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GEM GRANITES AND ANR.

v.

STATE OF TAMIL NADU AND ORS.

JANUARY 19, 1995

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[J.S. VERMA, S.P. BHARUCHA AND K.S. PARIPOORNAN, JJ.]

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Mines & Minerals (Regulation & Development) Act, 1957—Section 17A(2)—Tamil Nadu Minor Mineral Concession Rules, 1959—Rule 8-C as amended on 10th June 1992 & Rule 38—Validity of—Reservation of granites and rock for State Government and its companies and corporations—Approval of Central Government not obtained—Rule 8-C as amended hit by provisions of Section 17-A(2)—Rule declared bad in law—Rule 38 must be read as being subject to provisions of Section 17-A(2).

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These writ petitions were filed challenging rule 8-C, as amended by G.O.M. No. 214 issued by the Government of Tamil Nadu on 10th June 1992 and rule 38 of the Tamil Nadu Minor Mineral Concession Rules, 1959, as bad in law. The challenge was based on the provisions of sub-section 2 of Section 17-A of the Mines & Minerals (Regulation & Development) Act, 1957 which was inserted in the statute by Amending Act 37 of 1986. The approval of the Central Government was not obtained to rule 8-C as amended on 10th June, 1992, either before or after that date.

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The respondent State urged that rule 8-C, as amended, did not, in any event, debar the State Government from making a rule that no lease to quarry the said granites and rock would be granted to any person and that the State Government itself could engage in such quarrying. It was then argued that the provisions of rule 8-C, as amended, were not intended to make a reservation of such granites and rock in favour of the State Government or its companies or corporations but to preserve the same and, therefore, the State Government was not obliged to obtain the approval of the Central Government thereto under the provisions of Section 17-A(2).

Disposing of the matter, this Court

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HELD 1.1. Rule 8-C, as amended by G.O.M. No. 214 issued by the Government of Tamil Nadu on 10th June, 1992, is intended to reserve the

quarrying of the said granites and rock for the State Government and for State Government companies and corporations. Insofar as the reservation is for State Government companies and corporations, it is hit by the provisions of Section 17-A(2) of the Mines and Mineral (Regulation and Development) Act, 1957, because, for such reservation, the approval of the Central Government was required and had not been obtained. [480-G]

1.2. Rule 38 of the Tamil Nadu Minor Mineral Concession Rules, 1959, purports to permit the State Government to reserve any area for exploitation by the Government or Central or State Government corporations or companies. The provisions of rule 38, insofar as they relate to the State Government itself, are unexceptionable but, insofar as they relate to Central or State Government companies or corporations, they must be read in conjunction with the provisions of section 17-A(2). In other words, the State Government may, by notification in the Official Gazette, reserve any area for exploitation by Central or State Government companies or corporations only if it has obtained the approval of the Central Government under section 17-A(2) for doing so. [480-H, 481-A-B]

Amritlal Nathubhai Shah and Ors. v. Union Government of India and Anr., [1977] 1 SCR 372, relied on.

CIVIL WRIT JURISDICTION : Writ Petition (C) No. 819 of 1992
Etc.

(Under Article 32 of the Constitution of India.)

A.K. Ganguli, C.S. Vaidyanathan, G.L. Sanghi, V. Ramasubramanian, V. Krishnamurthi, K.R. Choudhury, S.R. Setia, Mrs. A. Mathur and A. Mariarputham for the appearing parties.

The Judgment of the Court was delivered by

BHARUCHA, J. What has been urged in these writ petitions is that rule 8-C, as amended by G.O.M. No. 214 issued by the Government of Tamil Nadu on 10th June, 1992 and rule 38 of the Tamil Nadu Minor Mineral Concession Rules, 1959, are bad in law. The challenge is grounded on the provisions of sub-section 2 of section 17-A of the Mines & Minerals (Regulation & Development) Act, 1957, which was inserted in the statute by Amending Act 37 of 1986.

A Rule 8-C is in Section II of the said Rules, which deals with Government lands in which minerals belong to the Government. The relevant portion of rule 8-C, as amended, reads thus :

B "8-C. Lease of quarries in respect 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 to a State Government Company or Corporation owned or controlled by the State Government - (1)(a) Notwithstanding anything contained in these rules but subject to rule 8-A and clause (b) of this sub-rule, on and from the 10th June 1992, no lease 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 stones shall be granted to any person.

D (b) The State Government themselves may engage in quarrying black, red, pink, grey, green, white or other coloured or multi-coloured granites or any rock suitable for use as ornamental and decorative stones or may grant and renew leases for the above minerals to a State Government Company or a Corporation owned or controlled by the State Government."

E Rule 38 is in Section V, dealing with miscellaneous matters. It reads thus:

F "38. Reservation of area for exploitation in the public sector, etc. - The State Government may, by notification in the Official Gazette, reserve any area for the exploitation by the Government, a Corporation established by any Central, State or Provincial Act or a Government Company within the meaning of section 617 of the Companies Act, 1956 (Central Act I of 1956)."

Section 17-A of the Act reads thus :

G "17-A. Reservation of area for purposes of conservation - (1) The Central Government, with a view to conserving any mineral and after consultation with the State Government, may reserve any area not already held under any prospecting licence or mining lease and, were it proposes 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 such area will be reserved.

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(2) 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 proposes 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 such areas will be reserved.

(3) Where in exercise of the powers conferred by sub-section (2) the State Government undertakes prospecting or mining operations in any area in which the minerals vest in a private person, it shall be liable to pay prospecting fee, royalty, surface rent or dead rent, as the case may be, from time to time at the same rate at which it would have been payable under this Act if such prospecting or mining operations had been undertaken by a private person under prospecting licence or mining lease."

It is an admitted position that the approval of the Central Government was not obtained to rule 8-C as amended on 10th June, 1992, either before or after that date.

Section 17A(2) empowers the State Government to reserve any area not already held under a mining lease for undertaking mining operations through a Government company or corporation owned or controlled by it or by the Central Government, but it may do so only with the approval of the Central Government. When it proposes to do so it must, by notification in the Official Gazette, specify the boundaries of that area and the mineral or minerals in respect of which that area is to be reserved. Rule 8- C, as amended on 10th June 1992, states that no lease for quarrying the granites therein specified and any rock suitable for use for ornamental or decorative stones shall be granted to any person. It also states that the State Government itself may engage in quarrying such granites or rock or may grant or renew leases to quarry the same to a State Government company or corporation.

This Court in *Amritlal Nathubhai Shah & Ors. v. Union Government of India and Anr.*, [1977] 1 S.C.R. 372, considered the provisions of section 17 of the said Act. It was argued on behalf of the appellants that they were only provisions for specifying the boundaries of the reserved areas and, as

A they related to prospecting or mining operations to be undertaken by the Central Government, they showed that the said Act did not contemplate or provide for reservation by any other authority or for any other purpose. The argument was repelled by this Court in these words :

B "The argument is however untenable because the aforesaid sub-sections of section 17 do not cover the entire field of the authority of refusing to grant a prospecting licence or a mining lease to any one else, and do not deal with the State Government's authority to reserve any area for itself. As has been stated, *the authority to order reservation flows from the fact that the State is the owner of the mines and the minerals within its territory, which vest in it.*" (Emphasis supplied).

D Mr. Sanghi, learned counsel for the respondent State, was, therefore, justified in asserting that rule 8-C, as amended, did not, in any event, debar the State Government from making a rule that no lease to quarry the said granites and rock would be granted to any person and that the State Government itself could engage in such quarrying. As the owner of the said granites and rock, the State Government may decline to give to anyone a lease to quarry the same and engage in such quarrying operations itself.

E The real question is whether the State Government is entitled to go further and state that it would be free to grant or renew leases to quarry the said granites and rock to a State Government company or corporation. Mr. Sanghi argued that the provisions of rule 8-C, as amended, were not intended to make a reservation of such granites and rock in favour of the State Government or its companies or corporations but to preserve the same and, therefore, the State Government was not obliged to obtain the approval of the Central Government thereto under the provisions of Section 17-A(2). We cannot agree. Clearly, rule 8-C, as amended, is intended to reserve the quarrying of the said granites and rock for the State Government and for State Government companies and corporations. Insofar as the reservation is for State Government companies and corporations, it is hit by the provisions of Section 17-A(2) because, for such reservation, the approval of the Central Government is required and has not been obtained.

H Rule 38 purports to permit the State Government to reserve any area for exploitation by the Government or Central or State Government corporations or companies. The provisions of rule 38, insofar as they relate to

the State Government itself, are unexceptionable but, insofar as they relate to Central or State Government companies or corporations, they must be read in conjunction with the provisions of section 17-A(2). In order words, the State Government may, by notification in the Official Gazette, reserve any area for exploitation by Central or State Government companies or corporations only if it has obtained the approval of the Central Government under section 17-A(2) for doing so.

The writ petitions are partly allowed in that rule 8-C, as amended by G.O.M. No. 214 dated 10th June, 1992, is declared to be bad in law and is struck down in so far as it permits the State Government to grant or renew leases in favour of State Government companies and corporations to quarry the granites and rock therein mentioned and that rule 38 must be read as being subject to the provisions of Section 17-A(2).

There shall be no order as to costs.

A.G.

Petitions disposed of.