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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 25566 of 2023
CNR No.ODHC010621542023

Prabir Ghose .... ***Petitioner***

-versus-

State of Odisha and others .... ***Opposite Parties***

Advocates appeared in this case:

For Petitioner : Ms. Pami Rath, Senior Advocate
Mr. P. Mohanty, Advocate

For Opp. Parties : Mr. Debashis Tripathy
Additional Govt. Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
AND
HON'BLE MR JUSTICE CHITTARANJAN DASH

J U D G M E N T

Date of Hearing : 18th August, 2026
Date of Judgment : 10th November, 2026

HARISH TANDON, CJ.

1. This is virtually a third round of litigation before this Court at the instance of the petitioner challenging the order dated 13.07.2023 whereunder an application for extension of the lease

under Section 8-A(5) of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) was rejected.

2. The genesis of the litigation is required to be succinctly recapitulated to determine the points raised in the instant writ petition. It is not disputed that the father of the petitioner was granted a mining lease for China Clay upon execution of the mining lease dated 15.09.1966 for a period of 20 years in respect of a mines situated in the village of Jhankarpalli in the district of Sambalpur. Upon expiration of the tenure reserved in the said mining lease, an application for renewal thereof was made and the same was renewed for a further period of 10 years with effect from 14.09.1986. As the original lessee died, the petitioner applied for second renewal for a period of 20 years with clear stipulation that the China Clay mines from the said minerals shall be used in a beneficiation plant. Though a considerable period of time was consumed to take a decision for second renewal, as the same was granted on 13.03.2003, but with effect from 15.09.1996. It is a specific case of the petitioner that the beneficiation plant was commissioned since April, 2004 and the ores mined from the said lease are used in the said beneficiation plant, which would be evident from the observation of the Director of

Mines while processing the prospective license application. In 2008, the petitioner constructed a second beneficiation plant within the leased area and thus, contended that the entire ores, i.e., China Clay is used for its captive purposes.

3. Subsequently, the Government amended the MMDR Act on 12.01.2015 inserting Section 8-A therein. Sub-section (5) of Section 8A of the said Act postulates that all the mining leases granted for captive use, shall be extended upto 31.03.2030; on the other hand, under sub-section (6) of Section 8-A of the Act, the mining leases which were not granted for captive use upto 31.03.2020. The petitioner contends that by virtue of a deeming provision and the fact that the mineral is used for his own captive purpose, the lease is required to be extended upto 31.03.2030 whereas the authorities extended the same upto 31.03.2020 as the mining lease was not for captive purposes. Since the authorities were not taking any steps for renewal, the petitioner consistently approached the authorities in this regard and ultimately in the 6th meeting of the Internal Verification Committee, a decision was taken that the petitioner is entitled to an extension of the validity period of lease upto 31.03.2020, as the original lease was not for captive purposes.

4. The decision of the Internal Verification Committee was communicated to the petitioner vide letter dated 04.10.2016 calling upon him to execute a supplementary deed within the stipulated time. Though the petitioner submitted the supplementary lease deed for its due execution but raised a protest that it ought to be upto 31.03.2030 and not 31.03.2020. The supplementary lease deed was executed on 07.12.2016, the duration whereof was upto 31.03.2020. On 09.12.2016 the petitioner entered into a partnership agreement with an another person having 50% share in another beneficiation plant and subsequently, communicated the same and invited the attention of the authorities that though the supplementary lease deed is executed but the same was under the protest and renewed the prayer for extension upto 31.03.2030 as the entire mineral is used for a beneficiation plant and therefore, the lease should be treated as for captive purposes. The said representation was being considered at the different level including the opinion sought from the Director of Mines and it would appear that the observation was made to the effect that the China Clay raised by the petitioner is used by its own beneficiation and washing plant. Ultimately, after great persuasion that the direction was passed to place the representations claiming

the extension upto 31.03.2030 before the Internal Verification Committee, where the meeting was held on 12.02.2020, wherein it was specifically observed that the petitioner is using the minerals produced from the mines for captive in their beneficiation plants since 2004 and the matter was referred to the Government for taking a decision in this regard.

5. The Department of Steel and Mines directed the Director of Mines to examine and furnish the details regarding nature of the captive use by the petitioner in terms of the raw material used into the plant and the final product produced in the said plant. In pursuance of the said direction, the Director of Mines communicated to the Government on 07.07.2020 observing that the lessee was consuming all the raised minerals from the said mines for captive use in its own beneficiation plant and also submitted the monthly returns in respect of the mines regularly. Yet the Government rejected the stand taken by the petitioner on the premise that the extension of the validity of the mining lease under Section 8-A(5) of the MMDR Act is inadmissible. Since there was no reason assigned in the said order, the petitioner challenged the same in W.P.(C) No.35636 of 2020 which was quashed and set aside as it is a cryptic

order without assigning any reasons in support of the final decision. The authorities were further directed to take a fresh decision by providing proper reasons. Pursuant to order dated 08.03.2022 passed in the said writ petition, the claim of the petitioner was further rejected on 17.08.2022 holding that the original lease was a merchant mining lease and not captive mining lease and, therefore, the recourse under Section 8-A(5) of the Act is impermissible.

6. The petitioner challenged the said order by filing a second writ petition being W.P.(C) No.26200 of 2022 which was again quashed and set aside on 20.03.2023 on the ground that since no opportunity was given to the petitioner, it violates the principles of natural justice with consequential direction upon the authorities to take a fresh decision after affording an opportunity of hearing to the petitioner. The authorities thereafter passed the impugned order dated 13.07.2023 reiterating the stand that since the original lease was a merchant mining lease and not a captive mining lease, the renewal under Section 8-A(5) of the MMDR Act is not permissible. It is further observed that mere use of the minerals in all plants or establishment does not qualify the same as captive use as the said word is not used in the original lease granted to the petitioner.

7. On the other hand, the Government took a stand in the counter affidavit that sub-section (5) of Section 8-A of the MMDR Act is applicable to a captive mining lease and since the original lease does not contain any such expression, there is no infirmity on the part of the authority in rejecting the claim of the petitioner and treating the same under sub-section (6) of Section 8-A of the said MMDR Act.

8. Both the counsel appearing for the respective parties made extensive submissions particularly on the ascertainment to the meaning derived from the original lease in pursuit of calling up the nature of the mining lease originally granted to the petitioner, it would simply make the judgment bulky in recording the respective stands of the counsel, as we find that the entire consideration is founded upon the applicability of the aforesaid sub-sections appearing under Section 8-A of the MMDR Act in juxtaposition with the nature of the mining lease originally granted to the predecessor of the petitioner. Both the parties have relied upon clause 8 of the Mining Lease deed dated 15th September, 1966 which contains thus:

> "8. Liberty and power to enter upon and use a sufficient part of the said lands to beneficiate any ore produced from the said lands and to carry away such beneficiated ore."

9. According to the petitioner, once the minerals are beneficiated in the own plant with further right to carry away such beneficiated ore, it is deemed that the same was used for captive purposes; on the other hand, the counsel for the State submits that since the words "captive use" is not reflected in the said clause, it cannot be construed for captive purposes. Such being the point involved in the instant writ petition, it would be apposite to trace the amendments having brought in the said MMDR Act in the year 2015. It is an admitted position that the expression captive use is not defined in the MMDR Act nor in the Odisha Minor Minerals Concession Rules, 2004. The said word received definition in the Orissa Minor Minerals Concession Rules, 2016 in the following:

> "2. Definition. xxxxx
>
> (d). ***"Captive use"*** means use of the entire quantity of mineral(s) extracted from the mining lease in a mineral processing unit or mineral beneficiation unit owned by the lessee excluding the mineral of substandard quality or mineral rejects"

10. Section 8-A was inserted by virtue of an Amendment Act 10 of 2015 with effect from 12.01.2015 encompassing the deemed extension of the various leases relating to major minerals, the said section is quoted as under:

"8-A. ***Period of grant of a mining lease for minerals other than coal, lignite and atomic minerals.*** (1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the First Schedule.

(2) On and from the date of the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, all mining leases shall be granted for the period of fifty years.

(3) All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be deemed to have been granted for a period of fifty years.

(4) On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act.

(5) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2030 with effect from the date of

expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(7) Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.

(7-A) Any lessee may, where mineral is used for captive purpose, sell mineral up to fifty per cent. of

the total mineral produced in a year after meeting the requirement of the end use plant linked with the mine in such manner as may be prescribed by the Central Government and on payment of such additional amount as specified in the Sixth Schedule:

Provided that the Central Government may, by notification in the Official Gazette and for the reasons to be recorded in writing, increase the said percentage of mineral that may be sold by a Government company or corporation:

Provided further that the Central Government may, by notification in the Official Gazette and for reasons to be recorded in writing, amend the Sixth Schedule so as to modify the entries mentioned therein with effect from such date as may be specified in the said notification.

(8) Notwithstanding anything contained in this section, the period of mining leases, including existing mining leases, of Government companies or corporations shall be such as may be prescribed by the Central Government.

Provided that the period of mining leases, other than the mining leases granted through auction, shall be

extended on payment of such additional amount as specified in the Fifth Schedule:

Provided further that the Central Government may, by notification in the Official Gazette and for reasons to be recorded in writing, amend the Fifth Schedule so as to modify the entries mentioned therein with effect from such date as may be specified in the said notification.

Explanation.- For the removal of doubts, it is hereby clarified that all such Government companies or corporations whose mining lease has been extended after the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall also pay such additional amount as specified in the Fifth Schedule for the mineral produced after the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021.

(9) The provisions of this section, notwithstanding anything contained therein, shall not apply to a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or which has been determined, or lapsed.]

11. It is pertinent to note that by virtue of Section 14 of the said MMDR Act, the applicability of the said section is excluded in relation to any minor minerals. Section 14 is quoted as under:

> "14. ***[Sections 5 to 13] not to apply to minor minerals***.- The provisions of [sections 5 to 13] (inclusive) shall not apply to [quarry leases, mining leases or other mineral concessions] in respect of minor minerals."

12. We hasten to add that the China Clay before such amendment was included as a major mineral but subsequently, have been included in the list of a minor mineral and, precisely, for such reason, the State has taken the stand that if the applicability of Section 8-A of the MMDR Act is excluded from the purview of the minor mineral, no benefit under the said provision can be resorted to. Such stand does not appear to be correct for the reason that the State Government while promulgating the OMMC Rules, 2016 makes the said Section 8-A applicable to the minerals which were major before the said Amendment Act but becomes minors subsequently in Rule 66 thereof, which is reproduced hereunder:

> "66. **Transitory provisions:—** (1) Notwithstanding anything contained in these rules, the existing lessees of such of the specified minor minerals which were major minerals on the date of coming into force of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (11 of 2015) shall be eligible for extension of the validity period of lease for such period and subject to such conditions as provided in Section 8A of the Mines and Minerals (Development and Regulation) Act, 1957.

> (2) Notwithstanding anything to the contrary contained in these rules, the applicants for mineral concessions in respect of such of the specified minor minerals, which were major minerals on the date of coming into force of the Mines and Minerals (Development and Regulation) 55 Amendment Act, 2015 (11 of 2015), and whose applications have remained eligible under the provisions of the sub-section (2) of Section 10A of the Act, shall remain eligible for grant of mineral concession for such period as prescribed under rule 8 of these rules subject to satisfaction of conditions prescribed in sub-rule (13) of rule 4 of these rules.
>
> (3) Notwithstanding anything to the contrary contained in the amended provisions, till the new system is put in place, the existing arrangement would continue. The State Government may take necessary steps for effective transition of minor minerals from Revenue & DM Department to Steel and Mines Department."

13. The conjoint reading of the aforesaid provision leaves no ambiguity in our mind that though Section 8-A of the MMDR Act is applicable to a major mineral and by virtue of Section 14 of the said Act does not have any manner of applicability to the minor mineral but by virtue of Rule 66 of the said Rules, it becomes applicable and therefore, the contention of the State that since the China Clay has now become a minor mineral though it was a major mineral at one point of time, Section 14 of the Act excludes the operation of Section 8-A, is untenable.

14. Now the only question that arises in the instant case, whether the mining lease executed in the year 1966 was, in fact, for captive use or

merchant mining lease. It is no gain saying that intention of the parties entered into a contract or an agreement can be gathered from the language and the expressions used therein. In the event, the intention is laudable and not capable of multiple interpretation; such manifestation would decide the nature and purpose of the lease. Undeniably, the words "captive use" is not incorporated in the original lease and the clause 8 which is central to the core uses the word beneficiation. The expression 'beneficiation' in its ordinary and general meaning is known as any process that improves the economic value of the ore by removing the Gangue Minerals resulting in a higher grade product and waste free. In other words, it is an integral part of mineral processing by separating the valuable minerals from the Gangue minerals found in the ore by using various techniques.

15. As indicated above, the captive use is not defined in the MMDR Act of 1957 nor in the OMMC Rules of 2004 but was given a meaning while promulgating the Rules of 2016 to mean the use of entire quantity of the mineral extracted from the mining lease in a mineral processing unit or mineral beneficiation unit owned by the lessee, excluding the minerals substandard quality or mineral rejects. Thus, to ascertain the meaning of clause 8 of the said mining lease, the original lessee was

given a power to beneficiate any ore produced from the said land and carry away such beneficiated ore therefrom.

16. It is not in dispute that in 2004, the petitioner set up the beneficiation plant and subsequently, set up another beneficiation plant and was all along using the minor minerals so extracted therein. While granting the first and the second renewal, the authorities were aware that the petitioner is using the said minor mineral in his beneficiation plant, which would further be corroborated by the observations and the opinions given by the authorities. Even the recommendation was made by the high ranking authority to the Government that the entire minor mineral extracted by the petitioner are used in his beneficiation plant and, therefore, an approval may be granted for extension of the lease under sub-section (5) of Section 8-A of the said Act. In our opinion, the authorities have misinterpreted and misplaced clause 8 of the original lease in its construction and were attempting to find out the clear expression, i.e. captive use. As indicated above, the captive use was neither defined in the MMDR Act nor the OMMC Rules prevalent before the Rules 2016 and, therefore, the intention has to be gathered from clause 8 thereof. The definition assigned in 2016 Rules to the captive use is explicit and clear that if the ores are used in a beneficiation

plant, it would be regarded as a captive use and therefore, the expression beneficiation appearing in clause 8 should be read in such prospective. Since the minor mineral is used by the petitioner in the beneficiation plant, which satisfies the definition of the captive use given in the Rules 2016, the stand of the authority that the lease was never granted for captive purposes but a merchant mining lease is unsustainable. The impugned order is, thus, quashed. The authorities are directed to execute a supplementary lease deed for the period enshrined under Section 8-A(5) of the said MMDR Act within three weeks from the date of communication of this judgment.

17. The writ petition is, thus, disposed of.

I agree.

(Chittaranjan Dash)
Judge

(Harish Tandon)
Chief Justice

Signature Not Verified
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SK Jena/Sr. Secy.