IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 5796 of 2025

Niranjan Nayak .... ***Petitioner***

Mr. Prafulla Kumar Rath, Senior Advocate
assisted by Mr. Abhijit Mohanty, Advocate

-versus-

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

Mr. Sanjay Rath, Additional Government Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
AND
HON'BLE MR JUSTICE MURAHARI SRI RAMAN

ORDER
24.03.2026

Order No.

01. **1.** The instant writ petition raises a serious issue as to whether less quantity of dispatch would attract the extraction of the stones, admittedly within the permitted limit, would tantamount to an illegal extraction.

2. The Odisha Minor Mineral Concession Rules, 2016 (hereinafter referred to as 'the Rules') defines the Minimum Guaranteed Quantity (MGQ) under Rule 2(p) thereof to mean "in respect of sources for which the mining plan has been approved, the quantity of annual extraction approved for the year concerned as per the mining plan and in respect of sources for which mining plan has not been prepared and approved, such annual extractable quantity as may be assessed by the Competent Authority with approval of the Controlling Authority as the reasonable quantity that may be extracted from the source considering its potential".

3. It is not in dispute that the petitioner was granted a lease for extraction of stone for a period of five (05) years identifying the quantity of the stone to be extracted on yearly basis. The Consent to Operate was issued by the Regional Office of the State Pollution Control Board (SPCB), Odisha limiting the extraction on yearly basis and the authority, on a field inspection done in the year 2024 (Annexure-17), found the total extraction at 7486.685 cum from the leased area but noticed the dispatch quantity of the stone at 7110.00 cum which according to the Mining Officer partakes a character of the excess extraction of the stone illegally.

4. Interestingly, the first sentence of the second paragraph of the Demand Letter dated 4th September, 2024 (Annexure-17), which laid the foundation of the demand, contains a clear and explicit expression that "the quantity so noticed is as per the Rule" meaning thereby that it is within the permissible limit set forth in the document recognized under the said Rules. It does not convey any intention that such extraction can take the character of illegal extraction as such extraction was found by the authority to have been done within the said Rules. The authority further noticed a less quantity of dispatch which is also not disputed and treated the remainder as an illegal extraction.

5. Our attention is drawn to the consent order issued by the Regional Office of the State Pollution Control Board, Odisha earmarking the quantity of production on yearly basis and the lease was admittedly commenced in the year 2021 and at the time of the inspection in the year 2024, the total extraction was noticed by the Tahasildar which on mere mathematical calculation would corroborate the Minimum Guaranteed Quantity to be extracted.

6. Our endeavour has failed to find out any such provision from the said Rules nor the counsel appearing for the respective parties could lay emphasis upon any such rules that if there is a mismatch between extraction of stone within the permissible ceiling limit, the disparity in the dispatch, that too less quantity would tantamount to an illegal extraction of the remainder quantity of stone.

7. Our attention is drawn to Rule-32 of the said Rules containing broader head relating to liability for payment of royalty, dead rent, surface rent, additional charge, amount of contribution payable to the District Mineral Foundation, amount of contribution payable to the Environment Management Fund to buttress the submission that in the event the quantity of extraction is beyond the MGQ, it can be removed from the leased area only after the payment of the amount under different categories as mentioned hereinabove on a pro-rata basis.

8. The removal of extraction is only permissible on the payment under the aforesaid categories mentioned therein but the said provision does not throw any light on the issue that if there is a less dispatch, the remainder would become illegally extracted quantity attracting the imposition of the penalty and the tax collected at source. Even the extraction appears to be nearly 80% of the total extraction which is admittedly done within the leased area in accordance with the provisions of the Rules.

9. Rule 51 of the said Rules relates to the power to impose penalty for violation of any terms and conditions of the lease deed as well as the provisions contained under the Rules and thus the question arose whether the authorities are within their competence to impose any penalty. Sub-rule (1) of Rule 51 of the said Rules postulates that wherever any person is found extracting or transporting any minor minerals, otherwise than in accordance with the said Rules shall be presumed to be a party to the illegal extraction or removal of such minor minerals and shall expose himself liable to be punished with Simple Imprisonment for a term which may extend to two (02) years or with fine which may extend to rupees five lakhs or with both.

10. Clause (iii) of sub-rule (1) of Rule 51 contains negative words as no cognizance shall be taken for such offence punishable under the said Rules by the Court unless a complaint in writing by such officer or the authority is made. The other incidences engulfed within the said Rules relate to separate incidences empowering the authorities to confiscate and recover the amount of illegally extracted minor minerals and other steps that may be warranted in a given situation.

11. So far as the imposition of the penalty in relation to illegal extraction within the Rules is concerned, it does not attract the penalty to be imposed by the authority as the charging provision confers power upon the Court to decide the same that too on the basis of a complaint given in writing by the competent authority. Once the power is conferred upon the authority, it impliedly takes away the power from the other authorities. The authorities have to travel within the circumference of the statutory provisions and cannot usurp the powers expressly conferred upon another authority because of the very presence within the statutory Rules. Once the exercise of powers is segregated upon different authorities, it necessarily excludes the exercise of powers by the other authorities.

12. As indicated hereinabove, once the extraction is admittedly done strictly in accordance with the provisions of the Rules, mere dispatch of a lesser amount, which is nearly 80% of the extracted amount, does not make the remainder having extracted illegally within the leased area. Apart from the same, Rule-51 of the said Rules does not cloathe power upon the authorities to impose penalty, which is expressly conferred upon the Court while taking cognizance of the offence having committed within the Rules and, therefore, the demand so made, is a colourable exercise of the powers not provided in the Rules and, therefore, cannot be sustained.

13. Therefore, the Demand Letter dated 4th September, 2024 (Annexure-17) issued by the Mining Officer-cum-Competent Authority, Minor Minerals, Nayagarh (opposite party No.7) is, hereby, quashed and set aside.

14. The writ petition is accordingly disposed of.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

S. Behera