying black, pink, red, grey, green, white or other coloured or multi-coloured granites or any other rock required for use for decorative

and ornamental purposes in ryotwari lands, Notwithstanding anything to the contrary contained in section III to these rules the authority competent to grant quarrying lease for quarrying black, pink, red, grey, green, white or other coloured or multi-coloured granites or any other rock required for use for decorative and ornamental purposes in ryotwari lands shall be the State Government. The application shall be in the form specified in Appendix VII to these rules:

The said application shall be accompanied by a mining dues clearance certificate issued by the District Collector concerned in the Form prescribed in Appendix VIII. Receipt of the application made under this rule shall be acknowledged by the District Collector or the Officer authorised by the District Collector in this behalf in the form prescribed in Appendix IX to these rules:

Provided that on and from the 10th June 1992 the State Government in granting quarrying lease for quarrying the following minor minerals in ryotwari lands, shall give preference to a State Government Company or a Corporation or Company owned or controlled by the State Government, namely:-

(a) Paradiso - (Gnessic Rock with
violet colour wavy
pattern)

(b) Kashmir White - (Leptynite White granite with gar net specks)

(c) Kunnam Paithur, Bavanur Black Black granite fine and medium grade with brown back ground

(d) Blue Granite- Chamockite with blue background.

(e) Raw Silk- Leptynite with
background. yellow
(f) Red Granite- Porphyritic granite
and granites with
red background.

Provided further that the quarrying holder for quarrying the above mineral shall remove or transport the mineral from the specified land after payment of area assessment, seigniorage fee or dead rent whichever is higher at the rate; prescribed from time to time in Appendix 11 to these rules and after obtaining transport permit from the District Collector or the Officer authorised by him in this behalf.

Provided also that the lessee shall keep correct accounts showing the quantity of the minerals quarried and shall allow any office authorised by the State Government in this behalf to inspect the quarry and verify its records and accounts and furnish such information and returns as may be

required by him.

5. It was the first proviso in Rule 19A as amended which was under challenge and was struck down by the High Court. By reason thereof, the State Government was obliged to give preference to State Government companies and Corporation in granting quarrying leases for the varieties of granite set out therein.

6. The High Court found that the first proviso in Rule 19A did not contain an guideline in the matter of giving preference to a State Government company or Corporation. The grant of preference was left to the unfettered discretion of the State Government. It was, therefore ultra vires the Constitution

7. Learned counsel for the appellant State drew our attention to the judgment of this Court in *State of Tamil Nadu v. Hind Stone etc.*, (1981) 2 S.C.R. 742. The High Court of Madras had struck down Rule 8C of the said Rules as it then read. Rule 8C stated that on and from 2nd December, 1977, no lease for quarrying black granite would be granted to private persons and that the State Government itself could engage in quarrying black granite or grant leases for quarrying black granite in favour of any State Government Corporation. This Court referred to the declaration made under Section 2 of the said Act, which states that "it is expedient in the public interest that the Union should take under its control the regulation of the mines and the development of minerals" to the extent provided in the said Act. The public interest, this court said, which induced parliament to make this declaration had to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals. Parliament's policy was clearly discernible from the provisions of the said Act. It was the conservation and the prudent and discriminating exploitation of minerals with a view to secure maximum benefit to the community. There were clear sign posts to lead and guide the subordinate legislating authority in the matter of making rules. It could not be said, having regard to the provisions of the said Act, that the rule making authority had exceeded its power in banning leases for quarrying black granite in favour of private parties and in stipulating that the State Government itself could engage in quarrying black granite or grant leases for quarrying black granite in favour of any State Government Corporation. To view such a rule as a rule to benefit the State Government, the subordinate legislating body, was to take too narrow a view of its functions. If in the pursuit of the avowed policy of the Act it was thought that exploitation by the public sector was best and wisest in the case of a particular mineral, the authority competent to make the subordinate legislation could make a rule banning private exploitation of such mineral, which had hitherto been permitted. In the case of scarce mineral the most effective method of conservation and prudent exploitation was to permit exploitation by the State or its agencies and to prohibit exploitation by private agencies. "If", the Court said "you want to conserve in 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."

8. That valid differentia exists between State Government companies and Corporations on the one hand and private miners on the other and that it bears close nexus to the object of the said Act is not in serious dispute. With the object of conserving a rare and precious mineral and ensuring its exploitation in the best possible manner, it is open to the State Government, the rule making

authority in respect of minor minerals under section 15 of the said Act, to keep mining operations in granite of the kind specified in the amended Rule 19-A, so far as is possible, in its own hands, and to do this by giving preference in the grant of quarrying leases for such granite to State Government companies or Corporations.

9. The principal challenge to the first proviso in Rule 19-A was that it was arbitrary in that it conferred no guidelines in the matter of giving preference to State Government companies or Corporations. In this connection attention was invited by learned counsel for the appellant State to Appendix X to the said Rules. Appendix X sets out the form of the application for a quarrying permit to be made in accordance with the provisions of Rule 3. The applicant is required to state, inter alia whether he or it is an individual or a firm or a company. The applicants nationality or place of registration or incorporation is to be set out, as also his or its profession or nature of business. The form requires the applicant to state whether it has filed an affidavit, as required by Rule 3, that no mining dues are outstanding in its name. It is also required to state whether it has previously worked the mineral in the area in which it seeks the permit, the quantity that it seeks to remove and the period during which it will be quarried and transported. It is required to state the purpose for which the mineral is to be used. Such guidelines as are required, it was submitted, are furnished by the form read with rule 3. Quite clearly, preference to a State Government company or Corporation must be given, all things being equal having regard to the various factors in respect of which information is sought by the aforesaid form. These are the guidelines in this behalf

10. It was submitted by learned counsel for the respondents that the Government company or Corporation was free to apply for one piece of land but not another and that the said rule should have provided guidelines for the State Government company or Corporation in this behalf. It is difficult to see how a Government company or Corporation can be bound down by guidelines provided by the said Rules. As commercial undertakings, they would be guided by commercial considerations, and it must be assumed that they would act bona fide.

11. It was submitted that Rule 19A as amended had no nexus to the objects stated in G.O. No. 214 quoted above. This submission is not well founded. The State Government would be better able to control the mining of the granite mentioned in the amended Rule if it was in the hands of a State Government company or Corporation. It was so held in the Hind Stone Case cited above.

12. It was submitted that under Rule 19-A as it stood before 10th June 1992, applicants who qualified to be granted quarrying leases were those who had an existing polishing unit or distinct industrial programme to set up one. Many pri-

vate persons had set up polishing units on the basis of this policy and had applied for quarrying leases. In the meantime, Rule 19A was amended, and these persons had suffered great hardship. The amendment of Rule 19-A to give preference to State Government companies or Corporations was detrimental to such persons. It was arbitrary and, applying also the principle of promissory estoppel, ought to be struck down. Rule 19-A as it read prior to its amendment on 10th June, 1992, has already been quoted. There is no promise or representation therein; the principle of promissory estoppel is, therefore, not attracted: nor can it be said that there is any arbitrariness in the

State Government's decision to alter its policy in regard to the mining of granite having regard to its perception, from time to time, of the need to conserve it.

13. Learned counsel for the respondents submitted that granite was a major as also a minor mineral, depending upon its end use; if it was used for industrial or engineering purposes it was not a building stone and could not be treated as a minor mineral. Under the provisions of Section 15 of the said Act the State Government has power to make rules for regulating the grant of quarry and mining leases only "in respect of minor minerals." The said Rules are, therefore, only in relation to minor minerals. The applicants that we are here concerned with are those who desire to quarry minor minerals. The submission, therefore, has no relevance to the validity of Rule 19A.

14. Learned counsel for the respondents submitted that under the first proviso of Rule 19A the consent of the owner of the land was not made a condition and it was bad in law on that account. The submission does not take note of section 24A of the said Act. Thereunder the holder of a mining lease under the said Act or- rules made under it is empowered to enter the land on which the lease has been granted and carry out mining operations-. He is obliged to compensate the land owner for any loss or damage that his operations may cause. Consent of the occupier is required only when the holder of the lease desires entry into any building or enclosed court or garden.

15. The provisions of section 17A(2) of the said Act were adverted to and it was submitted that they were being circumvented by the first proviso of Rule 19A. Section 17A(2) reads thus:

"The State Government may, with the approval of the Central Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government, company or corporation owned or controlled by it or by the Central Government and where it purposes to do so, it shall, by notification in the official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which areas will be reserved."

Section 17A(2) applies when an area is sought to be reserved by the State Government for undertaking mining operations exclusively through a Government company or corporation. When such area is notified the mineral or minerals in respect of which it is notified must also be stated. Such reservation cannot be made without the approval of the Central Government. The first proviso of Rule 19A does not wholly exclude private parties from obtaining quarrying leases for the minerals specified therein. It states that for such leases preferences shall be given to State Government companies and corporations. Where, therefore, there are, for the same mining lease for the specified minerals, rival applications, all things being equal having regard to the requirements of Rule 3 and the form at Appendix X, a State Government company or corporation is to be preferred. The first proviso to Rule 19A cannot, therefore, be said to circumvent the provisions of section 17(2).

16. The provisions of the amended Rule 19-A have not been attacked on grounds other than those set out above. We find no substance in the attack. We are of the view that the High Court was in error in holding that the first proviso in Rule 19-A was ultra vires the Constitution. Rules 8D and

19B:

17. Rules 8D and 19B were introduced in to the said Rules by Government Order No. 214. dated 10th June, 1992. The two rules are identical, except that Rule 8D is in Section 11 which relates to Government lands which the minerals belong to the Government and Rule 19B is in Section III which relates to ryotwari land in which the minerals belong to. This being so, it is enough to quote Rule 19B. It reads thus:

" 19-B Constitution of black, red, pink, grey, green, white or other coloured or multi-coloured granites or any rock suitable for use as ornamental and decorative stones quarried by the permit holder, etc.-

(1) Notwithstanding anything contained in these rules, on and from the 10th June, 1992 the sale of the quarried black, red, pink, grey, green, white or other Coloured or multi-

coloured granites or any rock suitable for use as ornamental and decorative stone by every permit holder who has been granted permission by the State Government and every person who has been permitted by a competent court having jurisdiction, for quarrying black, red, pink, grey, green, white or other coloured or multi- coloured granites or any rock suitable for use as ornamental and decorative stone, shall be regulated by the State or by an Officer of the State Government or by a State Government company or by a corporation owned or controlled by the State Government as the State Government may direct in this behalf (2) Where the above sale is regulated by-

(i) The State Government or by an Officer of the State Government, the minimum price shall be as fixed by the State Government;

(ii) The State Government-Company or a corporation owned or controlled by the State Government, the minimum price shall be as fixed by the said company or corporation, as the case may be:

Provided that in fixing the minimum price under this sub-rule the fair market price prevailing at the time of the sale shall be taken into account."

18. On the same day that Rule 8D and 19B were introduced, that is, 10th, June, 1992, Government Order No. 216 was also issued. It directed, under the provisions of the two Rules, that the Tamil Nadu Minerals Limited, a State Company, would regulate the sale of quarried black, red, pink, grey, green, white or other coloured or multi-coloured granite or any rock suitable for use as ornamental and decorative stones.

19. The High Court quashed Rules 8D and 19B 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.

20. Learned counsel for the appellant State submitted that Rules 8D and 19B 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 8D and 19B.

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 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 (1A) of section 15 states that such rules may provide for the matters set out herein, 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 therefore; the time and the form in which an application is to be made; the matters which are to be considered where application 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 (1A) 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 8D and 19B empowers the State Government company or corporation as the State Government may direct to control the sale by every permit-holder of quarried granite or other or 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 10th June, 1992, quoted above, is to conserve and protect granite resources.

23. It is difficult to see how granite resource 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 minor mineral is not covered by the terms of clause (o) of sub-section (1A) 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.

25. In our view, therefore, the High Court was clearly right in striking down Rules 8D and 19B as being beyond the purview of the rule making power of the State Government. These Rules having been struck down, the High Court was also right in striking down Government Order No.214 to the extent that it prescribed these Rules and Government Order No.216 made in pursuance of these Rules.

26. In the result, these appeals succeed in part. The judgment and order of the High Court is set aside in so far as it holds that Rule 19A as amended by Government Order No.214 dated 10th June, 1992, is bad in law. The judgment and order of the High Court is affirmed in so far as it holds that Rules 8D and 19B are bad in law. It is affirmed also in so far as it holds that Government Order No. 214 dated 10th June, 1992, in so far as it prescribes Rules 8D and 19, and Government Order No.216 dated 10th June, 1992, are bad in law,

27. There shall be no order as to costs.