



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು
ವಿಶೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

ಭಾಗ - IV-A	ಬೆಂಗಳೂರು, ಮಂಗಳವಾರ, ಜನವರಿ ೨೧, ೨೦೧೪ (ಮಾಘ ೧, ಶಕ ವರ್ಷ ೧೯೩೫)	ನಂ. ೪೩
Part - IV-A	Bangalore, Tuesday, January 21, 2014 (Magha 1, Shaka Varsha 1935)	No. 43

COMMERCE AND INDUSTRIES SECRETARIAT

NOTIFICATION

NO: CI 21 MMN (2) 2014, Bangalore, Dated: 21.01.2014

In exercise of the powers conferred by sub-section (3) and (4) of section 21 and section 22 of Mines and Mineral (Regulation and Development) Act, 1957 (central Act 67 of 1957) and sub-rule (3) of rule 43 and rule 46 of Karnataka Minor Mineral Concession Rules, 1994 and in modification of Notification No.CII 186/96/19839 dated: 4.2.1993, the Government of Karnataka do hereby authorise the officers/authorities specified in column (2) of the table below in respect of the area specified in the corresponding entries in column (3) thereof, for the purpose of the said sub-section (3) and (4) of section 21 and section 22 of the Act and sub-rule (3) rule 43 and rule 46 of the Karnataka Minor Mineral Concession Rules, 1994.

TABLE

Sl. No	Designation of Officers/ Authorities	Jurisdiction	Department
(1)	(2)	(3)	(4)
1	The Additional Director (mineral administration)	Whole of the State	Department of Mines and Geology
2	The Joint Director, South/North zones	Within their jurisdiction	Department of Mines and Geology
3	Deputy Director (mineral administration)	Whole of the State	Department of Mines and Geology
4	The Deputy Commissioner	Respective districts	Revenue Department
5	The Superintendent of Police/Police commissioner	Within their jurisdiction	Police Department
6	The Deputy Conservator of Forest	Respective jurisdiction	Forest Department
7	The Deputy Superintendent of Police	Respective sub-division	Police Department

Sl. No	Designation of Officers/ Authorities	Jurisdiction	Department
(1)	(2)	(3)	(4)
8	Deputy Director/Senior Geologist	Within their jurisdiction	Department of Mines and Geology
9	The Asst. Commissioner	Respective sub-division	Revenue Department
10	Geologists	Within their jurisdiction	Department of Mines and Geology
11	The Tahsildhar	Respective Taluk	Revenue Department
12	The Circle Inspector /Inspector of police	Within their jurisdiction	Police Department
13	Sub-Inspector of police	Within their jurisdiction	Police Department
14	The Revenue Inspector	Respective Hoblies	Revenue Department
15	The Range Forest Officers	Respective Range	Forest Department

By order and in the name of the Governor of Karnataka.

P.S. KANTHAJ
Deputy Secretary to Government
Commerce and Industries Department

as precise information as possible with regard to any mineral available in or under any land in relation to which any prospecting licence or mining lease has been granted, whether by the State Government or by any other person, the Central Government may authorise the Geological Survey of India, or such other authority or agency as it may specify in this behalf, to carry out such detailed investigations for the purpose of obtaining such information as may be necessary.

Provided that in the cases of prospecting licences or mining leases granted by a State Government, no such authorisation shall be made except after consultation with the State Government.

(2) On the issue of any authorisation under sub-section (1), it shall be lawful for the Geological Survey of India or the specified authority or agency, and its servants and workmen:—

- (a) to enter upon such land;
- (b) to dig or bore into the subsoil;
- (c) to do all other acts necessary to determine the extent of any mineral available in or under such land;
- (d) to set out boundaries of the land in which any mineral is expected to be found;
- (e) to mark such boundaries and line by placing marks;
- (f) where otherwise the survey cannot be completed on the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle.

Provided that no such authority or agency shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of its intention to do so.

(3) Whenever any action of the nature specified in sub-section (2) is to be taken, the Central Government shall, before or at the time when such action is taken, pay or tender payment for all necessary damage which is likely to be caused, and in case of dispute as to the sufficiency of the amount so paid or tendered, or as to the person to whom it should be paid or tendered, the Central Government shall refer the dispute to the principal Civil Court of original jurisdiction having jurisdiction over the land in question.

(4) The fact that there exists any such dispute as is referred to in sub-section (3) shall not be a bar to the taking of any action under sub-section (2).

(5) After the completion of the investigation, the Geological Survey of India or the specified authority or agency by which the investigation was made shall submit to the Central Government a detailed report indicating therein the extent and nature of any mineral which lies deposited in or under the land.

(6) The costs of the investigation made under this section shall be borne by the Central Government:

Provided that where the State Government or other person to whom the prospecting licence or mining lease is vested or the holder of any prospecting licence or mining lease applies to the Central Government to furnish to it or him a copy of the report submitted under sub-section (5), that State Government or other person or the holder of a prospecting licence or mining lease, as the case may be, shall bear such reasonable part of the costs of investigation as the Central Government may specify in this behalf and shall, on payment of such part of the costs of investigation, be entitled to receive from the Central Government a true copy of the report submitted to it under sub-section (5).]

Miscellaneous

19. **Prospecting licences and mining leases to be void if in contravention of Act.**—Any ¹[reconnaissance permit, prospecting licence or mining lease] granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect.

Explanation.—Where a person has acquired more than one ²[reconnaissance permit, prospecting licence or mining lease] ³[x x x x x] and the aggregate area covered by such ⁴[permits, licences or leases], as the case may be, exceeds the maximum area permissible under Section 6, only that ⁵[reconnaissance permit, prospecting licence or mining lease] the acquisition of which has resulted in such maximum area being exceeded shall be deemed to be void.

20. **Act and rules to apply to all renewals of prospecting licences and mining leases.**—The provisions of this Act and the rules made thereunder shall apply in relation to the renewal after the commencement of this Act of any prospecting licence or mining lease granted before such commencement as they apply in relation to the renewal of a prospecting licence or mining lease granted after such commencement.

21. **Penalties.**—⁶(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1-A) of Section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both.]

1. Substituted for the words "prospecting licence or mining lease" by Act No. 38 of 1999
2. Substituted for the words "prospecting licence or mining lease" by Act No. 38 of 1999
3. The words "in any State" omitted by Act No. 25 of 1994 and shall be deemed to have come into force w.e.f. 25-1-1994
4. Substituted for the words "licences or leases" by Act No. 38 of 1999
5. Substituted for the words "prospecting licence or mining lease" by Act No. 38 of 1999
6. Sub-section (1) substituted by Act No. 38 of 1999

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable [with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees] or with both, and in the case of a continuing contravention, with an additional fine which may extend to [five hundred rupees] for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of Section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(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 or 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.]

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.]

(6) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.]

CASE LAW

Section 21 — Interpretation of Statutes — Use of marginal notes appended to section of Act as internal aid to construction of section — Permissibility — Where language used in body of section is clear and spells out its own meaning, marginal notes appended to section cannot be referred to for controlling that meaning.

R.C. Lahoti, Ashok Bhan and B.P. Singh, JJ., Held: The demand by the State of Karnataka of the price of the mineral cannot be said to be levy of penalty or a penal action. The marginal note of the section — 'Penalties', creates a

1. Substituted for the words "with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees" by Act No. 37 of 1986, w.e.f. 10-2-1987
2. Substituted for the words "one thousand rupees" by Act No. 37 of 1986, w.e.f. 10-2-1987
3. Sub-sections (3) to (5) inserted by Act No. 56 of 1972
4. Sub-sections (4) and (4-A) substituted for sub-section (4) by Act No. 38 of 1989
5. Sub-section (6) inserted by Act No. 37 of 1986, w.e.f. 10-2-1987

wrong impression. A reading of Section 21 shows that it deals with variety of situations. . . . The marginal note appended to a section cannot be used for construing the section. There is no justification for restricting the section by the marginal note nor does the marginal note control the meaning of the body of the section if the language employed therein is clear and spells out its own meaning. — *Karnataka Rare Earth and An. v. Senior Geologist, Department of Mines and Geology and Another*, 2005(1) Kar. L.J. 1681 (SC) : 2004 AIR SCW 476 : AIR 2004 SC 2915.

Section 21(5) — Penalty — What does not amount to — Interim stay or order cancelling quarry lease pending disposal of lessee's appeal against cancellation — Dismissal of appeal with consequent vacation of order staying cancellation — Recovery of price of minerals raised and disposed of by lessee during period of stay of order cancelling his lease, does not amount to imposition of penalty, but is intended to compensate State for loss of minerals caused by person who was held not entitled in law to raise same.

R.C. Lahoti, Ashok Bhan and B.P. Singh, JJ., Held: Sub-section (5) empowers the State Government to recover rent, royalty or tax from the person who has raised the mineral from any land without any lawful authority and also empowers the State Government to recover the price thereof where such mineral has already been disposed of inasmuch as the same would not be available for seizure and confiscation. The provision as to recovery of price is in the nature of recovering the compensation and not penalty so also the power of the State Government to recover rent, royalty or tax in respect of any mineral raised without any lawful authority can also not be called a penal action. The underlying principle of sub-section (5) is that a person acting without any lawful authority must not find himself placed in a position more advantageous than a person raising minerals with lawful authority. . . . By the interim orders passed by this Court the appellants were allowed during the pendency of the earlier appeals to operate under the mining leases, whether freshly granted or renewed and to effectuate the interim orders the authorities were also directed to issue transport permits. Admittedly, the transport permits were obtained by the appellants after the dismissal of their appeals. The appellants claim that both the parties were ignorant of the dismissal of the appeals when the transport permits were issued and the granite blocks were exported. . . . Whether they had the knowledge of the judgment or not and whether the transport permits were obtained by the appellants before the dismissal of the appeals during which the interim orders were in operation or after the dismissal of the appeals when the interim orders had ceased to operate would not make any difference. For the purposes of the law it is enough that the appellants have enjoyed the benefit under the interim orders of the Court which have stood vacated with the dismissal of their appeals. . . . But for the interim orders passed by this Court, there is no difference between the appellants and any person raising without any lawful authority, any mineral from any land, and the applicability of sub-section (5) of Section 21. The appellants cannot be allowed to retain the benefit carried by them under the interim orders of the Court. All that the State Government is demanding from the appellants is the price of the minor minerals. Rent, royalty or tax has already been levied by the State Government and therefore there is no

demand under that Head. No penal proceedings, much less any criminal proceedings, have been initiated against the appellants. It is absolutely incorrect to contend that the appellants are being asked to pay any penalty or are being subjected to any penal action. It is not the case of the appellants that they are being asked to pay a price more than what they have realised from the exports or that the price appointed by the respondent-State is in any manner arbitrary or unreasonable. . . . There is no element of penalty involved and the recovery of price is not a penal action. It is just compensatory. — *Karnataka Rare Earth and Another v Senior Geologist, Department of Mines and Geology and Another*, 2005(1) Kar. L.J. 168A (SC) : 2004 AIR SCW 476 : AIR 2004 SC 2915.

22. Cognizance of offences.—No Court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

23. Offences by companies.—(1) If the person committing an offence under this Act or any rules made thereunder is a company, every person who at the time the offence was committed was in-charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section.—

- (a) "Company" means any body corporate and includes a firm or other association of individuals;
- (b) "Director" in relation to a firm means a partner in the firm.

123-A. Compounding of offences.—(1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under Section 22 to make a complaint to the Court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify.

Provided that in the case of an offence punishable with fine, such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith.]

123-B. Power to search.—If any Gazetted Officer of the Central or a State Government authorised by the Central Government¹ for a State Government, as the case may be, in this behalf by general or special order has reason to believe that any mineral has been raised in contravention of the provisions of this Act or the rules made thereunder or any document or thing in relation to such mineral is secreted in any place³ [or vehicle], he may search for such mineral, document or thing and the provisions of Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to every such search.]

123-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 weighbridges to measure the quantity of mineral being transported;
- (c) regulation of mineral being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;
- (d) inspection, checking and search of minerals at the place of excavation or storage or during transit;
- (e) maintenance of registers and forms for the purposes of these rules;

(3) 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

¹ Section 23-B inserted by Act No. 25 of 1994 and shall be deemed to have come into force as if it had been so inserted.
² Section 23-B inserted by Act No. 38 of 1999 and shall be deemed to have come into force as if it had been so inserted.
³ Section 23-C inserted by Act No. 38 of 1999 and shall be deemed to have come into force as if it had been so inserted.

of quarrying granite or mining activity is undoubtedly a diversion from an agricultural activity. . . . A land classified for agricultural use in the revenue records under the provisions of the Act if is sought to be used by a person for mining operations and if such a person has applied for issue of a mineral dispatch permit under the provisions of Rule 42 of the Karnataka Minor Mineral Concession Rules, 1994 and the authority to issue the permit at the instance of the Deputy Commissioner functioning under the provisions of the Act enquires such a person as to whether the person had obtained permission for diversion of the user of the land to a non-agricultural purpose like the mining operation and insists that if the person has not already obtained the same, issue of mineral dispatch permit will be deferred pending obtaining such a permission, then there is nothing wrong either in the action of the authority functioning under the MMDR Act and Mineral Concession Rules, 1969 in deferring the issue of mineral dispatch permit nor anything wrong in the communication by the Deputy Commissioner to such authority apprising him to insist on the obtaining of permission by such person. — *Chikkusappa v State of Karnataka and Others*, 2006(3) Kar. L.J. 64A.

CHAPTER VII

Controlling of Unauthorised Transportation of Minor Minerals, Checking of Minerals in Transit and Unauthorised Quarrying Offences

43. **Checkposts and checking of minerals in transit.**—(1) The State Government may, by notification, direct the establishment of checkpost or erection of barriers or both at such place or places as it thinks fit with a view to prevent or check unauthorised transportation of minor minerals and evasion of royalty or commission of any other offence in respect of minor minerals:

Provided that till such checkposts are established or barriers are erected in any place or places, the State Government may, notify the checkposts already established or barriers erected in such place or places under the Karnataka Sales Tax Act, 1957 or the Karnataka Forest Rules 1964 to be the checkposts or barriers for the purposes of these rules also.

(2) Every driver or person in-charge of a vehicle carrying minor mineral shall be in possession of a valid permit and waybill, sale or delivery note and Form-39 issued by Commercial Taxes Department containing necessary particulars in respect of such minerals and shall produce the same before any authorised officer in-charge of a checkpost or barrier.

(3) Any officer authorised by the State Government in this behalf (hereinafter referred to as authorised officer) may check a vehicle carrying minor mineral at any place, and the owner or person in-charge of the vehicle shall produce the permit and other documents such as waybill etc. as demanded by the authorised officer.

46. Power of entry, inspection etc.—(1) Any officer empowered by the State Government by notification in this behalf (hereinafter, in this rule referred to as empowered officer) may, for the purpose of these rules require any quarry operator, lessee, licensee, dealer in minor minerals, owner or manager of granite cutting and polishing units, transporter of minor mineral, clearing and forwarding agents for granite and other specified minor minerals, to produce before him the accounts, registers and other documents and to furnish any other information relating to quarrying operation or business or trade in minor minerals.

(2) All accounts registers and other documents pertaining to the business of a dealer, lessee, licensee, the minerals in his possession or in the possession of his agent including clearing and forwarding agents or broker and their offices, godown, cutting and polishing units, factory, vehicle or any other place where the business is done or accounts are kept shall be open for entry and inspection and examination at all reasonable times by the empowered officers.

(3) If the empowered officer has reason to suspect that any dealer, lessee or licensee is attempting to evade payment of royalty or other dues under these rules, he may, for reasons to be recorded in writing, seize such mineral, accounts registers or other documents of the dealer, lessee or licensee as he may consider necessary and shall give receipt to the dealer, lessee, licensee or any other person from whose custody such mineral, accounts registers, documents are seized. The accounts registers and documents so seized shall be retained by such officer only for their examination or for any enquiry or proceedings under these rules or for prosecution:

Provided that the mineral, accounts registers and documents so seized shall not be retained by such officer beyond a period of thirty days from the date of seizure without the written order of the Director for reasons to be recorded in writing:

Provided further that before returning the minerals, accounts registers and documents, the empowered officer may require that the dealer, lessee or licensee shall give a written undertaking that the minerals, accounts registers and documents shall be presented whenever required by the empowered officer for proceedings under these rules and that such undertaking shall be supported by a security in such form as may be specified for a total sum calculated at the rate of five times the royalty prevailing as per Schedule 2 for the possession or utilisation of minerals not accounted for.

(4) The empowered officer may, after giving the dealer/ lessee/licensee an opportunity of being heard and holding such further enquiry as he may consider fit, realise from him, the cost of the mineral for the possession or utilisation of mineral not accounted for.