IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 1373 OF 2021

Smt. Deepali w/o Gopal Gundawar
vs.
State of Maharashtra, through its Secretary, Ministry of Mines, Mantralaya, Mumbai-32 and others

with

WRIT PETITION NO.1369 OF 2021

Narendra s/o Namdeorao Warwatkar
vs.
State of Maharashtra, through its Secretary, Ministry of Mines, Mantralaya, Mumbai-32 and others

with

WRIT PETITION NO. 1370 OF 2021

Avinash s/o Namdeorao Warwatkar
vs.
State of Maharashtra, through its Secretary, Ministry of Mines, Mantralaya, Mumbai-32 and others

with

WRIT PETITION NO. 1372 OF 2021

Surendra s/o Chatturbhujji Bhartia
vs.
State of Maharashtra, through its Secretary, Ministry of Mines, Mantralaya, Mumbai-32 and others

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S/Shri Akshay Naik, Ashwin Deshpande, R.D.Dharmadhikari, Advocates for petitioner in all writ petitions.
Shri N.R.Patil, Assistant Government Pleader for respondents in all writ petitions.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

ARGUMENTS WERE HEARD ON : 18th JULY, 2023

ORDER IS PRONOUNCED ON : 15th SEPTEMBER, 2023

Since a common challenge has been raised in all these writ petitions, they have been heard together in the light of the notice issued for final disposal.

2. Each petitioner is dealing in the business of mining of Limestone and Dolomite at various mines in District Yavatmal. Lease agreement has been entered into by each petitioner with the respondent no.3-The District Mining Officer, Yavatmal. The petitioners had not obtained environmental clearance certificate from the Environment Department of the State of Maharashtra

during the period from 2006-07 to 2011-12. Hence, each petitioner was issued a communication dated 21.01.2021 by which they were informed that in terms of the decision of the Hon'ble Supreme Court in *Common Cause vs. Union of India and others*, ***[(2017) 9 SCC 499]***, they were liable to pay penalty to the extent of 100% of the value of the minerals. Though notice demanding such amounts had been issued on 29.09.2018 to each petitioner, the requisite amount of penalty had not been deposited. Being aggrieved by the communication dated 21.01.2021 demanding such amounts, the petitioners have challenged the same in the present writ petitions. A chart indicating the basis for demand of value of the mines is reproduced hereunder:

Writ Petition No. and Name of the petitioner	Mineral raised	Mouza	Period	Mineral raised without Environ-mental Clearance	100% value of minerals.	Recover-ed value of minerals	Amount due towards value of minerals
Writ Petition No.1369/2021 Shri Narendra N. Warvatkar	Lime-stone	Wanjari	2006-07 to 2011-12	21932	Rs.24,35,161	0	Rs.24,35,161
	Lime-stone	Gourala	2006-07 to 2011-12	59235	Rs.1,00,81,020	0	Rs.1,00,81,020
Writ Petition No.1370/2021 Shri Avinash N. Warvatkar	Dolomite	Wanjari	2008-09 to 2011-12	20011	Rs.25,45,637	0	Rs.25,45,637
	Lime-stone	Majara	2009-10 to 2010-11	19326	Rs.25,28,500	0	Rs.25,28,500
Writ Petition No.1372/2021 Surendra C. Bhartia	Lime-stone	Hivard-ara	2009-10 to 2010-11	13906	Rs.27,81,200	0	Rs.27,81,200
	Dolomite	--do--	2009-10 to 2010-11	14100	Rs.12,69,000	0	Rs.12,69,000
Writ Petition No.1373/2021 Smt. Deepali G.Gundawar	Dolomite	Adega-on	2006-07 to 2011-12	54580	Rs.49,12,200	0	Rs.49,12,200

3. Shri Akshay Naik, learned counsel appearing for the petitioners submitted that the impugned communication dated 21.01.2021 issued by the District Mining Officer seeks to recover the value of minerals alongwith the amount of royalty though such royalty has already been paid by the petitioners. Each petitioner having already paid the amount of royalty towards excavation of minerals, its value was not liable to be added in the value of minerals that has been demanded by the impugned communication. Referring to the provisions of Section 21 (5) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, the Act of 1957), it was submitted that what could be recovered by the State Government under the said provision was only the value of the minerals that had been raised. Under Rule 45 (8) of the Mineral Conservation and Development Rules, 2017 (for short, the Rules of 2017), the sale value as well as the Ex-mine price of a mineral has been indicated. Form G-1 under the Rules of 2017 was also relevant and from the aforesaid it was clear that while determining the Ex-mine price, the amount of royalty was not liable to be included in the same. The calculations that were supplied by the District Mining Officer did not indicate the break-up so as to demonstrate the fact that the amount of royalty had not been included in the Ex-mine price. Since the provisions of Section 21(5) of the Act of 1957 require payment of the price of minerals and as the Ex-mine price has to be determined without including the amount of royalty, it was clear that the demand made by the District Mining Officer from each petitioner was unsustainable. The District Mining Officer failed to indicate in clear terms that the amount of royalty had not been

included in the amount of penalty that was being demanded from the petitioners. Referring to the affidavit filed on record by the District Mining Officer, it was submitted additional reasons so given therein to support the impugned demand were not liable to be taken into consideration and the impugned order would have to be considered in the light of what was stated therein. It was therefore submitted that the amount of royalty already paid by the petitioners was liable to be deducted while determining the amount of penalty.

4. Shri N. R. Patil, learned Assistant Government Pleader for the respondents supported the impugned order and submitted that the demand of penalty had been made in accordance with the Act of 1957 and the Rules of 2017. He submitted the amount of royalty had not been included in the amount of value of minerals that was being demanded from each petitioner and the value of the minerals raised had been determined by considering its pit mouth value. According to him, from the break-up of the amounts as indicated in the affidavits filed on record, it was clear that the amount of royalty had not been included in the demand that was made from the petitioners. He referred to the annual returns submitted by the petitioners and urged that from the details given therein the value of the minerals could be easily determined. Since the amount of penalty had been rightly calculated and what was demanded was only the value of the minerals in accordance with Section 21(5) of the Act of 1957, there was no reason to interfere with the demand of penalty. There was sufficient material on record to justify the demand as made.

5. We have heard the learned counsel for the parties and with their assistance we have perused the documents on record. It is not in dispute that pursuant to the decision of the Hon'ble Supreme in *Common Cause* (supra) decided on 02.08.2017, the District Mining Officer was entitled to demand 100% value of the minerals raised as penalty under Section 21(5) of the Act of 1957. Each petitioner was accordingly issued a notice on 29.09.2018 by the District Mining Officer in that regard. In the said notice, reference is made to the period when such excavation was undertaken, the minerals raised, the extent of minerals raised without permission from the Environment Department and the Ex-mine price at which the penalty was liable to be levied. On that basis, it was indicated in the notice issued to each petitioner that it was liable to pay such penalty. The petitioner in Writ Petition No.1373 of 2021 submitted her reply on 18.03.2019 to the letter of demand stating therein that since the mining lease had been extended coupled with the fact that Notification was issued by the Ministry of Environment and Forests on 14.09.2006, the petitioner was not liable to pay any penalty. A request was also made to waive the amount of penalty in its case. The petitioner in Writ Petition No.1370 of 2021 received a letter of demand dated 29.09.2018 but did not reply to the same. Similar is the case with the petitioner in Writ Petition No.1369 of 2021 and 1372 of 2021. At that stage, none of the petitioners raised any objection that the amount of penalty as demanded from each of them included the amount of royalty and therefore the amount as demanded was not liable to be paid. The impugned communication dated 21.01.2021 issued to each petitioner merely reiterates

the demand that was made to each petitioner by the communication dated 29.09.2018. The impugned communication merely calls upon each petitioner to deposit the amount of penalty within a period of seven days failing which action under the provisions of the Maharashtra Land Revenue Code, 1966 for recovery of the value of the minerals was liable to be taken. It is thus clear that the initial notice dated 29.09.2018 issued to each petitioner demanding the amount of penalty was not challenged by them when the same was received nor is it challenged even at this stage. In these circumstances, a mere challenge to the subsequent communication dated 21.01.2021 issued to each petitioner requiring them to comply with the earlier notice dated 29.09.2018 would not be sustainable.

6. Be that as it may, we have examined the challenge of the petitioners based on the contention that while demanding the value of the minerals from each petitioner the amount of royalty already paid by them was included therein and hence the demand was not in accordance with the Act of 1957. In the additional reply filed by the District Mining Officer the manner in which the amount of penalty has been determined is indicated. It has been asserted that the amount of royalty has not been included in the amount of penalty and that the same has been calculated on the Ex-mine price of the mineral. Reference is made to Form H-8 of Part VI to indicate the manner in which the Ex-mine price is determined. The same does not indicate that the amount of royalty is included therein. It is further stated that the amount of royalty is included in the cost of production which is given in Part-VII of the said Form H-8. On the basis of returns submitted by

each petitioner, the Ex-mine price being the pit-mouth value has been determined. It is further stated that after the Act of 1957 was amended in 2017, Form G-1 has been introduced which is similar to Form H-8. In the additional affidavit filed on behalf of the District Mining Officer, Yavatmal, it has been stated in paragraphs 4 and 5 as under:

> *"4.....*
>
> *Following deductions that are made to be for computation of 'Ex-mine price".*
>
> *a) Cost of transportation (Indicate loading station and distance from mine in remark).*
> *b) Loading and unloading charges.*
> *c) Railway freight if applicable (indicate destination and distance).*
> *d) Port handling charges/export duty (indicate name of port).*
> *e) Charges for sampling and analysis.*
> *f) Rent for the plot at stocking yard.*
> *g) Other charges (specify clearly).*
>
> *That after deduction of above charges the actual cost of minerals i.e Ex-mine price i.e. "Pit Mouth Value' is arrived. The Ex-mine Price does not include Royalty in it. Royalty is added in the cost of production which is demonstrated as under:*
>
> *5. Whereas that as provided in form no. H-8 part VII provides for the manner to arrive at cost of production. In the cost of production 'per ton of mineral produce' following items are required to be taken into consideration in calculating the cost of production per metric ton.*
>
> *i) Direct Cost.*
> *a) Exploration.*
> *b) Mining.*
> *c) Beneficiation (Mechanical only)*
> *ii) Over-head cost.*
> *iii) Depreciation.*
> *iv) Interest.*
> *v) Royalty.*
> *vi) Taxes.*

> *vii) Dead Rent.*
> *Viii) Others(specify)*
>
> *Thus, pointed out above the amount of "Royalty" is taken into consideration in calculation of total 'cost of production' of mineral per ton but for arriving at Ex-mine price, royalty or other items in above para 5(i) to (viii) are not included at all. Thus, the contentions of the petitioners on that count are baseless.*
>
> *The copy of 'form H-8' is annexed herewith at Annexure-R-A. Thus the Ex-mine price is that one resembles to the actual mineral value of the product i.e. direct cost of the product and while calculating cost of production the items mentioned in part VI of the Form H-8 excluding royalty is taken into calculation."*

7. We thus find that the District Mining Officer in each case has determined the amount of the value of the minerals based on the Ex-mine price which is also the Pit Mouth Value of the minerals in the light of the returns submitted by each petitioner under Rule 45 of the Rules of 2017. From the said calculations, we do not find that the amount of royalty has been included in the amount of the value of the minerals demanded from each petitioner. We therefore do not find any illegality whatsoever committed by the District Mining Officer in demanding 100% value of the minerals from each petitioner.

The initial notice dated 29.09.2018 issued to each petitioner had not been challenged and there being no illegality in determining the amount of penalty as demanded, there is no reason to interfere in exercise of extra ordinary jurisdiction. By the interim order dated 24.03.2021 the petitioners were directed to deposit 25% of the quantified value of the minerals for the relevant period within a period of one week from the date of the order and the balance amount of quantified value of the minerals was required to be deposited in eight equal monthly instalments. After taking into consideration the amounts deposited by each petitioner, the balance amount due and payable in terms of the impugned communication dated 21.01.2021 shall be paid within a period of four weeks from today.

8. The writ petitions stand dismissed with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.) **(A.S.CHANDURKAR, J.)**

Andurkar.