ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 38965 OF 2021

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR ST Minerals Pvt. Ltd. ..... Petitioner

-Versus-

State of Odisha and others ..... Opp. Parties

For Petitioner : M/s. S. Palit,
A. Mishra, A. Kejriwal,
A. Parija and S. Bose
Advocates

For Opp. Parties : Mr. P.K. Muduli,
Addl. Govt. Advocate

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE S.K. PANIGRAHI

Date of hearing and judgment: 07.01.2022

DR. B.R. SARANGI, J. The petitioner, by means of this writ petition, seeks direction to the opposite parties to extend the lease period for 10 years or the maximum period as permissible under the Orissa Minor Minerals Concession Rules, 2016 (for short "OMMC Rules, 2016").

2. The factual matrix of the case, in brief, is that the petitioner was granted on lease Bholanugaon Stone Quarry, Ghasipura Tahasil in the district of Keonjhar for mining of stone for a term of five years from 2015-2020. Since then, the petitioner has been operating the said quarry in accordance with law and in full compliance with the provisions of the OMMC Rules, 2016 as well as mining plan. The requisite environmental clearance, consent to establish and consent to operate were granted after a delay of two years, and accordingly the lease period was further extended until 04.04.2022. The petitioner has invested significant sums of money and has even established a stone crusher in the region for processing of the quarry output in accordance with the norms prescribed by the competent authority. As per the OMMC Rules 2016, the period of mining lease for any specified minor minerals is 30 years and for quarry lease

it is 10 years. The minimum period for any quarry lease is 5 years. The opposite parties granted the quarry lease only for the minimum period prescribed, which is arbitrary and unreasonable and does not take into account the investments made by the leaseholder as also the impact on the environment causes by such short lease periods and repeated change of leaseholder as well as mining plans. There being no rational nexus between the quarry lease period granted by the opposite parties and the objective sought to be achieved by the OMMC Rules, 2016, such action of the opposite parties is manifestly arbitrary and is liable to be set aside. It is further averred in the writ petition that the previous rules, i.e., Orissa Minor Minerals Concessions Rules, 2004 (for short "OMMC Rules, 2004") provided for grant of mining lease for a maximum period of 30 years and a minimum period of twenty years for all minor minerals and there was no categorization for specified and non-specified minor minerals. Therefore, the action of opposite parties in granting the quarry lease for only five years is completely non-application of mind and mechanical decision making. There is no economic sense for granting of leases for a period of only five years. All leaseholders invest considerable amount of money for operation and establishment of the quarries and lease period of five years is not adequate enough to realize the true potential from the quarry. A longer quarry lease period permits a more systematic and sustainable mining process and also facilitates proper implementation of the mining plan as well as supports thorough rehabilitation of the quarry lease area to negate the adverse environmental impact caused by the mining. Therefore, the petitioner has approached this Court by filing the present writ petition seeking for extension of quarry lease period from five years to ten years.

3. Mr. S. Palit, learned counsel for the petitioner contended that pursuant to the auction notice issued by the authority, the petitioner participated in the proceeding for grant of lease in respect of the stone quarry under consideration and got selected. As a consequence thereof, the petitioner executed quarry lease

agreement in the prescribed Form-N as per Rule-27(13) of OMMC Rules, 2016 for a period of five years. It is contended that the said lease period should be extended for a period of 10 years in the facts and circumstances of the case. The same having not been extended by the authority, the petitioner has approached this Court by invoking the extraordinary jurisdiction of this Court under Article 226 of Constitution of India. To substantiate his contention, he has relied upon the judgment of the apex Court in the case of ***Deepak Kumar and others v. State of Haryana and others,*** (2012) 4 SCC 629, and that of this Court in the case of ***Bhramarbar Das v. State of Orissa, AIR 2012 Orissa*** 163.

4. Mr. P.K. Muduli, learned Addl. Government Advocate contended that the petitioner, having participated in the process of tender, was granted above noted quarry lease and, as such, lease agreement was executed in the prescribed Form-N as per Rule-27(13) of OMMC Rules, 2016. The lease agreement was executed for a period of five years and, as such, the same is valid

till 04.04.2022. Therefore, the petitioner cannot invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to change the terms and conditions of the lease seeking extension of the period from five years to ten years. It is further contended that since the claim of the petitioner emanates from an agreement, the condition of the agreement cannot be changed by virtue of the direction of this Court under Article 226 of the Constitution of India.

5. This Court heard Mr. S. Palit, learned counsel for the petitioner and Mr. P.K. Muduli, learned Addl. Government Advocate appearing for the State-opposite parties by hybrid mode. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, this writ petition is disposed of finally at the stage of admission.

6. On the basis of facts narrated above, it appears that by following due process, the petitioner was granted on lease Bholanuagaon Stone Quarry, Ghasipura Tahasil in the district of Keonjhar for mining of stone for

a term of five years from 2015-2020. As a consequence thereof, the petitioner has executed quarry lease agreement in Form-N as per Rule-27(13) of OMMC Rules, 2016 for a period of five years. The terms and conditions of the agreement clearly specify to the following effect:-

> *"........WHEREAS the lessee has applied to the competent Authority-concerned for a quarry mining lease for Stone in accordance with the provisions of the OMMC Rules, 2016 in respect of the lands described in part-I of the schedule* ***for a term of 5 years*** *and the lease agreement for the year 2017-18 & 2018-19 has already been made on 05.04.2017 vide ID No.1021700206/2017 & made on 31.01.2019 vide id no.1021900059/2019.*
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> *xxx xxx xxx*
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> *As per OMMC Rules 43 (2) "the date of commencement of the period for which a prospecting license-cum-mining lease or mining lease or quarry lease is granted shall be the date on which a duly executed deed is registered", according the lease is valid till 04.04.2022. "*

7. On perusal of the above mentioned conditions, it is made clear that the petitioner was granted with the above noted lease for a period of five years, which was commenced from the date of its execution, as per Rule-43(2) of OMMC Rules, 2016, and the same is going to expire on 04.04.2022. Thereby, at the fag end of the lease

period, the petitioner has approached this Court seeking extension of the period from five years to ten years. As such, the terms of the lease agreement were known to the petitioner, when it had executed the same with the opposite parties with eyes wide open. In such event, the petitioner should not have come to this Court for extension of the period from five years to ten years.

8. Much reliance was placed by learned counsel for the petitioner on Rule-8 of the Orissa Minor Mineral Concession Rules, 2004, sub-rule (2) whereof provides that the lease granted shall not be less than twenty years. But the said Rule-8 has undergone amendment in OMMC Rules, 2016 and under sub-rule (4) thereof it is provided that the maximum period for which a quarry lease may be granted shall not exceed ten years and shall be subject to such terms and conditions as may be specified by the competent authority. Provided that the minimum period for which any such lease may be granted shall be five years. There is no dispute that the minimum five years period of lease has been granted in favour of the

petitioner. But whether the said period will be extended to ten years or not, the same is within the complete domain of the competent authority and, as such, this Court has no jurisdiction to make any change in the terms and conditions of the agreement executed between the parties under Annexure-1.

9. In the case of ***Deepak Kumar*** (supra), on which reliance was placed by learned counsel for the petitioner, the apex Court has taken into consideration the back-ground facts in sub-para 4.3 of paragraph-19 on which mining leases for various periods are granted. But the said case has got no nexus to the issue involved in the present case, in view of the fact that rules have been framed by the authority and pursuant to which lease deed has been executed between the petitioner and the opposite parties specifying the terms and conditions in the agreement. At this stage, the petitioner wants to change the terms and conditions of the lease deed, which is not permissible. The context on which the judgment in ***Deepak Kumar*** (supra) has been rendered may have a

bearing, so far as OMMC Rules, 2004 is concerned, but the case at hand deals with OMMC Rules, 2016. Furthermore, by the time the judgment in ***Deepak Kumar*** (supra) was delivered, OMMC Rules, 2016 had not seen the light of the day and that itself does not permit the benefit to the petitioner by extending the lease period from five years to ten years, as claimed in this writ petition. More so, when this Court called upon learned counsel for the petitioner to produce any provision with regard to jurisdiction of this Court to extend the period of lease agreement, he is not able to produce any such provision nor any law decided on this issue. Thereby, this Court is of the considered view that this being a purely contract, the condition of the contract cannot be changed in exercise of powers conferred under Article 226 of the Constitution of India.

10. In ***Bhramarabar Das*** (supra), on which reliance was also placed on behalf of the petitioner, the prayer was twofold; the first prayer was that Rules-35 and 36 of OMMC Rules, 2004 are invalid; and the second

prayer was that authorities were not justified in rejecting petitioner's application for stone query lease and that decision making process of the authority was arbitrary and unreasonable. This Court in paragraph-32 held that the application of the petitioner, who was already lessee, might be considered by putting the sairat source to public auction and that it would be open for any category of applicant referred to in Rule-27, including the petitioner, to participate in public auction of minor minerals and in case the petitioner was not found to be the highest bidder, but agreed to match with the price at which the bid was knocked, preference would be given to him even though he is not the highest bidder and also held that writ petition is maintainable in a contractual dispute. But the factual matrix of the said case is absolutely different from that of the present one.

11. In the above view of the matter, this Court is of the considered view that the relief sought by the petitioner for extension of lease period from five years to ten years under OMMC Rules, 2016 invoking extra-

ordinary jurisdiction of this Court under Article 226 of the Constitution of India cannot be acceded to.

12. In the result, the writ petition merits no consideration and the same is accordingly dismissed. However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

S.K. PANIGRAHI, J. I agree.

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S.K. PANIGRAHI
JUDGE

Orissa High Court, Cuttack
The 7th January, 2022, Ashok/GDS