

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 08/11/2019****Judgment Delivered on : 06/12/2019****Writ Appeal No. 408 of 2019***{Arising out of Order dated 27.08.2018 passed in Writ Petition (C) No. 2240 of 2018 by the learned Single Judge}*

M/s BSCPL INFRASTRUCTURE LTD, through Power of Attorney Holder Shri M. Nageshwara Rao, aged about 46 Years, S/o Shri M. Jayarammaiah Registered Office M. No. 8-2/502/1/A, Jivi Tower, Road No.7, Banjara Hills, Hyderabad, Telengana Present Corporate Office Village Ghodari, Tahsil and District Mahasamund, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, through Secretary, Department of Mineral Resources, Mahanadi Bhavan, Naya Raipur, Chhattisgarh.
2. Director Directorate of Geology & Mining, Indravati Bhawan, Naya Raipur, Chhattisgarh
3. Collector, District Mahasamund, Chhattisgarh.

---- Respondents**WA No. 395 of 2019***{Arising out of Order dated 05.09.2018 passed in Writ Petition (C) No. 2254 of 2018 by the learned Single Judge}*

M/s BSCPL INFRASTRUCTURE LTD., through Power of Attorney Holder Shri M. Nageshwara Rao aged about 45 Years S/o Shri M. Jayarammaiah Registered Office M. No. 8 - 2/502/1/ A, Jivi Tower, Road No. 7, Banjara Hills, Hyderabad, Telengana Present Corporate Office Village - Ghodari, Tehsil and District - Mahasamund Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Department of Mineral Resources, Mahanadi Bhavan, Naya Raipur, Chhattisgarh.
2. Director Directorate of Geology and Mining, Indravati Bhawan, Naya Raipur, Chhattisgarh.
3. Collector, District - Mahasamund, Chhattisgarh

---- Respondents

WA No. 403 of 2019

{Arising out of Order dated 27.08.2018 passed in Writ Petition (C) No. 2365 of 2018 by the learned Single Judge}

- M/s BSCPL INFRASTRUCTURE LTD Through Power of Attorney Holder Shri M. Nageshwara Rao Aged About 45 Years S/o Shri M. Jayarammaiah Registered Office M. No. 8-2/502/1A, Jivi Tower, Road No. 7, Banjara Hills, Hyderabad, Telengana Present Corporate Office Village Ghodari, Tehsil and District- Mahasamund, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Mineral Resources, Mahanadi Bhavan, Naya Raipur, Chhattisgarh.
2. Director Directorate of Geology and Mining, Indravati Bhawan, Naya Raipur, Chhattisgarh.
3. Collector District- Mahasamund, Chhattisgarh

---- Respondents

WA No. 404 of 2019

{Arising out of Order dated 27.08.2018 passed in Writ Petition (C) No. 2250 of 2018 by the learned Single Judge}

- M/s BSCPL INFRASTRUCTURE LTD., Through Power of Attorney Holder Shri M. Nageshwara Rao Aged About 46 Years S/o Shri M. Jayarammaiah Registered Office M. No. 8 -2 / 502/1/A, Jivi Tower, Road No. 7, Banjara Hills, Hyderabad, Telengana Present Corporate Office Village - Ghodari, Tehsil and District - Mahasamund, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Mineral Resources, Mahanadi Bhavan, Naya Raipur, Chhattisgarh.
2. Director Directorate of Geology and Mining, Indravati Bhawan, Naya Raipur, Chhattisgarh.
3. Collector, District - Mahasamund, Chhattisgarh.

---- Respondents

WA No. 405 of 2019

{Arising out of Order dated 27.08.2018 passed in Writ Petition (C) No. 2252 of 2018 by the learned Single Judge}

- M/s BSCPL INFRASTRUCTURE LIMITED, Through Power of Attorney Holder, Shri M. Nageshwara Rao Aged About 46 Years, R/o - Shri M. Jayarammaiah, Registered Office M.No. 8-2/502/1/A, Jivi Tower, Road No. 7, Banjara Hills, Hyderabad, Telengana,

Present Corporate Office Village Ghodari, Tehsil And District Mahasamund, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Mineral Resources, Mahanadi Bhawan, Naya Raipur Chhattisgarh
2. Director, Directorate of Geology and Mining, Indrawati Bhawan, Naya Raipur Chhattisgarh
3. Collector, District Mahasamund Chhattisgarh

---- Respondents

WA No. 406 of 2019

{Arising out of Order dated 27.08.2018 passed in Writ Petition (C) No. 2249 of 2018 by the learned Single Judge}

- M/s BSCPL INFRASTRUCTURE LTD, through Power of Attorney Holder Shri M. Nageshwara Rao Aged About 46 Years, S/o Shri M. Jayarammaiah Registered Office M.No. 8-2/502/1/A, Jivi Tower, Road No. 7, Banjara Hills, Hyderabad, Telengana Present Corporate Office Village - Ghodari, Tehsil And District Mahasamund, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Mineral Resources, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. Director Directorate of Geology and Mining, Indravati Bhawan, Naya Raipur, Chhattisgarh
3. Collector District Mahasamund, Chhattisgarh.

---- Respondents

WA No. 407 of 2019

{Arising out of Order dated 27.08.2018 passed in Writ Petition (C) No. 2237 of 2018 by the learned Single Judge}

- M/s BSCPL INFRASTRUCTURE LTD, through Power of Attorney Holder Shri M. Nageshwara Rao Aged About 46 Years S/o Shri M. Jayarammaiah Registered Office M.No. 8-2/502/1/A, Jivi Tower, Road No. 7, Banjara Hills, Hyderabad, Telengana Present Corporate Office, Village Ghodari, Tahsil And District Mahasamund, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Mineral Resources, Mahanadi Bhavan, Naya Raipur, Chhattisgarh.

2. Director Directorate of Geology and Mining, Indravati Bhawan, Naya Raipur, Chhattisgarh.
3. Collector District Mahasamund, Chhattisgarh

---- Respondents

WA No. 411 of 2019

{Arising out of Order dated 27.08.2018 passed in Writ Petition (C) No. 2251 of 2018 by the learned Single Judge}

- M/s BSCPL INFRASTRUCTURE LTD, through Power of Attorney Holder Shri M. Nageshwara Rao Aged About 46 Years S/o - Shri M. Jayarammaiah Registered Office M.No. 8-2/502/1/A, Jivi Tower Road No. 7, Banjara Hills, Hyderabad, Telengana, Present Corporate Office Village Ghodari, Tehsil And District Mahasamund, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Mineral Resource, Mahanadi Bhawan, Naya Raipur Chhattisgarh
2. Director, Directorate of Geology and Mining, Indravati Bhawan, Naya Raipur Chhattisgarh
3. Collector, District Mahasamund, Chhattisgarh.

---- Respondent

For Petitioner	: Shri Siddharth Shukla, Advocate.
For Respondent/State	: Shri Siddharth Dubey, Deputy Government Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Judgment

Per P.R. Ramachandra Menon, Chief Justice

1. I.A. No. 1 of 2019, application for condonation of delay has been filed in all these appeals for condoning delay ranging from 297 days to 305 days. After hearing both the sides, the delay is condoned for the reasons stated in the application.
2. The appeals arise from a common judgment dated 27.08.2018 passed by the learned Single Judge, whereby similar issues and similar

contentions raised in respect of similar impugned orders were considered together and decided; declining interference with regard to the merit involved. In the said circumstance, all these appeals have been taken up, heard and are being finalised accordingly.

3. Writ Appeal No. 403 of 2019 arising from WPC No. 2365 of 2018 (treated as the lead case by the learned Single Judge) is taken up as the lead case.

4. We have heard Shri Siddharth Shukla, the learned counsel for the Appellants and Shri Siddharth Dubey, the learned Deputy Government Advocate for the Respondents/State.

5. The Appellant/Petitioner-Company is the same in all the cases, though challenge is raised in respect of different, but similar cause of action. In fact, the Appellant is a road construction contractor who participated in the bid floated by the National Highways Authority of India for construction of the National Highway-Four Lane Road, from Aarang to Saraipali in Mahasamund District in the State of Chhattisgarh, under 'Build, Operate and Transfer' scheme, which was to pass through different villages. It is the case of the Appellant that, since the work had to be completed in a time bound manner, necessary raw materials had to be procured on war footing to have uninterrupted supply; one among which was 'Muroom/Mutti'. So as to meet the situation, the Appellant entered into an agreement with the private land owners to excavate and extract 'Muroom/Mutti', which is a minor mineral governed by the Mines and Minerals (Development and Regulation) Act, 1957 (*for short 'the Act'*) and the Chhattisgarh Minor Mineral Rules, 1996 (*for short, 'the 1996 Rules'*) as amended/repealed by the Chhattisgarh Minor Mineral Rules, 2015 (*for short, 'the 2015 Rules'*). Admittedly, the Appellant did not get any licence/permission/sanction from the competent authority of the

Government to extract the minerals, which actually belong to the Government even in respect of private lands. The minor mineral as extracted above, based on the strength of the agreement executed with the private land owners, was put to use for construction of the road and no transportation of the same beyond the site of the construction was ever effected by the Appellant.

6. All the above cases are stated as of similar nature, except Writ Appeal No. 395 of 2019 arising from WPC No. 2254 of 2018. In the said case, the excavation was done and extraction of the minor mineral was done from the property belonging to the Panchayat and it was not a private land. The said excavation was done by the Appellant only as per the instructions and to cater to the needs of the Panchayat in connection with the digging of a pond.

7. In the course of further proceedings, steps were initiated against the Appellant under Section 21(5) of the Act and a proper reply was given to the show cause notice in this regard. However, without properly considering the same, the matter was finalised passing an order under Rule 53(5) of the Rules, 1996, fixing a total sum of Rs. 27,30,000/- which was inclusive of Rs. 21,00,000/- (10 times of the royalty) and Rs. 6,30,000/- towards the market value of the minor mineral extracted. This was taken up in appeal before the 2nd Respondent/Director, Directorate of Geology and Mining, and thereafter before the 1st Respondent/State, which came to be dismissed and the order passed by the 3rd Respondent/Collector was affirmed. This made the Appellants to challenge the impugned orders by filing the writ petitions before this Court.

8. It is specifically contended before the learned Single Judge that there was a clear violation of the statutory provisions; that no opportunity of

hearing was given; that there was violation of the principles of natural justice and further that, the penalty imposed was quite exorbitant and not in conformity with the statutory prescriptions. The learned Single Judge however observed that, in the reply submitted by the Appellant in response to the show cause notice, illegal extraction of the mineral was admitted and having admitted the guilt, the consequential orders passed imposing penalty in terms of the relevant provisions of law was not open to be challenged by the Appellant in the writ petition. It was accordingly, that interference was declined and all the writ petitions were dismissed; in turn giving rise to these appeals.

9. With regard to the merit involved in all these appeals, except Writ Appeal No. 395 of 2019 (which is stated as having some difference/dissimilarity), the learned counsel submits, that the Rules 1996 are not applicable to the case in hand and the matter ought to have been considered and finalised in terms of the provisions of the Chhattisgarh Land Revenue Code, 1959 (*for short 'the Code'*) and in particular, Section 247(7). With reference to Rule 1(2) of the 2015 Rules, the learned counsel for the Appellant submits that the said Rule is applicable only in respect of “**quarry leases**” which is not the situation in the instant case, as no extraction of any minor mineral from a 'quarry' is involved, but for extraction from the lands belonging to private land owners. The proceedings ought to have been finalised in terms of Section 247(7) of the Code; where the quantum of liability is much lesser. The learned counsel submits that a case had come up for consideration before a Division Bench of the Madhya Pradesh High Court in Writ Petition No. 6163 of 2017 challenging the proceedings under Section 247 of the Code, contending that it could only be under the 1996 Rules. Repelling the challenge, it was categorically held that proceedings were maintainable under Section 247(7) of the Code. In the said circumstance, the

proceedings taken and finalised under the 1996 Rules, instead of having it been finalised as per Section 247(7) of the Code, is liable to be interdicted; submits the learned counsel.

10. The learned counsel for the Appellant further submits that a rule similar to Rule 1(2) of the 2015 Rules was not in existence in the 1996 Rules. But as per the law declared by the Apex Court in ***State of Bihar v. S.K.Roy***, (1966) Supp SCR 259, if the previous legislation is obscure on some point, the subsequent legislation can be looked into, to ascertain the scope and meaning of the relevant provisions in the previous legislation. The said principle is stated as reiterated in ***Pappu Sweets & Biscuits & Another v. Commissioner of Trade Tax, UP Lucknow***, (1998) 7 SCC 228 (paragraph 13 as well). It is the contention of the Appellant that, in view of missing of a rule like Rule 1(2) of the 2015 Rules in the 1996 Rules, and since more than one interpretation is possible, a cue has to be taken from the 2015 Rules (new Rules) to hold that the 1996 Rules (previous Rules) are not applicable to the case in hand and hence, the impugned orders have to go. There is an alternate argument/prayer to the effect that the penalty has been imposed by the 3rd Respondent adding both the royalty part as well as the market price of the commodity together. It is contended that there is absolutely no legal basis for such a computation and there is an arithmetical error as well, which requires to be rectified.

11. Coming to Writ Appeal No. 395 of 2019 (arising from Writ Petition (C) No. 2254 of 2018), the learned counsel submits that the proceedings are taken against the Appellant under Section 21(5) of the Act. It is stated that, it has to be read and understood in the light of Section 14; which says that Sections 5 to 13 of the Act will not apply to 'minor minerals'. It is also added that there is no dispute with regard to the provisions, and the grievance is only with regard to interpretation, particularly as to the price of the mineral.

This, according to the Department, it is the 'Market Price', which according to the Appellant should be 'Weighted Average Price' as explained by the Apex Court in ***Common cause v. Union of India & Others***, (2017) 9 SCC 499.

12. The learned counsel representing the State/Respondents submits that there is absolutely no basis for the submissions from the part of the Appellants, as a totally new case is put up now before this Court, which does not have any footing with reference to the case presented before the learned Single Judge. The learned counsel submits that the provisions under Section 247(7) of the Code, Section 53(5) of the 1996 Rules and the provisions of the Act go hand in hand and they are complimentary to each other, intended to meet the specific requirements depending upon the context. The learned counsel also points out the event that attract penalty is different from the event which attracts compensation towards the value of the mineral extracted. Reliance is sought to be placed on the verdict passed by the Full Bench of the Madhya Pradesh High Court, in ***Nitesh Rathore & Another v. State of Madhya Pradesh & Another***, reported in AIR 2019 MP 11, to contend that the provisions in Section 247(7) of the Code will not oust the jurisdiction under Section 53(5) of the 1996 Rules. It is further pointed out that there is no arithmetical error or computation mistake in the quantum of liability fixed by the 3rd Respondent, as per the impugned order, where one head is towards the 'penalty'; whereas the other one is in respect of the 'value of the mineral' extracted. It is pointed out that the observation made by the Apex Court in ***Common cause*** (supra) as to the 'Weighted Average Price' is having no application to the case in hand, as it was rendered in a different context involving serious damage being caused to the environment, because of rampant, unauthorised and illegal extraction of 'major minerals', like Iron ore and Manganese in the State of Orissa destroying the environment and the forest, causing untold miseries to the Tribals in the area.

13. It is evident from the pleadings and proceedings that the case projected by the Appellants/petitioners in the writ petitions was never with reference to the applicability of Section 247(7) of the Code or questioning the inapplicability of Rule 53(5) of the 1996 Rules. Only six grounds, namely 'A to F' were raised in the writ petition, which centered around the invocation of Rule 53(5) of the 1996 Rules and the alleged violation of natural justice and nothing else. With reference to Rule 53(5) of the 1996 Rules, the contention was that, the said provision will be attracted only if the offence was compounded and in the instant case, there was no compounding of offence between the parties.

14. Rule 53(5) of the 1996 Rules reads as follows:

53. Penalty for un-authorised extraction and transportation. -

xxx xxx xxx

(5) The Collector/Additional Collector/Joint Director/Deputy Director/ Mining Officer or Officer authorised by Zila/Janpad/Gram Sabha may either before or after the institution of the prosecution, compound the offence so committed under sub-rule (1) on payment of such fine which may extend to double the market value of mineral so extracted but in no case it will be less than rupees one thousand or ten times of royalty of minerals so extracted whichever is higher:

Provided that in case of continuing contravention Collector/Additional Collector/Deputy Director/Mining Officer in addition to the fine imposed may also recover an amount of Rs. 500/- for each day till such contravention continues."

15. To understand the nature and scope of contentions, it is worthwhile to have an idea as to the scheme of the statute, particularly Section 21 of the Act, which prescribes penalties.

"21. Penalties.—1[(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

(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 two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand 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.

(4A) 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.]"

16. Sub-section (1) of Section 21 of the Act provides for punishment for the offences under Section (1) or (1A) of Section 4 of the Act, with 'imprisonment' upto 5 years and with 'fine' which may extend to Rs. Five Lakhs per hectare of the area. Section 4(1) and 4(1A) of the Act are reproduced below:

"4. Prospecting or mining operations to be under licence or lease.—(1) [No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder]:

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

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

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

(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder."

17. Section 4(1) of the Act deals with violation as to the mining operations in any area; whereas Section 4(1A) is in respect of the violation as to the transportation or storage of any mineral otherwise than in accordance with the provisions of the Act or the Rules made thereunder. These two instances are taken separate care of by the 'Act' itself and punishment is stipulated with 'imprisonment and fine' as mentioned under Section 21(1) of the Act. How the violation of the Rules framed under the Act is to be dealt with as specified in sub-section (1) of Section 21 stipulating the punishment. Sub-section (4) of Section 21 says that the mineral raised or transported in violation of the provisions could be seized alongwith the tools, equipments,

vehicles or such other things and by virtue of sub-section 4(A), it could be confiscated as well. Sub-section (5) of Section 21 speaks about the power and authority of the State Government to recover the mineral raised unauthorisedly from the person concerned, in violation of the statutory provisions and if such mineral has already been disposed of, to recover the 'price' thereof from the said person alongwith the rent, royalty or tax, as the case may be. Thus, it is clear that Section 21(5) of the Act is not a provision to impose 'penalty', but to recover the cost of the mineral illegally raised, along with tax/royalty etc. Punishment is for the offence of extraction/transportation, which is separately provided under Section 21(1) of the Act. In other words, in a case covered by Section 4(1) or 4(1A) (raising or transportation of the mineral illegally), the person concerned is bound to face the 'prosecution' for imposition of punishment of 'imprisonment and fine' under Section 21(1) and is also liable to face the proceedings in respect of the recovery of the mineral or its price alongwith royalty or tax, as the case may be, if it has already been disposed of.

18. At the same time, it is relevant to note that, it is open for the person to compound the offence, instead of facing the prosecution and to go to jail (if he gets convicted and sentenced). Section 23(A) of the Act, in this regard, reads as follows:

"23A. 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 only, no 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.

It is in respect of the violation of the relevant Rules, that a similar provision is made under Rule 53(5) of the Rules, 1996; as extracted already.

19. Sub-rule (1) of Rule 53 of the Rules, 1996 deals with the prosecution steps and the punishment to be given by way of simple imprisonment or with fine as specified; whereas sub-rule (5) deals with the provisions for compounding the offence, instead of facing prosecution. Both the above compounding provisions i.e. Section 23A of the Act as well as Rule 53(5) of the Rules, 1996, clearly stipulate that the Authorised Officer may compound the offence either before or after the institution of the prosecution. In other words, it is not necessary to have the prosecution proceedings launched for facilitating the compounding of offence and this being the position, the contention raised in the writ petition that Rule 53(5) is not attracted since the offence was not compounded, is not at all correct or sustainable.

20. The position becomes more clear from the sequence of events and the admission made by the Appellant in the course of the proceedings, as taken note of by the learned Single Judge and extracted in the judgment. On receipt of the show-cause notice issued by the 3rd Respondent, a reply was filed on 06.12.2014 as extracted in paragraph 3 of the judgment. To have proper appreciation as to the 'admission' contained in the reply, the relevant portion is extracted below:

“चूँकि फोरलेन सडक निर्माण का कार्य निर्धारित समयावधि में पूर्ण किया जाना है इस कारण बरसात के बाद अक्टूबर/नवम्बर माह में किसानों की लगानी भूमि से उनके सम्मति के आधार पर मिटटी/मूरुम उत्खनन किया गया है एवं सडक निर्माण कार्य में उपयोग किया गया है । कंपनी द्वारा मिटटी/मूरुम उत्खनन के लिए कोई अनुमति नहीं ली गई है । कंपनी अपना अपराध स्वीकार करती है ।

कंपनी द्वारा अवैध रूप से उत्खनन की गई मिट्टी/मूरूम शासकीय निर्माण कार्य में उपयोग किया गया है ।

अतः अवैध उत्खनन प्रकरण में सहानुभूति पूर्वक विचार करते हुए उपयोग की गई खनिज की रायल्टी राशि एवं न्यूनतम अर्थदण्ड जमा करने कंपनी तैयार है ।”

From the above, it is quite clear that the illegal mining was admitted by the Appellant, expressing willingness to have the matter finalised, requesting to take a lenient view, for the fact that the mineral extracted was used for the construction of the road, by imposing the minimum penalty. It was in the said circumstance, that the matter was considered and finalised by the 3rd Respondent, fixing the quantum of liability. This being the position, it is not open for the Appellant to take a 'U-turn' and say that the Appellant had not given any application for compounding and hence, Rule 53(5) of the 1996 Rules is not attracted.

21. Coming to the question of minimum liability to be satisfied for compounding the offence under Rule 53(5) of the 1996 Rules, it was to be by payment of 'fine', which may extend to double the market value of the mineral so extracted and that in no case, it shall be less than Rs.1000/- or 10 times of royalty of the mineral so extracted, whichever is higher. In the instant case, the royalty has been fixed and its '10 fold figure' has been worked out with regard to which there is no dispute. Since the provision clearly says that the quantum shall not be less than 10 times of the royalty of the mineral so extracted, there cannot be any valid grievance in this regard.

22. With regard to the addition of the value of the mineral so extracted, it is to be noted that admittedly, the extracted mineral has been consumed by the Appellant, having put the same as part of the raw material for construction of the road. Sub Rule (2) of Rule 53 of the 1996 Rules enables the illegally extracted minor minerals and all the tools/equipments/vehicles used in

committing the offence to be seized. Sub-rule (7) of Rule 53 stipulates that the seized articles under sub-rule (2) of Rule 53 are liable to be confiscated by an order of the Magistrate trying the offence, and on payment of the 'fine' and such other sums, only the other articles would be returned except the 'mineral' or its products so seized, which shall be confiscated and shall be the property of the State. Since the mineral extracted has been admittedly disposed of/consumed by the Appellant, it is no more available to be confiscated and to be the property of the Government; which naturally necessitates payment of the 'market value' of the said property. This in turn has to be satisfied alongwith the 'compounding fee' as mentioned in sub-rule (5) of Rule 53. The scope of the above provision becomes clear, when read in the light of the similar provisions as contained in sub-section (1) to (5) of Section 21 as extracted above.

23. With regard to the applicability of Section 247(1), (7) and (8) of the Code; the said provisions are extracted below:

247. Government's title to minerals. - (1) Unless it is otherwise expressly provided by the terms of a grant made by the Government, the right to all minerals, mines and quarters shall vest in the State Government which shall have all powers necessary for the proper enjoyment of such rights.

xxx

xxx

xxx

(7) Any person who without lawful authority extracts or removes minerals from any mine or quarry, the right to which vests in, and has not been assigned by, the Government shall, without prejudice to any other action that may be taken against him be liable, on the order in writing of the Collector, to pay penalty not exceeding a sum calculated at double the market value of the minerals so extracted or removed :

Provided that if the sum so calculated is less than one thousand rupees, the penalty may be such larger sum not exceeding one thousand rupees as the Collector may impose.

(8) Without prejudice to the provisions in sub- section (7) the Collector may seize and confiscate any mineral extracted or removed from any mine or quarry the right

to which vests in, and has not been assigned by the Government."

24. A mere reading of sub-section (7) of Section 247 clearly reveals that, it is in respect of extraction or removal of minerals without lawful authority from any mine or quarry, the right to which vests in and has not been assigned by the Government; which enables the Government to proceed against such wrong doer, without prejudice to any other action and to impose penalty of not exceeding a sum calculated at 'double the market value' of the mineral so extracted or removed. Sub-section 8 of Section 247 of the Code shows that, such minerals extracted or removed from any mine or quarry, can be seized or confiscated by the Collector. In the instant case, extraction of mineral is not from any 'mine or quarry', but from the land of some private land owners. As it stands so, the said provision is not attracted to the case in hand and the idea and understanding of the Appellant is thoroughly wrong and misconceived.

25. It is the further contention of the Appellant, as mentioned already, that the 1996 Rules are not applicable. Such a contention is raised with reference to the 2015 Rules, with particular reference to Rule 1(2) which excludes extraction of minerals from the property of the private land owners. It is the case of the Appellants that the said Rule is only applicable for extraction/mining activity from 'quarry'. The said Rule is extracted below:

"1. Short title, extent and commencement.-(1) These rules may be called the Chhattisgarh Minor Mineral Rules, 2015.

(2) These rules shall apply to the grant and regulation of Quarry Leases and other mineral concessions in respect of Minor Minerals and for purposes connected therewith in the State of Chhattisgarh only."

It is with reference to the above 2015 Rules, that the Appellant contends that, though such a rule is missing in 1996 Rules, it has to be read into the latter Rules, to understand the scope, by taking a cue from the 2015

Rules as held by the Apex Court in **S.K.Roy** (supra). But a careful reading of Rule 1(2) of the 2015 Rules shows that the Rule speaks about the applicability to the grant and regulation of: quarry leases **and other mineral concessions in respect of minor minerals and for purposes connected therewith** in the State of Chhattisgarh only.

In other words, confining the applicability of the Rules to the State of Chhattisgarh is highlighted with reference to the grant and regulation of quarry leases besides other mineral concessions in respect of minor minerals. The said provision does not say that the Rules will not be applicable to extraction of minerals from the property of private land owners; especially when the land owners are having only the surface right and the exclusive right upon the minerals stand vested with the Government. This is evident from various other provisions in the Rules, as discussed already and the Rules have to be read together and understood accordingly; and not by isolating the word '**quarry lease**' which is only one of the instances mentioned therein.

26. Coming to the 1996 Rules, Rule 3 deals with 'exemptions', which is reproduced below:

"3. Exemptions. - Nothing in these rules shall apply to-

(i) the extraction of clay or sand, by a hereditary kumhar, a member of a Scheduled Caste or a member of a Scheduled Tribe or a Cooperative Society of such kumhars or members of Scheduled Castes or members of Scheduled Tribes for preparing tiles, pots or bricks by traditional means, but not by the process of manufacture in kilns or by any mechanical means, from the area that the Gram Sabha may decide and earmark within their respective jurisdiction for such purpose:

Provided that quarrying shall be done within a distance of 100 meters from a bridge, national/state highway, railway line, public place, river bank, nalas, canal, Reservoir, dam, any natural water course or any water impounding structure, 10 meters from grameen kacha rasta.

(ii) Such quarrying of minor minerals which is not done for sale but for the purpose of construction of repairs of wells, or other agricultural works or for the improvement of the dwelling houses of agriculturists, village artisans and labourers residing in villages:

Provided that no quarrying shall be done within a distance of 100 meters from a bridge, national/state highway, railway line, public place, river bank, nalas, canal, reservoir, dam, any natural water course or any water impounding structure; 10 meters from grameen kachcha rasta.

(iii) the minor minerals removed from Government lands for public works by Gram Panchayats, Janpad Panchatats and Zila Panchatats for work undertaken by respective Panchyats. However, the department shall be required to deposit royalty under the revenue receipt head prescribed in sub-rule (3) of Rule 10.

Provided that no quarrying shall be done within a distance of 100 meters from a bridge, national/state highway, railway line, public place, river bank, river bank, nalas, canal, reservoir, dam, any natural water course or any water impounding structure; 10 meters from grameen kachcha rasta.

(iv) the search for minor minerals at the surface not involving any substantial disturbance of the soil by digging up pits, trenches or otherwise.

The chipping of outcrops with a geological hammer for the purposes of taking samples shall not be deemed to be a substantial disturbance of the soil:

Provided that the aforesaid exemptions do not afford immunity from any action which might be taken under any existing rules or any Act of the State or Central Government for unauthorised removal of minor minerals from any land by private person, without the permission of the State Government or any officer or Authority authorised by it in this behalf."

So long as the law makers were conscious enough to grant 'exemptions', mentioning that those Rules shall not apply to the four different situations under (i) to (iv), it is specific and it cannot be said that there is any omission and there is no need or necessity to bank upon the subsequent Rules i.e. 2015 Rules to understand the scope of the former Rules, in the light of the ruling rendered by the Apex Court in **S.K.Roy** (supra).

27. From the above discussion, it is quite clear that, though a slight distinction is sought to be drawn with reference to the situation in WA No.395

of 2019, there is no significant or substantial change with regard to factual scenario or as to the applicability of the relevant provisions of law. It is seen that the course of action pursued by the 3rd Respondent is in conformity with the provisions of law, which stands affirmed by the appellate authorities like the 2nd and 1st Respondent respectively and it has been rightly upheld by the learned Single Judge.

28. We do not find any tenable ground to call for interference. The appeals fail. They are dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE