THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT PETITION Nos.1809 of 2011; 10512 AND 26340 of 2010 AND 31524 of 2013

COMMON ORDER: *(per the Hon'ble Shri Justice Anil Kumar Jukanti)*

Mr. Karthik Ramana Puttamreddy, learned counsel appears for the petitioners in W.P.No.1809 of 2011 and W.P.No.26340 of 2010 and 31524 of 2013.

Mr. Madas Bharath Chandra, learned counsel appears for Mr. Bodduluri Srinivasa Rao, learned counsel for the petitioner in W.P.No.10512 of 2010.

Mr. Mohd. Imran Khan, learned Additional Advocate General appears for the State of Telangana.

2. These writ petitions are filed praying to grant the following relief:

> "... to issue a Writ of Mandamus or any other appropriate order or direction declaring the amendment of Rule 5 (5) of the Andhra Pradesh Forest Produces Rules, 1970 as amended by G.O.Ms.No.35,

Environment, Forests, Science & Technology Department, dated 06.02.2010, which enhanced the permit fee from Rs.500/- per 100 permits to Rs.10/- per tonne/cmt in respect of major minerals/minor mineral/granite is arbitrary, irrational and unconstitutional, and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case."

3. Brief facts:

Petitioner companies have cement plants at Basanthnagar, Karimnagar District. The raw material required for manufacturing the portland cement is limestone. A mining lease was granted in forest land of Palkurthi, Takkalapalli and Putnoor Reserve Forest, Ramagundam Mandal, which was valid for a period of 20 years and permission was obtained from Government of India till 17.08.2016 for the forest land to be put to non-forest use. Based on Ministry of Environment and Forest proceedings, Government of Andhra Pradesh issued G.O.Ms.No.215, dated 05.08.2006, granting renewal of lease of Acs.890.20 guntas which included forest land of Acs.570.00. The Government of

Andhra Pradesh also requested petitioners to obtain further clearance for a further period of ten years i.e., 18.08.2016 to 17.08.2026 from forest department.

3.1. The petitioner companies pay royalty on the mineral mined to State Government. The authorities under Mines and Minerals (Regulation and Development) Act, (for short, 'the MMRD Act') regulate the mining operations and collection of revenue. Section 2 (g) of Andhra Pradesh Forest Act, 1967 (for short, 'the Act, 1967'), defines the expression 'forest produce'. Under Section 29 of the Act, 1967, State Government is empowered to make rules to regulate the transit and possession of timber and other forest produce. In exercise of such power, the Government made Rules called Andhra Pradesh Forest Produce Transit Rules, 1970 (for short, 'the Rules, 1970').

3.2. As per amended Rule, levy which was on the basis of number of permits changed to levy on the basis of charge per permit per tonne, per cubic metre, per lorry, per Cart of forest

produce. Charge per permit was fixed at Rs.10.00 per tonne/cmt in respect of major minerals/minor mineral/ granite. The petitioners were directed by respondent No.3 to place an indent for Transit Permit in Form-I with fee in terms of G.O.Ms.No.35, dated 06.02.2010 based on quantity of mineral extracted per month. These writ petitions are filed to declare the amendment to Rule 5 (5) of the Rules, 1970 as amended by G.O.Ms.No.35, dated 06.02.2010, enhancing the permit fee from Rs.500.00 for 100 permits to Rs.10.00 per tonne/cmt in respect of major minerals/minor minerals/ granite as arbitrary, irrational and unconstitutional.

4. It is submitted by learned counsel for petitioners that as per Rules, 1970, for supply of Form-I and Form-II permits in triplicate, a rate of Rs.5.00 per 100 permits in triplicate was charged. It is further submitted that the relevant rule stood amended in the year 2001 and levy at rate of Rs.500.00 per 100 permits was being charged. By amendment in the year 2010, for supply of Form-I and Form-II permits in triplicate

charges per permit have been levied on per tonne basis in respect of mineral extracted by the petitioners. It is also submitted that the levy is exorbitant and is a tax in disguise. It is contended that levy is neither in the nature of regulatory fee nor a transit fee, but in fact in the nature of compensatory fee and in effect is confiscatory in nature. It is strenuously contended that for a compensatory fee, there must be an element of *quid pro quo.* It is further contended that a perusal of the Rules, 1970 clearly establishes that levy is compensatory in nature.

4.1. It is urged that as per Section 29 (2) (c) of the Act, 1967, the power to make rules to regulate the transit possession of timber and other forest produce does not contain the terms 'rate' or 'fee' and that even amended Rule 5 (5) of the Rules, 1970 does not has the term 'rate'. It is also submitted that the transit permit is analogous to a waybill issued by the State Commercial Tax Department.

4.2. Our attention has been invited to Rules 5 and 6 of Uttar Pradesh Transit of Timber and Other Forest Produce Rules, 1978 and it is contended that there are distinct rules for levies and Rule 6 uses the phrase 'price to be paid' in respect of passes of compensatory nature and that Rule 5 is regulatory in nature. Our further attention has also been invited to Rules 5 and 6 of the Madhya Pradesh Transit (Forest Produce) Rules, 2000 and it is argued that Rule 6 (3) uses the phrase 'sums to be paid' and that the said Rule is compensatory in nature and Rule 5 uses the phrase 'rates of fee for issue of transit pass' and that Rule 6 is compensatory in nature whereas Rule 5 is regulatory in nature. It is submitted that similar Rules are provided in Orissa Timber and Other Forest Produce Transit Rules, 1980, wherein our attention has been invited to Rule 4 to buttress the same contention. It is further submitted that in the Telangana Rules, there are no distinct levies as seen in Uttar Pradesh and Madhya Pradesh Rules, but there is only one levy which

is compensatory in nature i.e., charges for the cost of permits under Rule 5 (5) of the Rules, 1970.

4.3. It is submitted that petitioners are paying royalty per tonne of limestone and increased permit charges amounts to a major levy in the nature of tax. It is further submitted that the levy is discriminatory in nature and is violative of Article 14 of the Constitution of India. There is no intelligible differentia for prescribing variable charges for various forest produce. Therefore, equals are being treated unequally. In the absence of any data to justify the increase in fee, the levy is *per se* bad.

4.4. It is submitted that the increment proposed by the G.O. is clearly in the nature of tax. The augmentation of revenue commensurate with cost of forest produce is clearly illegal and assumes the colour of tax. It is submitted that *quid pro quo* is a *sine qua non* for levy of compensatory fee.

4.5. Our attention has been invited to The [Telangana] Sandalwood and Red-sanders Wood Transit Rules, 1969 and submitted that Rule 5 (3) of the Rules contemplates for supply of Form-I or Form-II permits in quadruplicate at a rate of Rs.10/- per 100 permits to buttress the contention that the increase is *per se* illegal.

4.6. Learned counsel appearing for the petitioners relied on the judgment of the Supreme Court in the **State of Uttarakhand and Others vs. Kumaon Stone Crusher and Others**[1] to bring the concept of tax. He further relied on the judgment of the Supreme Court in **the Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**[2], for defining the tax and the fee elaborately. **Delhi Race Club Limited vs. Union of India and Others**[3] decision was relied for the proposition that State is not required to prove any *quid pro quo* for levy or increase in fee, but a broad correlation

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[1] (2018) 14 SCC 537
[2] AIR 1954 SC 282
[3] (2012) 8 SCC 680

has to be established between expenses incurred for Regulation of Transit and the fee realized.

4.7. It is submitted by learned counsel appearing on behalf of petitioners in W.P.No.10512 of 2010 that State Government is not justified in enhancing the amounts exorbitantly without there being any empirical data and that there is no correlation between the discharging of functions by department and increase in fee realized. The exorbitant increase is more in the nature of a tax for augmenting the revenue, which is not permissible.

5. It is submitted by learned Additional Advocate General that contention of the petitioners that levy is in the form of tax, is unreasonable and excessive and without any basis. It is further submitted that after 40 long years, there is an increase in the levy of charge, which is almost 10 ps. per kg., (in year 2010) for the material transported which cannot be said to be excessive, exorbitant or prohibitive. The levy, which was earlier Rs.5/- per permit, is nominally increased to

Rs.10/- per tone in respect of major minerals/minor minerals/granite in the year 2010. It is further submitted that there must be a constant watch on the movement of minerals which are mined in the forest area. It is also submitted that conclusion cannot be arrived at in isolation, without considering the object of the Act, 1967 and the Rules, 1970.

5.1 It is submitted that quantifying the forest produce in terms of tonne, cubic metre, per lorry and per cart and thereupon levying per permit is well within the purview of the rule. It is further submitted that increase is necessitated for various reasons and that there should be a watch on the movement of forest produce. It is also submitted that the increase is nominal and is not excessive as canvassed by the petitioners. It is submitted that the permit fee is regulatory in nature to know the quantity of mineral, which is being mined and being transported from the forest land.

5.2 Our attention is invited to paragraph No.2 of the G.O.Ms.No.35, dated 06.02.2010, and submitted that it

becomes imperative for the Government to keep a watch on the mining activity, to assess the quantity of mineral mine, the type of mineral being quarried, the forest officials to carry out a survey and also to keep a watch on the movement of forest produce. It is further submitted that for these reasons and other allied factors, proposed amendment of Rule 5 of the Rules, 1970 was issued in G.O.Ms.No.35, dated 06.02.2010. It is also submitted that viewed from a holistic perspective of the Act, 1967 and the Rules, 1970 and the objective of the impugned G.O., it would be clear that the Rule is not confiscatory in nature and is only regulatory in nature.

5.3 Learned Additional Advocate General placed reliance on the judgment of the Supreme Court in **State of of Tripura and Others vs. Sudhir Ranjan Nath**[4] in support of his contentions. The relevant portion relied is as follows:

> "… Sections 41 and 76 of the Act vest total control over the forest produce in the State Government and empower it to regulate the transit of all timber or other forest produce for which purpose the State Government is also empowered to

[4] (1997) 3 SCC 665

make the Rules. The decision of the High Court invalidating the levy of application fee in the said case on the ground that the State had not established that the services were rendered in lieu of the said fee, was reversed by this Court holding that the fee was regulatory and not compensatory. ..."

5.4 The learned Additional Advocate General further relied upon the judgment in **Corporation of Calcutta and Another vs. Liberty Cinema**[5] and contended that "the expression licence fee does not necessarily mean a fee in lieu of services and in case of regulatory fee no *quid pro quo* need be established" as held in the Apex Court decision. It is further submitted by learned Additional Advocate General that the transit fee under the Rules is regulatory in nature and it was not necessary for the State to establish *quid pro quo.*

6. Heard learned counsels, perused the record and considered the rival submissions.

7. It is not in dispute that the petitioner companies have been paying the said fee. The grievance of the petitioners

[5] (1965) 2 SCR 477

appears to be the increase in the levy under the impugned G.O.Ms.No.35, dated 06.02.2010, issued and the levy is in the nature of compensatory fee and there exists no element of *quid pro quo.*

8. The State Legislature delegated power under Section 29 of the Act, 1967 to make rules to regulate the transit of timber and other forest produces. In exercise of the said rule making power, the Governor of Andhra Pradesh made rules to regulate the movement of forest produce in the State of Andhra Pradesh. The power to levy charges per permit to different classes of forest produce is well within the ambit and enough guidance for such levy is indicated in Section 29 of the Act, 1967 itself. Section 29 of the Act, 1967, is as follows:

> "Section 29: Power to make rules to regulate the transit and possession of timber and other forest produce. The Government may make rules to regulate –
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> (i) the floating of timber in the rivers in the State and the transit of timber and other forest produce by land or water;
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> (ii) the possession of teak wood of such value as may be specified in this behalf, or red sanders wood by any person residing in any village within a

radius of fifteen kilometers of such reserved forest as may be specified in this behalf.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may

(a) specify the routes by which alone timber or other forest produce may be imported, exported or moved into, from or within the State;

(b) prohibit the import or export or moving of such timber or other forest produce without a permit from a forest Officer duly authorised to issue the same, or otherwise that in accordance with the conditions of such permit, or in the case of timber, without a transit mark affixed by such officer.

(c) provide for the issue, production and return of such permit or in the case of timber, for affixing of transit mark and for the payment of the fees therefor;

(d) provide for the stoppage, reporting, examination and marking of timber or other forest produce in transit in respect of which there is reason to believe that any money is payable to the Government on account of the price thereof, or on account of any duty, fee, royalty, or charge due thereon or to which it is desirable for the purpose of this Act to affix a mark;

Rule 3 of the Rules, 1970 is as follows:

> "No forest produce shall be moved into or from or within the State by land or water, unless such produce is accompanied by a permit therefor issued under Rule 5 and produced for check immediately on demand"

Rule 5 of the Rules, 1970 is as follows:

> 5. (1) The Divisional Forest Officer or an Officer or person duly authorised by him in this behalf shall, subject to the provisions of the rules, [issue a permit in Form-I in respect of forest produce to be removed from the forest areas or Government Timber Depots, and in Form-II in all other cases.] The Divisional Forest Officer may refuse to issue such permits, if he has any doubt either of ownership or the existence of forest produce itself and, may withhold the issue of transit permits till it is proved to his satisfaction that the forest produce that exists lawfully belongs to the applicant.
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> (2) The Divisional Forest Officer may satisfy himself about the presence of forest produce to be removed and shall determine the number of permits required, keeping in view the estimated quantity of the forest produce.
> (3) The Divisional Forest Officer may, for the purpose of issue of permits in Form-II for the forest produce to be removed from private lands, ascertain about the rights and titles over the forest produce from such Revenue Officer of the district, as may be specified by the Conservator of Forests.
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> Explanation - A certificate issued by the Revenue Officer or other authorized person in the form prescribed by the concerned Conservator of Forests shall be considered as conclusive evidence of the rights and titles of individuals over the tree growth.
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> (4) The permit authorizing the transport of forest produce in lorries or railway wagons etc., and the like shall be super scribed clearly by the words "Transport by lorry" "Transport by wagon", "Transport by cart" etc., and the like as the case

> may be depending on the mode of conveyance used for transport.
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> (5) For the supply of Form-I and Form-II permits in triplicate a rate of Rs.5.00 per 100 permits in triplicate shall be charged if printed permits are not in stock, the Divisional Forest Officer may permit the person requiring the permits to print the permits and charge at the [rate of Rs.10.00 per 100 permits] or less in triplicate for affixing his seal of authority before allowing the use of such permits."

9. The mandate as indicated in Section 29 of the Act, 1967, is usually different in different State statutes. It is one thing to say that rules in different states serve similar purpose, but quite another thing to say that a rule of one State should be considered and interpreted in the same lines or viewed from the same perspective in another State. The mandate contained in the Section 29 of the Act, 1967 which enables the rule making authority is the foundation on which the rule withstands the assault and challenge. A reasonable latitude is permissible to the rule making authority and an increase in the charges cannot lead to the inference that the same is confiscatory in nature and is a tax in disguise. Such a conclusion would defeat the very purpose and object of levy.

10. Parliament and State Legislature(s), instead of incorporating rules, ordinarily authorize Government to carry out the details of the policy laid down by empowering to frame rules under the statute/act. Once rules are framed, they become part of statute and are governed by same principles of interpretation. Only condition being that rules are to serve the purpose of the Act and not to traverse beyond the scope of the Act under which they are enacted. The State Government enacts rules/regulations keeping in view the prevailing circumstances and also to meet the changing circumstances. Fixing of charges for permits is done by choosing appropriate methods (per tonne, per cubic metre, per lorry etc.) and also by taking into consideration various other factors. Fixing of charges, per permit to different classes of forest produce is based on varied and innumerable factors, which the State Government has to take note of, ordinarily it does so and it has enough freedom to do so.

11. The impugned G.O. classifies the various forest produces and charges per permit and for Form-I permits on the basis of tonne, cubic metre, per lorry and per cart. By way of G.O.Ms.No.35, dated 26.04.2001, sub-rule (5) of Rule 5 of the Rules, 1970 was amended and the same is as follows:

> "(5) For the supply of Form.I and Form.II permits in triplicate a rate of Rs.500.00 (Rupees five hundred) per 100 permits n triplicate shall be charged."

Rule 5 (5) stood amended again in the year 2010 vide G.O.Ms.No.35, dated 06.02.2010. The same was as follows:

> In the said rules for sub-rule (5) of Rule 5, the following was substituted namely: -
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> (5) For the supply of Form-I and Form-II permits in triplicate the following shall be charged per permit:

Form-I permits	Charge per permit
Major Mineral/Minor mineral/Granite	Rs. 10.00/Tonne/Cmt
Timber	Rs.5.00 per Cmt
Fuel Wood	Rs.3 .00 per Cmt
Bamboo & other Forest Produce	Rs. 50.00 per Lorry & Rs.20.00 per Cmt
Form-II Permits from Intermediate Depot to Destination for all Forest Produce	Rs. 20.00 per permit

12. The G.O. charges for Form-II permits for intermediate depot to destination for all Forest Produce @ Rs.20/- per

permit. The petitioners contend that Form-I permits for Major Minerals/Minor Minerals/Granite charging per permit for Rs.10/- per tonne/cmt is arbitrary, irrational and unconstitutional. Petitioners are at peace with respect to other Form-I permits for the rest of the forest produces, i.e., other classes. Their ignorance to the fact that the charges for other forest produces have also been enhanced on par with the class of forest produce for which the petitioners are aggrieved is only misconceived. The submissions of the learned counsels are based on sandy foundations.

13. In **State Of U.P. And Ors. vs Sitapur Packing Wood Suppliers and others**[6], the Apex Court while dealing with a similar issue held as follows:

> "8. The distinction between tax and fee is well settled and need not be restated herein. It is clear from the afore noticed provisions of the Act and the Rules that the transitory fee is regulatory in nature. The question of quid pro quo is necessary when a fee is compensatory. It is well established that for every fee quid pro quo is not necessary. The transit fee being regulatory, it is not necessary to establish the factum of rendering of service. Thus, there is no question of a levy of transit fee being

[6] (2002) 4 SCC 566

invalidated on the ground that quid pro quo has not been established.

9. State of Tripura and Ors. v. Sudhir Ranjan Nath [(1997) 2 SCR 29] almost similar question came up for consideration in relation to State of Tripura. It was held that Sections 41 and 76 of the Act vest total control over the forest produce in the State Government and empower it to regulate the transit of all timber or other forest produce for which purpose the State Government is also empowered to make the Rules. The decision of the High Court invalidating the levy of application fee in the said case on the ground that the State had not established that the services were rendered in lieu of the said fee, was reversed by this Court holding that the fee was regulatory and not compensatory. Reference may be made to the decision in the case of Corporation of Calcutta and Anr. v. Liberty Cinema [(1965) 2 SCR 477] wherein it was held that the expression licence fee does not necessarily mean a fee in lieu of services and in case of regulatory fee no quid pro quo need be established. Following Liberty Cinema's case similar views have been expressed in Secundrabad Hyderabad Hotel Owners' Association and Ors. v. Hyderabad Municipal Corporation, Hyderabad and Anr. [(1999) 1 SCR 143], and P. Kannadasan and Ors. v. State of T.N. and Ors [AIR 1996 C 2560].

10. The transit fee under Rule 5 is clearly regulatory and, thus, it was not necessary for the State to establish quid pro quo. The High Court was in error in holding that transit fee is invalid in absence of quid pro quo. As a consequence the penalty would also be valid. The penalty was held to be invalid by the High Court in view of its conclusion about the invalidity of the transit fee. The penalty, however, cannot be beyond what is permissible in the Act. That aspect, however, is not under challenge in these appeals as the State Government after the impugned judgment of the High Court realizing its mistake amended the Rule so as to bring the provision of penalty in accord with the provisions of the Act.”

14. The Apex Court, while dealing with similar issue in **State of Uttarakhand** (supra), has held as follows:

> "216. When the State is empowered to fix the rate of fee, it has latitude under the statute to adopt a basis, for fixation of rates of fee. It cannot be said that under the statute fee can be charged only to meet the expenses which are incurred for printing or preparation of passes. The High Court has taken a incorrect view of the matter while coming to the conclusion that Notification dated 28.5.2001 is beyond the power of the State under Rule 5 of Rules, 2000. Rule 5 clearly empowers the State to fix the rate of fee and the rate of fee can be fixed on the basis of quantity/ volume of the Forest Produce. We thus are of the view that the High Court committed error in setting aside the Notification dated 28.05.2001. This Court in State of U.P. Vs. Sitapur Packing Wood 183 Supplier (Supra) which judgment has already been noticed by Division Bench of High Court has considered the rules framed by State of U.P. under Section 41 of 1927 Act. Rule 5 of the U.P. Transit of Timber and Other Forest Produce Rules, 1978, provided for payment of transit fee on the forest produce calculated on the rates as mentioned therein. High Court had upheld the competence of the State in providing fee as set out in Rule 5 which was noticed by this Court in paragraph 7 of the judgment, which is to the following effect:
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> > "7. Having found that the constitutional competence in providing fee as set out in Rule 5 is not lacking, the High Court accepted the challenge to the validity of levy on the ground that the fee is not supported by the principle of quid pro quo. It held that no service is provided in lieu of the fee to any person much less to the person from whom the transit fee is charged. In the view of the High Court, reasonable relationship between the levy of the fee and the services rendered had not been established."
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> 217. High Court although upheld the competence of the State to provide fee but held that fee is not supported by principles of quid pro quo. On that ground transit fee was held to be invalid. The view of the High Court was reversed and this Court held that charging of transit fee was valid. Following was held in paragraph 10 and 11:

> "10. The transit fee under Rule 5 is clearly regulatory and, thus, it was not necessary for the State to establish quid pro quo. The High Court was in error in holding the transit fee is invalid in absence of quid pro quo...."

15. Learned counsel for the petitioner companies tried to distinguish rules of different States on the basis of the text used in rules and canvass the proposition that the levy is compensatory fee in nature and that there is no element of *quid pro quo.* We are of the view that indulgence cannot be shown in such flawed submissions in view of the decisions of the Apex Court. This Court cannot lose sight of the fact that the Act empowers the rule making authority by clear guidance. Such guidance is the very foundation for the rule making authority and we do not see that the rule making authority has traversed beyond the guidance as indicated in Section 29 of the Act, 1967. The Apex Court in **State of Uttarakhand** (supra) has held that the rules are regulatory in nature and have been duly enacted under the Act. On an analysis of the Act 1967, Rules 1970, amended rule 5 (as amended by G.O.Ms.No.35, dated 06.02.2010) and the Apex

Court's decision(s), we are of the view that Rule 5(5) as amended is regulatory in nature and does not call for any interference. This Court is of the considered opinion that the contentions advanced are devoid of merits.

16. For the reasons aforesaid, the writ petitions fail and deserve to be dismissed and are accordingly dismissed.

Miscellaneous applications pending, if any, shall stand closed.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

Date: 25.04.2024

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