IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12950 of 2018

---

1. The Union Of India
2. The Divisional Railway Manager Engineering East Central Railway, Danapur, Khagaul.
3. The Senior Divisional Engineer 1 East Central Railway, Danapur, Khagaul.
4. The Senior Divisional Finance Manager, East Central Railway, Danapur, Khagaul.

.. ... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Seikhpura.
3. Mineral Development Officer, Sheikhpura.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate
For the State	:	Mr. Gyan Prakash Ojha -GA-7
For Mines	:	Mr. Naresh Dikshit, Advocate
		Mr. Brij Bihari Tiwary, Advocate
		Ms. Kalpana, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 28-03-2024

Heard Mr. Satyabir Bharti, senior panel counsel appearing on behalf of the petitioner; Mr. Gyan Prakash Ojha, learned GA-7 appearing on behalf of the State and Mr. Naresh Dikshit, learned counsel for the Department of Mines.

2. Petitioner has prayed for following relief(s) in paragraph no. 1 of the writ petition:

"That the present writ application is being filed

for issuance of writ in the nature of certiorari for quashing the letter No. 99 dated 15.02.2016 (Annexure-2) and consequence there of the letter No. 24 dated 14.01.2017 (Annexure-5) by which the Mineral Development Officer, Respondent No. 3 has made a demand for Dead Rent and surface Rent from petitioners violating clause (1) & (4) of Part (V) of the Memorandum of Agreement dated 31.12.2010."

3. *Brief facts* of the case are that on 31/12/2010, the Mines Officer/Collector, Sheikhpura, on behalf of the Mines Department had entered into a lease deed with the petitioner, the Indian Railway, an Union of India undertaking, for allotment of a lease for stone mining (Ballast Querry) situated in Sheikhpura at *Mauza- Indray*, Plot no. 574 (P), 575 (P), 576 (P), 577(P), 578 (P), 579(P) in the District of Sheikhpura, which was finally settled on 03.09.2010 after following due procedure, in favour of the petitioner and in accordance with the provisions contained under the Bihar Minor Mineral Concession Rules, 1972 and the Mines and Minerals (Development and Regulation) Act, 1957. The term of the lease deed dated 03.09.2010 was for a period of 10 years from 3/09/2010.

4. Part V of the deed in question deals with the rent and royalties to be paid by the lessee, the Railway. The clause (1) of Part (V) of the agreement binds the parties, which is reproduced hereinafter:-

Part-V (1). To pay dead rent or royalty whichever is greater- The Lessee" / Lessees shall pay in respect of any quarry period or half yearly period as may be fixed by the Collector <u>either the dead rent reserved by</u>

clause 3 of the this part whichever is greater. If the lease permits the working of more than one mineral in the same area, the Collector may fix separate dead rent in respect of each mineral. Provided the lessee shall be liable to pay the dead rent or royalty in respect of each mineral whichever be higher in amount, but not later. (Not applicable)

3. Monthly account to be sent to State Government:- The account for each month in respect of raising sale, dispatch, local consumption, royalty and rent dues and paid shall be 1 [submitted] within 15 days of the months following and a true copy signed by the lessee or his/her/its authorized agent shall be sent in triplicate to the Competent Officer 2[XXX] thereafter in a form that may be prescribed from time to time by the State Government.

5. The clause (4) of the Part (V) of the said agreement provides for surface rent:-

Part -V (4) Payment of surface rent- The lessees shall pay rent to the state Government in respect of all parts of the surface of the said lands which shall from time to time be occupied for used by the lessee under the authority of these present at the rate of Rs. 18,000/- per annum per acre of the area or at the rates as may be fixed by the Collector from time to time so occupied or used and so in Proportion for any area less than acre during the period from the commencement of such occupation or use until the area shall cease to be so occupied or used and shall as far as possible be restored to its original condition (which rent shall be paid upon each of the quarterly or behalf yearly dated hereinbefore appointed for the payment of Installments annual dead rent. (Not applicable)

6. The Mineral Development Officer, Sheikhpura vide letter No. 99 dated 15.2.2016 had directed the petitioner to pay an arrear of Rs. 43,30,152, which included royalty, surface rent, dead rent and interest for the period of September 2010 to June 2015.

7. The petitioner case is that vide letter dated 8.6.2016, it was requested to the respondents not to consider the surface rent and dead rent, thereto, because these rents were termed as "*Not applicable*" in the aforesaid agreement. The Mineral Development Officer, Sheikhpura without considering the explanation of the petitioner had vide letter No. 24 dated 14.01.2017 raised a demand of Rs. 52,27,393/- which included royalty, surface rent, dead rent and interest upto march 2016.

8. Aggrieved by the penalty order and demand notice, the petitioner had filed the present writ petition seeking quashing of the order contained in Memo No.99, dated 15/2/2016 (Annexure-2 to the writ petition) and the consequential letter contained Memo no. 24 dated 14/1/2017 (Annexure-5 to the writ petition), passed by, the Mineral Development Officer (respondent no. 3) by which demand on account of dead rent and surface rent has been raised, which according to the petitioner is in violation of clauses (1) & (4) of Part V of the of Memorandum Agreement dated the 31/12/2010.

SUBMISSIONS

9. Mr. Satyabri Bharti, Learned Senior Panel Counsel, Union of India, referring to Letter No. 99 dated

15.02.2016 (Annexure-2) and Letter No. 24 dated 14.01.2017 (Annexure-5) has submitted that the order is not in accordance with the provisions of the Bihar Minor Mineral Act, 1957 and Rules, 1972 and 2019, framed thereunder in view of the terms and conditions of the Agreement dated 03.09.2010. He further submitted that without issuing any show cause notice, the District Mining Officer, Sheikhpura, has passed order imposing penalty amounting to Rs. 43,30,152/- on account of royalty, dead rent, surface rent and interest in furtherance of the Letter No. 99 dated 15.02.2016 and he has raised a demand of Rs. 52,27,393/- as contained in Letter No. 24 dated 14.01.2017.

10. The main contention of the petitioner is that Part-V of the lease agreement relates to rent and royalties to be paid by the lessee in respect of (Mineral) of Ballast Quarry at Sheikhpura. Clause-1 of the said Part-V relates to the manner in which different components of tax, royalty and rent are required to be paid in the manner as specified under the Act and the lease agreement dated 03.09.2010, which was in force for a period of 10 years and expired on 02.09.2020.

11. Learned counsel further submitted that the lease period is covered by both the Rules i.e. Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as the

'Rule, 1972) and Bihar Minor Minerals (Concession Illegal Mining and Storage) Rules, 2019 (hereinafter referred to as the 'Rule, 2019) considering the fact that the lease agreement was entered for a period of 10 years, which was to expire on 02.09.2020. Learned counsel in support has referred to Rule 36 of the Rule, 1972 and Rule 77 of the Rule 2019 in support of his contention that the the terms and conditions of the agreement was binding between the parties and those which are contrary to the Rules and the agreement shall not be binding between the parties.

12. Learned counsel next submitted that Clause-1 of Part-V of the lease agreement provides for payment of dead rent or royalty, whichever is greater, if the lease permits the working of more than one mineral in the same area, the Collector may fix separate dead rent in respect of each mineral, whichever be higher in amount, but not later, which clearly has been mentioned to be not applicable in the case of the petitioner.

13. Learned counsel further emphatically submitted that the District Mining Officer has failed to take note of the conditions mentioned in the lease agreement, which is binding on both the parties that the lessee i.e. petitioner is only liable to pay royalty as per the terms and conditions of Clause-3

of Part-V of the lease agreement, and in terms of the Clause-6 and the terms and conditions as imposed in sanction order. As per the provision of Bihar Minor Mineral Concession Rules, 1972, any revision in the terms and conditions is prohibited during the subsistence of the lease.

14. Learned counsel in support of his submission submitted that after the specific guidelines issued by the Apex Court in case of ***Deepak Kumar etc. Vs. State of Haryana and Others*** reported in ***(2012) 4 SCC 629*** and ***Saurabh Prakash Vs. DLF Universal Ltd. (2007) 1 SCC 228,*** and in the light of the direction contained therein, the authorities were required to abide by the governing guidelines laid down by the Apex Court. The District Mining Officer while passing the order, has not applied his mind. No consideration to the terms and conditions of the agreement which has been drawn in terms of the guidelines by the Apex Court in Deepak Kumar (Supra), particularly, contained in Part-V of the lease agreement, demand contained in Letter No. 99 dated 15.02.2016 and Letter No. 24 dated 14.01.2017, amounting to Rs. 43,30,152/- is not sustainable in the eye of law. He further submitted that no show cause notice was issued and opportunity of hearing was provided in accordance with settled principle of law that before

taking penal action, opportunity of hearing must be provided to all the affected parties and on these grounds, learned counsel seeks quashing of the order contained in Letter No. 99 dated 15.02.2016 and demand raised in Letter No. 24 dated 14.01.2017.

15. *Per contra*, Mr. Naresh Dikshit alongside Mr. Brij Bihari Tiwary, learned counsel appearing on behalf of the Mines Department submitted that the petitioner having violated Clause-1 and 4 of Part-V of the memorandum of lease agreement dated 03.09.2010 for having not made payment of entire demand amount on account of dead rent and surface rent, the action of the Mining Officer had imposed penalty. Petitioner being the licensee of Ballast Quarry at Sheikhpura, the terms and conditions of the agreement is binding on him and is liable to make payment of outstanding dues of Rs. 43,30,152/- in accordance with Letter No. 99 dated 15.02.2016 and is also liable to make payment of outstanding dues amounting Rs. 52,27,393/- in accordance with revised demand notice contained in Letter No. 24 dated 14.01.2017 and in this regard, specific statement has been made in paragraphs no. 9 and 10 of the counter affidavit filed on behalf of respondents no. 1 to 3.

16. He further submitted that, so far as, the

contention of the petitioner that no opportunity of hearing was afforded is considered in this regard he informed that the petitioner was given notice under Rule 24 (3) of the Rule, 1972, which was served upon the petitioner for making payment of the entire due amount within a period of 30 days as contained in Memo No. 693 dated 24.08.2017 and Challan dated 24.10.2017 to deposit an amount of Rs. 19,18,269/- by 25.01.2018 which binds the petitioner to make payment of interest on royalty. Learned counsel further submitted that Section 17(3) of the Mines and Minerals (Development and Regulation) Act, 1957, makes it mandatory with respect to all the central government undertaking indulge in mining operation to pay royalties, surface rent or dead rent, as the case may be. He submitted that, so far as, the contention of the petitioner is concerned that the petitioner is only liable to make payment of either surface rent or dead rent as per the terms and conditions of Clause-1 of Part-V of the lease agreement is concerned, in paragraph no. 15 of the counter affidavit, it has been clarified that as per Section 17(3) of the Mines and Minerals (Development and Regulation) Act, 1957 in the event of the Central Government undertaking mining operations in an area, the same shall be liable to pay royalty, surface rent or dead rent, as the case may be, at the same rate at which it would been payable had it been undertaken by a private person.

17. Learned counsel further submitted that it is well settled law that executive actions cannot supersede statutory provisions. The impugned order and notices of demand don't call for interference and the petitioner is liable to make payments of the amount under the heads of dead rent and surface rent outstanding in favour of the Department, notwithstanding the "*Not Applicable*" clause having been indicated in the lease deed entered into between the present and the Department.

18. Learned counsel appearing on behalf of the State has supported the argument made on behalf of the Department of Mines.

ANALYSIS

19. Heard the parties.

20 . Rules for the grant of mineral concessions in British India were for the first time made by the Department of Revenue and Agriculture (Geology and Minerals) by a resolution dated December 13, 1894. These rules were revised in 1899. In 1913 revised rules come in effect by Resolution No. 7552-7581-121 dated September 15, 1913. These rules were

intended to provide guidance to officials of the government in granting prospecting licences and mining leases.

21. Pursuant to Entry 54 of the Union List, the Parliament of India has enacted the Mines and Minerals (Development and Regulation) Act, 1957 (the MMDR Act), which is the main source of legislation governing the development and regulation of mines and minerals in India. The MMDR Act declares that it is in the public interest that the Union should take the regulation of mines and the development of minerals under its control, to the extent provided in the MMDR Act.

22. In ***D.K. Trivedi and Sons & Ors. Etc. v. State of Gujarat & Ors.*** reported in ***AIR 1986 SC 1323***, the Apex Court has taken note of that the power to make rules conferred by section 15(1) which includes the power to make rules charging dead rent and royalty. Rent is an integral part of the concept of a lease. It is the consideration moving from the lessee to the lessor for demise of the property to him. Section 105 of the Transfer of Property Act, 1982, contains the definitions of the terms "lease", "lessor", "lessee", "premium" and "rent". Royalty connotes the payment made for the materials or minerals won from the land.

"In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called "surface rent"), dead rent and royalty. Since a mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lea e but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty". It may, however, be that the mine is not worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called "dead rent".

> <u>"Dead rent" is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. "while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed. Since dead rent and royalty are both a return to the lessor in respect of the area leased, looked at from one point of view teat rent can be described as the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased ant not on the quantity of minerals extracted or removed. Stipulations providing for the lessee's liability to pay surface rent,</u>

dead rent and royalty to the lessor are the usual covenants to be found in a mining lease."

23. It has been observed that the grant of a mining lease would thus provide for the consideration for such grant in the shape of surface rent, teat rent and royalty.

24. It has been observed that the conservation of minerals and their proper exploitation result in securing the maximum benefit to the community and lt is open to the State Governments to enhance the rate of dead rent so as to ensure the proper conservation and development of minor minerals even though it may effect a lessee's liability under a subsisting lease. ***State of Tamil Nadu v. Hind Stone Etc., [1981] 2 S.C.R. 742 @ 751*** relied on.

Where a statute confers discretionary powers upon the executive or an administrative authority, the validity or constitutionality of such power cannot be judged on the assumption that the executive or such authority will act in an arbitrary manner in the exercise of the discretion conferred upon lt. If the executive or the administrative authority acts in an arbitrary manner, its action would be bad in law and liable to be struck down by the courts but the possibility of abuse of power or arbitrary exercise of power cannot invalidate the statute conferring the power or the power which has been conferred by lt.

The enhancement in the rates of royalty and dead rent is made in the exercise of the statutory power to amend the rules framed under section 15(1). There is no such principle of law that before such a statutory power is exercised, persons who may be affected thereby should be heard. Whether any opportunity is to be given to persons affected to make representations to the Government would depend upon the form in which the rule making power is conferred.

25. The words " for the development and regulation of mines and minerals" (Subs. by Act 38 of 1999, s. 2, for "regulation of mines and the development of minerals" (w.e.f. 18-12-1999), are incorporated both in the Preamble and the Statement of Objects and Reasons of the Act, 1957. The word "regulation" may have a different meaning in a different context but considering it in relation to the economic and social activities including the development and excavation of mines, ecological and environmental factors including States' contribution in developing, manning and controlling such activities, including parting with its wealth, viz., the minerals, the fixation of the rate of royalties would also be included

within its meaning. The Apex Court in ***State of T.N.* v. *Hind Stone*** **[(1981) 2 SCC 205]** held:

> "Word 'regulation' has not got that rigidity of meaning as never to take in 'prohibition'. In modern statutes concerned as they are with economic and social activities, 'regulation' must of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State. Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated legislation. Each case must be judged on its own facts and in its own setting of time and circumstances and it may be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly is the only practical and reasonable manner of regulation. The Mines and Minerals (Development and Regulation) Act aims at the conservation and the prudent and discriminating exploitation of minerals and prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

26. The Government of Bihar in exercise of its power under Section 15 of the Mines and Minerals(Development and Regulation) Act, 1957 framed the Bihar Minor Mineral Concession Rules, 1972 and fixed the royalty from time to time. Unlike the previous rules, 1972 Rules, for the first time, made a reference to minor minerals, the extraction of which was to be regulated by such separate rules as the Local Governments might prescribe in accordance with

local circumstances and requirements.

27. So in regulating mineral development, the royalty/dead rent is the inherent part of it. The State has thus before it a number of factors as held by the Apex Court, which would guide it to fix, enhance or modify the rate of royalty/dead rent payable by a lessee. The conservation and regulation of mines and mineral development includes wide activity of the State including parting with its wealth, which are all relevant factors to be taken into consideration as a guiding force for fixing such royalty/dead rent.

28. For proper analysis of the present case it is apt to reproduce the provision of the Bihar Minor Mineral Concession Rules, 1972:

> **Rule 9 provides for Application for grant of mining leases.** - [(1) Except of Granite]
> [(a) A mining lease except of granite shall be granted by the Collector,]
>
> (b) Mining lease or prospecting licence of granite shall be granted by the State Govt.
>
> (2) Every application for a mining lease in respect of any land shall be made in Form "A" to the [Competent-Officer] or any other officer authorised by the Collector.

(3) Every application for mining lease shall be accompanied by a fee of [Rs. 2000,] and details of the land in respect of which the mining lease is applied for, and, where so required, certified copy or copies of the relevant extracts of the record of rights.

[(4) Every application for mining lease shall be accompanied by a valid clearance certificate of payment of mining dues such as royalty or dead rent, surface rent and cess upto the end of last financial year [in respect of all mineral concessions held in the State of Bihar.]]

[x x x x]

[(6) **Every application shall be accompanied by an affidavit stating that the applicant has**-

(i) filed Income-Tax returns up-to:date;

(ii) paid the Income-Tax assessed on him; and

(iii) paid the Income-Tax on the basis of self assessment as provided in the Income-Tax Act, 1961.

(7) Every application shall be accompanied by an affidavit showing particulars of areas mineral wise in such State, which the applicant or any person jointly with him-

(i) already holds under a mining lease;

(ii) has applied for but has not been granted; and

(iii) being applied for simultaneously."

(8) Every application shall be accompanied by a statement in writing that the applicant, has, where the land is not owned by him, obtained surface right over the are or has obtained the consent of the owners for

starting prospecting operation; provided that no such statement shall be necessary where the land is owned by the Government.]

[Provided that consent of the raiyats/owners of the land for starting prospecting/ mining operations in the area or part thereof shall be furnished after execution of the lease deed but before entry into said area:

Provided further that no consent shall be required in the case of renewal where consent has already been obtained during the lease.]

[(9) When an application for a mining lease is not accompanied by the papers specified in sub-rules (2), (3), (4) and [6, 7, & 8] it shall be rejected straightway by the Competent Officer within a period of 15 days from the date of its receipt.]

[9A. - <u>Notwithstanding anything contained in. these rules the Government may by notification in Official Gazette direct that any mineral may be leased out or settled by Public auction/tender in the manner prescribed in Rule-52].</u>

Rule 21. Conditions. - (1) Every mining lease shall be in Form "D" or in a Form as near thereto as circumstances of each case may require.

(2) The conditions embodied in Form "D" shall be deemed to be conditions imposed under this Rule.

(3) The Collector may impose such other conditions as he deems necessary in regard to the following, namely:-

(XXX)

Rule 22A.(1) [x x x]

(2) [x x x]

(3) [x x x]

(4) The existing quarrying leases shall not be renewed but it would be allowed to subsist for the remaining period for which they have already been granted on the same terms and condition:

Provided that at the end of the period for which they had been granted the area settled for quarrying will be governed by Rule 52.

Explanation I. - The relevant Rules of Bihar Mineral Concession Rules 1972 shall *"Mutatis Mutandis"* apply to quarry lease granted under Rule 52.

Explanation II. - Existing leases shall not be renewed nor fresh lease permits shall be granted.]

Rule 24. Right to [surrender] lease. -
<u>(3) The Collector may determine the lease if the lessee commits any breach of the terms and conditions of the mining lease after the applicant is given reasonable opportunity of being heard.</u>

<u>(4) At the expiry of the lease or on determination of the lease, the lessee shall deliver up the leased area and all quarries if any, dug therein a proper and workable state save in respect of any working regarding which the Collector may have sanctioned abandonment.</u>

Rule 25. Execution of lease. - <u>(1) Where a mining lease is granted under Rule 9 (1), 9(A) and 52, the formal lease shall be executed by the Collector in Form</u>

D within 120 days of the order sanctioning the lease and if the person to whom such lease has been granted fails to submit the required documents for execution within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked and in that event the application fee and the security deposit shall be forfeited:

Provided that no lease shall be executed unless the person to whom such lease has been granted submits that environmental clearance and mining plan as required under these rules:

Provided further that where the Collector is satisfied that the person to whom such lease has been granted is not responsible for the delay in execution of the formal lease, he may permit the execution of the formal lease even after the expiry of the aforesaid period of 120 days.

(2) The date of the commencement of the period for which a mining lease is granted shall be the date on which the mining lease deed is executed under sub-rule (1) and the lessee shall be liable to pay rent/royalty from the date of the execution of the mining lease.

Rule 26. Rent/royalty and assessment. - (1) When a lease is granted or renewed:-]

[(a) Dead rent shall be charged at the rates specified in Schedule I;

(b) Royalty shall be charged at the rates specified in Schedule II; and

(c) Surface rent shall be charged at the rate specified by the Collector from time to time for the area occupied or used by the lessee.]

(2) On and from the date of commencement of these rules, the provisions of sub-rule (1) shall also apply to the leases granted or renewed prior to the date of such commencement and subsisting on such date.

(3) If the lease permits the working of more than one mineral in the same area, the Collector may charge separate dead rent in respect of each mineral:

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral, whichever be higher in amount.

[*(4] Notwithstanding any thing contained in any instrument of lease the lessee shall pay rent/royalty in respect of any minor mineral own, extracted and removed at the rate specified from time to time in Schedules I and II.*] ******** Clause (5) (6) from bare act.

29. The petitioner had entered into lease agreement on 31.12.2010. 29. Part-V and Part-VI of the Lease Agreement dated 31.12.2010 (Annexure-1), entered into by the State of Bihar and the Railway, is as follows:-

"PART V

Rent and Royalties Reserved by this Lease for Railway owned Ballast Quarry at Sheikhpura.

1. To pay dead rent or royalty whichever is greater - The lessee/lessees shall pay in respect of any quarterly period or half yearly period as may be fixed by the Collector either the dead rent reserved by clause 3 of this part whichever is greater. If the lease permits the working of more than one mineral in the same area, the Collector may fix separate dead rent in respect of each mineral. Provided the lessee shall be liable to pay the dead rent or *royalty in respect of each mineral. Provided the lessee shall be liable to pay the dead rent or royalty in respect of each mineral whichever be higher in amount, but not later. (Not applicable)*

2. Rate and mode of payment of dead rent - Subject to the provision of clause I of this part as from the day of .... 2010 during the subsistence of this lease the lessee/lessees shall pay to the Collector (in four equal quarterly installments on the ....day of the months of ....or in four equal half yearly installments on the .... day of ....and the.....................31.........day of...........January......... in each year) certain annual dead rent at the following rates per acre of the lands, described in Part-I of this Schedule subject to revision at any time by the State Government by, notification of Schedule-1 of this Rule, (Rs................) (Not applicable)

3. Rate and mode of payment of royalty - Subject to the provision of this part, the Rly. shall during the subsistence of this lease pay to the State Government in four equal installments on the 31st day of the month of March, May, August & November in each year royalty in respect of any mineral/minerals removed by him/them from the leased area at the rate for the time being specified in the Second Schedule to the Bihar Mineral Concession Rules, 1972.

4. Payment of surface rent- The lessee/lessees shall pay rent to the state Government in respect of all parts of the surface of the said lands which shall from time to time be occupied for used by the lessee under the authority of these present at the rate of Rs. 18,000/- per annum per acre of the area or at the rates as may be fixed by the Collector from time to time so occupied or used and so in proportion for any area less than acre during the period from the commencement of such occupation or use untill the area shall cease to be so occupied or used and shall as far as possible be restored to its original condition (which rent shall be paid upon each of the quarterly or half-yearly dated hereinbefore appointed for the payment of Installments of certain annual dead rent): (***Not applicable****)*

*5. The lessee/lessees shall duly and regularly pay to the appropriate authority all cases, taxes and local dues in respect of the leased area, the said minerals or the working of the mines in addition to the rent and royalty so payable as aforesaid. (****Not applicable****)*

6. The E.C. Railway and their contractor will have to abide by all terms and conditions as imposed in sanctioning order *and BMMC Rule 1972 and any revision in them during the subsistence of this leased.*

<u>PART VI (Not applicable)</u>

Provisions Relating to the Rents and Royalties

1. Rent and royalties to be free deductions etc: The rent and royalties mentioned in Part V of this Schedule shall paid free from any deductions to the State Government at ...... And in such manner as the State Government may direct.

2. Mod of computation of royalty:- For the purposes of computing the said royalties the lessee/lessees shall keep a correct account of the mineral/minerals in stock or in the process of dispatch may be checked by any officer authorized by the Collector.

3. Monthly account to be sent to State Government:- The account for each month in respect of raising sale, dispatch, local consumption, royalty and rent dues and paid shall be 1 [submitted] within 15 days of the months following and a true copy signed by the lessee or his/her/its authorized agent shall be sent in triplicate to the Competent Officer 2[XXX] thereafter in a form that may be prescribed from time to time by the State Government.

4. Interest on arrear payments;- The lessee/lessees shall be liable or pay interest at the rate of 24% percent per annum on any amount remaining payable to the State Government.

*5. **<u>Course of action if rent and royalties are not paid in time</u>**:- Should the royalty and/or rent reserved and made payable by the lessee be not paid within one month next after the date fixed in the lease for the payment of the same, the Collector may enter upon the premises and distain all or any the mineral or beneficiated products thereof or moveable property their or of so much of them as will suffice for the satisfactory ton of the rent and/or royalties due and all costs and expanses occasioned by the non-payments thereof. If any royalty or rent remains at any time jumped for 3 calendar months after the date on which it is due, the Collector may determine the lease Premises comprised thereon. These rights shall be without prejudice to the right of the Collector to realize the dues under the Bihar Public Demands Recovery Act or any Statutory Act or Rules there of for the time being in force."*

30. In the counter affidavit, a very vague statement

has been made that the petitioner had submitted very late the Environmental Clearance Certificate and other necessary compliance certificates. It has been asserted in paragraph no. 15 of the counter affidavit that petitioner is liable to pay royalty, surface rent, dead rent, as the case may be, at the same rate applicable to the private persons.

31. Provision of Section 17 of the Mines and Mineral (Development and Regulation) Act, 1957 read with Rule 26(1)(a) and Rule 26(a) of Bihar the Bihar Minor Mineral Concession Rules, 1972 provides for payment of royalty, dead rent, surface rent and other dues to be paid by the lease holder.

32. A perusal of Rule 26(4) of the Bihar Minor Mineral Concession Rules, 1972 would indicate that the lessee shall pay rent/royalty in respect of any minor mineral owned, extracted and removed at the rate specified from time to time in schedule I and II of the said rules, notwithstanding any articles/ clauses contained in the instrument of the lease entered into between the lessee and the Department.

33. The Bihar Minor Mineral Concession Rules, 1972 provides for forfeiture of security deposit in the event of failure on the part of successful bidder. The relevant part of the aforesaid Rule is produced hereinafter:

"Rule 22. Sub-clause (c) provides for Amount equivalent to 10[ten percent] of auction amount as security which shall be adjusted with the last installment of auction amount if the mining leaseholder is not otherwise defaulter in payment. In case of unsuccessful bidder the security deposit shall be refunded by the Collector.

Rule (6) Failure on the part of the successful bidder.-In case the successful bidder fails to deposit the required security deposit along with other payable taxes within the prescribed time limit as referred to in the prevailing notification of the State Government in this regard, his security deposit shall be forfeited and a fresh settlement process through public auction shall be initiated."

34. The question which arise for consideration is whether the lessee i.e the petitioner is liably to pay only royalty as per the term and conditions of Clasue-III of Part-V of the lease agreement and in terms of Clause-VI of the terms and conditions imposed in the sanction order. Secondly, impugned order can be interfered with considering the fact that no show cause notice was issued and opportunity of hearing was provided to the petitioner.

35. The Constitution of India provides for power to carry on trade and enter into contracts in exercise of executive power of the Union or of a State. Article 298 and 299 of the Constitution of India are reproduced hereinunder:

298. Power to carry on trade, etc.

The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:Provided that--

(a)the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws,

be subject in each State to legislation by the State; and

(b)the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.

299. Contracts

(1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2)Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

36. The Hon'ble Supreme Court, in the case of ***Quarry Owners' Assn. v. State of Bihar*****, (2000) 8 SCC 655,** has inter alia made the following observations :-

> **32.** We have said Sections 4-A, 17, 18 and 23-C also provide for the guidelines. Sub-section (2) of Section 4-A empowers the State Government to prematurely terminate any prospecting licence or mining lease if it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, control of floods, prevention of pollution or for avoiding danger to public health or communications or to ensure safety of buildings, monuments, structures or for other purposes. <u>Under sub-section (2) of Section 17, the Central Government undertakes reconnaissance, prospecting or mining operations in any area not already covered by any licence or lease,</u>

after consultation with the State Government but sub-section (3) obligates it to pay the permit fee, prospecting fee, royalty, surface rent or dead rent, at the same rate at which it would have been payable by any other person under this Act. This also is a check on the State Government, while fixing the rate of the royalty. Similarly, Section 18 which refers to the mineral development as aforesaid casts an obligation on the Central Government to take all such steps for the conservation and systematic development of minerals in India and for the protection of the environment by preventing or controlling any pollution for which it may make rules and sub-section (2), in particular, specifies a large list on which such rules may be framed, which have been framed (the Mineral Conservation and Development Rules, 1988), which would be binding on the Government including the State Government. In conserving or regulating the development of any mineral resources, the price factor is inherent. Any development requires planning, execution, management and with reference to the excavation of mines, controlling the extent and manner of mining, to check its wastage, protecting the environment and controlling pollution, etc. which are provided in this Act. All this requires expenditure to be incurred by the State coupled with considerations for parting with the wealth of the State, as minerals belong to the State except on private land. They are all guiding factors in fixing, modifying or enhancing the rate of royalty. Thus development of mineral resources inherently refers to the price factor to be recovered by the owner.

42. We may further examine this question from another angle. In order to adjudicate, whether any delegation of power is unbridled or excessive, the historical background of similar provisions which preceded the impugned provision should be kept in mind, as it is also a relevant consideration. In fact, *D.K. Trivedi case* [1986 Supp SCC 20] itself has taken note of its historical background. It is significant that Entry 54 List I of the Seventh Schedule of the Constitution of India, reproduces Entry 36 in the Federal Legislative List in the Government of India Act, 1935, except by omitting the words "and oil fields". Under this Entry 36 the Mines and Minerals (Regulation and Development) Act, 1948 was enacted as we have now the present 1957 Act under Entry 54 List I. This Act conferred very wide rule-making power upon the Central Government, for regulating and granting of mining leases. The constitution makers also knew that the Central Government in exercise of this rule-making power, made the Mineral Concession Rules, 1949 and by Rule 4 the extraction of minor minerals was left to be regulated by the rules made by the Provincial Governments. When the present 1957 Act came into force, Parliament was aware that different State Governments in pursuance of this Rule 4 were regulating the grant of leases in respect of minor minerals including fixation of rate of royalties. This Parliament approved in the present Act through sub-sections (2) and (3) of Section 15, the then existing Rules which were in force immediately before the commencement of this Act which included the rate of royalty/dead rent for it to continue in force, unless superseded by the Rules made under sub-section (1). Thus, Parliament was fully aware that even in the past it was the State Governments which were entrusted and were dealing with minor minerals as a delegatee. The only difference being, earlier the State Governments were acting as sub-delegatee of the Central Government but now they act as

> delegatee of Parliament. This was the pattern adopted and approved since the inception. This seems to be also because minor minerals being more useful for the local uses and the State Government being the highest executive in the State knowing fully well of its uses, management including fixation of its prices. Thus, in this historical background there is nothing wrong to delegate to the State Government power to fix rate of royalty/dead rent for the minor minerals. "
>
> (emphasis supplied)

37. In light of the observation made by Apex Court quoted, hereinabove, it can well be inferred that a permit must necessarily be obtained before quarrying/mining activities can be carried out and for the utilization of the minerals, the Union of India is bound by statutory laws and rules to pay the statutory dues recoverable by the State.

38. In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate Forum is, undoubtedly, maintainable. The State and its executives have duty to act fairly and when its action is arbitrary permits for the constitutional remedy against the executive action if the action is arbitrary.

39. The reach of Article 14 enables a Writ Court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate

causes of action for invoking Article 14 . The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the Writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.

40. The legal right that can be enforced must ordinarily be the right of the Appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury;a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized. In **Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413** the Apex Court held that *"the manner in which a statutory authority had understood the application of a statute would not confer any legal right upon a party unless the same finds favour with the Court of law dealing with the matter."*

41. The Apex Court recently, in the case of ***M.P.***

Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd.*, (2023) 2 SCC 703,** while dealing with the scope of judicial review of action of State in a matter arising out of contract has relied on several decisions of the Apex Court and has summarised in paragraph no.52, the effect of contract not being statutory and the concept of public law in judicial review in the contractual matter. Dealing with the above question of law the Apex Court has finally concluded relying on a decision in ***ABL International Ltd. v. Export Credit Guarantee Corpn. Of India Ltd. reported in ***(2004) 3 SCC 553*** that each case, however, must be decided on its own merits. Public interest may be one of the factors to exercise power of judicial review and in a case where public element is involved, judicial review may be permissible. (See Binny Ltd. v. V. Sadasivan [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] and G.B. Mahajan v. Jalgaon Municipal Council [G.B. Mahajan v. Jalgaoin Municipal Council, (1991) 3 SCC 91]).

42. The Hon'ble Apex Court in the case of ***State of Orissa & Ors vs. Union of India & Anr***, reported in ***(2001) 1 SCC 429*,** while dealing with the question as to whether in the absence of any lease deed being executed in favour of Union of India, the State Government would be entitled to royalty or cess

for extraction of minerals from the land which had been acquired for the purpose of laying down railway track and possession whereof has been given to the Union of India, has *inter alia* made following observations:-

> "This being the position and the use of minor minerals on the railway track, after being extracted from the land, not coming within the expression bona fide domestic consumption, the said operation would be a quarrying operation under Rule 2(o), and consequently, the embargo contained in Rule 3 would apply. A combined reading of Rules 2(l), 2(o) and Rule 3 makes it crystal clear that the Railway Administration, cannot undertake the quarrying operation unless a permit is granted in its favour and, consequently, if the Railway Administration utilises the minor minerals from the land, for the railway track, it would be bound to pay the royalty chargeable under the Orissa Minor Mineral Concession Rules. The liability for payment of royalty accrues under Rule 13 and no doubt, speaks of a lease deed. If the Railway Administration, though not a lessee and at the same time is not authorised under Rule 3 to undertake any quarrying operation for the purpose of extraction of minor minerals, then for such unauthorised action, the Railway Administration would be liable for penalties, as contained in Rule 24. This being the position and in view of the prohibition contained in sub-Rule 2 of Rule 10 and taking into account the fact that such minor minerals would be absolutely necessary for laying down the railway track and maintenance of the same, we would hold that the Railway Administration would be bound to pay royalty for the minerals extracted and used by it, in laying down the

> railway track. The impugned judgment of the Orissa High Court is accordingly set aside and this appeal is allowed." *(emphasised supplied)*

43. It is made clear that a quarry lease, mining lease or other mineral concession in respect of minor minerals doesn't stand on the same footing as an ordinary contract. These leases and concessions are granted by the government pursuant to Rules made under the statutory power conferred upon them by a Regulatory Act. Minerals are part of material resources which constitute nation's natural wealth and if nation is so advance industrially and if its economy is to benefit by the proper development and exploitation of these resources, then it cannot be permitted to be frittered away and exhausted within a few years by indiscriminate exploitation without any regard to public and national interest. It was for achieving the object set out above that the 1957 Act was enacted with an objective that the makers of the Constitution recognized the importance to the nation of the regulation of mines and minerals development in public interest. The Indian Railways being part of the said development, cannot be subjected to arbitrary action of the authority clothed with statutory power, who, in the present case, definitely has acted in most unreasonable manner without taking into consideration the provision of the Act, Rules and the

guidelines issued by the Apex Court and N.G.T, as well as, the specific condition contained in lease agreement dated 31.12.2010. Every action of the executive government must be informed with reasons and should be free from arbitrariness.

44. While dealing with the scope of interference by the writ Courts in matters where after the contract was entered between the parties and the Government and its agencies, the decision making authority exceeded its statutory power or defied the principles of natural justice, the Apex Court in the case of ***Verigamto Naveen vs. State of A.P.*** reported in ***(2001) 8 SCC 344***, made following observations:-

> *"21. ... Though there is one set of cases rendered by this Court of the type arising in Radhakrishna Agarwal case [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457] much water has flown in the stream of judicial review in contractual field. In cases where the decision-making authority exceeded its statutory power or committed breach of rules or principles of natural justice in exercise of such power or its decision is perverse or passed an irrational order, this Court has interceded even after the contract was entered into between the parties and the Government and its agencies."*

45. In the present case, Part-V of the lease agreement relates to rent and royalties to be paid by the lessee in respect of Ballast (Mineral) Quarry at Sheikhpura. Clause-1 of the said Part-V provides for the manner in which different components of tax, royalty and rent are required to be paid in the manner as specified under the Act. It provides for payment

of dead rent or royalty, whichever is greater, if the lease permits the working of more than one mineral in the same area, the Collector may fix separate dead rent in respect of each mineral, whichever be higher in amount, but not later, which clearly has been mentioned to be not applicable in the case of the petitioner in view of specific condition contained in Clause-2, 4 and 5 which are applicable in the case of the petitioner. As per the provision of Bihar Minor Mineral Concession Rules, 1972, any revision in the terms and conditions is prohibited during the subsistence of the lease. The lease agreement dated 03.09.2010, was for a period of 10 years and had expired on 02.09.2020. The lease period is covered by both the Rules i.e. Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as the 'Rule, 1972) and Bihar Minor Minerals (Concession Illegal Mining and Storage) Rules, 2019 (hereinafter referred to as the 'Rule, 2019).

46. The question arises whether the lessee i.e. petitioner is only liable to pay royalty as per the terms and conditions of Clause-3 of Part-V of the lease agreement, and in terms of the Clause-6 and the terms and conditions as imposed in sanction order. The specific guidelines issued by the Apex Court in case of ***Deepak Kumar etc. Vs. State of Haryana and***

Others reported in ***(2012) 4 SCC 629*** and ***Saurabh Prakash Vs. DLF Universal Ltd. (2007) 1 SCC 228,*** the authorities were required to abide by the governing guidelines laid down by the Apex Court and the District Mining Officer while passing the order, without application of mind and taking into consideration the terms and conditions as contained in Part-V of the lease agreement. a demand vide Letter No. 99 dated 15.02.2016 and Letter No. 24 dated 14.01.2017, amounting to Rs. 43,30,152/-. Secondly, no show cause notice was issued and opportunity of hearing was provided to the petitioner. Law in this regard is well settled that before taking penal action, opportunity of hearing must be provided to all the affected parties and on these grounds, learned counsel seeks quashing of the order contained in Letter No. 99 dated 15.02.2016 and demand raised in Letter No. 24 dated 14.01.2017. Rule 24 (3) of the Rule, 1972, which was served upon the petitioner for making payment of the entire due amount within a period of 30 days. Section 17(3) of the Mines and Minerals (Development and Regulation) Act, 1957, makes it mandatory with respect to all the central government undertaking indulge in mining operation to pay royalties, surface rent or dead rent, as the case may be.

47. As per Rule 36 of the Rule, 1972, the condition

as per the agreement shall be binding between the parties if an agreement is entered between the State Government and the Central Government in public interest.

48. In view of the above discussion and law laid down by the Apex Court, the order contained in Letter No. 99 dated 15.02.2016 (Annexure-2 to the writ petition) passed by Mineral Development Officer Sheikhpura and the consequential order contained in Letter No. 24 dated 14.01.2017 (Annexure-5 to the writ petition) passed by the Mineral Development Officer, Sheikhpura, by which without giving proper opportunity of hearing to the petitioner and without taking into account the provision of Mineral Act, 1957 and Rules framed therein (Rules 2012 and 2019) and the terms and conditions of the agreement dated 31.12.2010 as contained in Clause-V and VI, the orders are hereby set aside and quashed.

49. The District Collector-cum-Licensing Authority, as such, is required to take corrective measures in accordance with law and pass a fresh order within a period of six weeks from the date of representation.

50. The District Collector being the Licensing Authority may take steps in accordance with law and as per the lease agreement between the parties.

51. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	10.05.2024
Transmission Date	N/A