

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 1054 of 2021

Nimai Charan Das

.....

Petitioner

Mr. S. Mishra, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

05.07.2022

Order No.

06.

This matter is taken up through hybrid mode.

2. The Petitioner has filed this Writ Petition seeking to quash the order dated 11.11.2020 under Annexure-7 passed by the Mining Officer, Baripada Circle, Baripada, by which demand has been raised against the Petitioner for an amount of Rs.1,48,30,534/- towards compensation under Section 21 (5) of MMDR Act, 1957 for production in violation of Mining Plan/Scheme, Consent to Operate in pursuance to the judgment dated 02.08.2017 passed by the Apex Court in the case of *Common Cause v. Union of India and others*, (2017) 9 SCC 499.

3. Mr. S. Mishra, learned Counsel for the Petitioner contended that the demand so raised vide Annexure-7 cannot sustain in the eye of law as the same has not taken note of Annexure-5 dated 20.11.2008, Annexure-6 series dated 09.10.2020 along with connected documents, and Annexure-9 dated 05.11.2020. It is further contended that the reliance placed on the judgment of *Common*

Cause (supra) has no application to the case of the Petitioner. According to him, the case cited by Opposite Party No.3 relates to a case of Iron and Manganese and is not applicable to the Petitioner, who deals in Quartz and Quartzite in an area of 2.22 acres, which does not exceed 5 hectares, thereby, the said judgment is not applicable to the present case, and without application of mind the demand having been raised, the same has to be quashed. It is further contended that the provision contained under Section 21 (5) of the MMDR Act has no application, as the Petitioner has occupied the area as per the lease deed till 2019. Therefore, the demand raised in Annexure-7 may be quashed.

4. Mr. P.P. Mohanty, learned Additional Government Advocate vehemently contended that the demand has been raised in consonance with the judgment of the apex Court in *Common Cause* (supra) and he refers to Paragraph-151 of the judgment, wherein the apex Court held that Section 21 (5) of the MMDR Act is applicable when any person raises, without any lawful authority, any mineral from any land and in that event, the State Government is entitled to recover from such person the mineral so raised or where the mineral has already been disposed of, the price thereof as compensation. In view of such position, the demand raised in Annexure-7 is well justified.

5. Having heard learned Counsel for the parties and after going through the record, it appears that the Petitioner was granted lease of Mines for a period of 20 years as per lease deed dated 06.01.1999. Pursuant to such lease deed, the Petitioner was carrying out the mining operation by fulfilling all the requirements, as and when required, till 05.01.2019, the date, the lease deed was expired. At this

point of time, the Petitioner received a notice dated 21.11.2017 issued by Opposite Party No.3 contending therein that the Petitioner has undertaken production of Quartz and Quartzite minerals from his mining leasehold excess of the lower of the approved limit of production under Mining Plan and consent to operate during 2000-01 to 2010-11. Considering the above production undertaken by the Petitioner, without lawful authority, notice of show cause was issued calling upon the Petitioner to show cause as to why the Petitioner shall not be directed to pay a sum of Rs.1,48,30,534/- being the price thereof towards compensation under Section 21 (5) of the MMDR Act, 1957 for production in violation of Mining Plan, Environmental Protection Act, 1986, in pursuance of the judgment passed in ***Common Cause*** (supra). In response to the same, the Petitioner has denied such allegation made against him and produced the materials before the authority while submitting his reply to the notice of show cause along with the documents and also filed the sale invoice materials from 2000-01 to 2007-08 on 09.10.2020 as per his letter dated 09.10.2020 and also the consent order from 2009 to 05.01.2009, i.e. till the last date of lease deed and, therefore, contended that he is not liable to pay the demand so raised by the Authority concerned. It is also contended that since the demand has been raised without taking into consideration the materials available on record, the said demand cannot sustain in the eye of law.

6. In view of such position, this Court is of the considered view that if the materials available on record under Annexures-5, 6 series and 9 have not been taken into consideration by the Opposite Parties, the said Opposite Parties cannot and could not have raised the demand under Annexure-7 dated 11.11.2020. More so, the reliance placed on ***Common Cause*** (supra) is only applicable to the

case relating to Iron and Manganese and not applicable in the case of Quartz and Quartzite, as has been objected by the Petitioner, has also not been taken into consideration. Consequent thereof, the judgment passed by the Apex Court in ***Common Cause*** (supra) may not have any application to the case of the Petitioner.

7. In view of the above, let the Mining Officer, Baripada Circle, Baripada-Opposite Party No.3 re-consider the demand made by him vide Annexure-7, taking into consideration the documents under Annexure-5, i.e. reply to the show cause dated 13.10.2020 along with the connected documents, Annexure-6 series, i.e. letter dated 09.10.2020 along with the connected documents and Annexure-9, i.e. letter dated 05.11.2020, and by giving opportunity of hearing to the Petitioner. If the said authority found that the contention raised by the Petitioner is well justified, it is open to the Mining Officer-O.P.2 to revise the demand so raised to the extent that the Petitioner is not liable to pay that amount, taking into consideration the applicability of the judgment in the case of ***Common Cause*** (supra) and accordingly re-cast the compensation imposed on him vide impugned order under Annexure-7.

8. With the above observation/direction the Writ Petition stands disposed of. The entire exercise in terms of the above direction shall be completed within a period of four months from the date of communication of this Order.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita

(S.K. MISHRA)
JUDGE