



IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.5735 of 2025

Chintamani Samal

....

Petitioner

Mr. Bibekananda Bhuyan, Senior Advocate
assisted by Mr. Bijay Jena, Advocate

-versus-

State of Odisha and others

....

Opposite parties

Ms. Biswabara Dash, Additional
Standing Counsel

Mr. Parsuram Pradhan, Mining Officer, Boudh

CORAM:

THE HON'BLE THE CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER

25.03.2026

Order No.

04.

- I.** Challenging the legality and propriety of demand raised in respect of royalty for the year 2024-25 relating to Kharasankuloi Sand Bed by Letter No.536/Mines, dated 30th October, 2024 issued by the Mining Officer, Boudh, Competent Authority Minor Minerals *vide* Annexure-9, the petitioner has approached this Court by way of filing this writ petition invoking provisions under Articles 226 and 227 of the Constitution of India with the following prayer (s):-

“The petitioner, therefore, prays that your Lordships would graciously be pleased to admit this writ petition, call for the records and after hearing the parties allow the writ petition, issue writ/writs in the nature of mandamus and/or any other further writs/directions, by quashing the demand notice dated 30.10.2024 and further direct the Opp. Party No.8 to issue the transit passes in favour of the petitioner for the financial year



2022-23 and allow him to operate the quarry for 5 years from the date of operation/issuing transit pass with respect to the demand notice so that he can operate the sand quarry with immediate effect and/or adjust the previous statutory dues paid by the petitioner for the coming financial year.

And any other order be passed, direction be issued as deem fit and proper.

And for this act of kindness, the petitioner as in duty bound shall ever pray.”

2. The petitioner after being adjudged as a successful bidder in the auction conducted by the authority in terms of the Odisha Minor Mineral Concession Rules, 2016 (for short, “the OMMC Rules”) for the Kharasankuloi Sand Quarry, deposited all the requisite amounts towards royalty and other statutory dues for the financial year 2022-23 in compliance of the notice issued by the Tahasildar, Harabhanga *vide* letter dated 15th November, 2022 and was issued Form-F in his favour and the lease deed was executed on 24th January, 2023 for five years.
3. A letter was issued by the Tahasildar, Harabhanga addressed to the Secretary, the Environmental Impact Assessment Authority indicating no objection in favour of the petitioner, in pursuant to which Environmental Clearance was issued in his favour on 17th February, 2024. Accordingly, the petitioner on 29th February, 2024 having applied for “Consent to Establish” the Regional Officer, Bolangir, State Pollution Control Board, Odisha by Office Memorandum dated 11th March, 2024 granted such “Consent to Establish”. However, in the meantime in view of amendment carried out in OMMC Rules, the records are transmitted to the Steel and Mines Department.



4. The petitioner approached the authority concerned for issue of transit pass for the financial year 2022-23. However, though the petitioner did not operate the sand source due to aforesaid procedural delay on the part of the authority concerned, the demand notice for the year 2024-25 has been issued by the Mining Officer, Boudh.
5. Learned Senior Advocate appearing for the petitioner submitted that the demand so raised is illegal, arbitrary and not in consonance with the requirement envisaged under the OMMC Rules. It is contended that when there was no removal of mineral from the lease area, no royalty is payable. Request made by the petitioner to the authority by way of representation to adjust the amount paid during the period for which it could not operate the quarry and remove the sand did not find favour with.
6. On the last occasion, when the matter was taken up, the learned Additional Standing Counsel sought for adjournment to obtain instruction. Today, when the matter is taken up, the learned Additional Standing Counsel sought for further accommodation as the authority concerned has not placed any instruction for her perusal. At the request of the Court through the learned Additional Standing Counsel, the Mining Officer, Boudh appeared through virtual mode.
 - 6.1. On a query to justify the computation of demand raised for the year 2024-25 *vide* Letter dated 30.10.2024 (Annexure-9), the said Mining Officer referred to sub-rule(4) of Rule 25 of the OMMC Rules, 2016, which reads thus:



“(4) *Where the holder of the prospecting license-cum-mining lease or a mining lease becomes liable for payment of royalty for any minor mineral removed or consumed by him or his manager and employees or the contractor from the leased area, he shall be liable to pay either such royalty or the deed rent in respect of that area, whichever is higher.*”

6.2. Raising serious objection to such stance of the Authority concerned, at this stage, the learned Senior Advocate appearing for the petitioner submitted that the said Rule is inapplicable to the nature of liability occasioned in the present matter. It is pointed out that Rule 25 under Chapter-III of the OMMC Rules is attracted in the context of the holder of the prospecting license-cum-mining lease, but not for the persons like the petitioner. Referring to Rule 32 under Chapter-IV of the OMMC Rules, he submitted that the liability to pay royalty under the said rule would arise only in the event the minor mineral is removed or consumed.

7. Heard learned Senior Advocate appearing for the petitioner and learned Additional Standing Counsel appearing for the State-opposite parties.

8. Having diligently considered the rival contentions and submissions, it would be apposite to reproduce the provisions contained in Rule 32 and sub-rule (15) of Rule 33 of the OMMC Rules, 2016, which run thus:

“32. *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.—*



- (1) *All the lessees for minor minerals other than specified minor minerals shall be liable to pay royalty or dead rent, surface rent, additional charge, amount of contribution payable to the District Mineral Foundation, amount of contribution payable to the Environment Management Fund and fees for compensatory afforestation.*
- (2) *The lessee shall pay to the State Government every year dead rent and surface rent at the rates specified in Schedule-I for all the areas included in the lease deed and royalty at the rates specified in Schedule-II:*

Provided that the rates specified in Schedule-I and Schedule-II may be revised by the Government, from time to time, by an amendment made to the said Schedules, but no revision shall be made before the expiry of three years from the date when the rates were last fixed:

Provided further that where the lessee becomes liable for payment of royalty for any minor mineral removed or consumed by him or his agent, manager and employees or the contractor from the leased area, he shall be liable to pay either such royalty or the dead rent whichever is higher.

- (3) *In addition to the surface rent, dead rent or royalty, as the case may be, the lessee shall be liable to pay additional charge, amount of contribution payable to the District Mineral Foundation and an amount of contribution payable to the Environment Management Fund in advance, on annual basis on the minimum guaranteed quantity of minor minerals even if the actual extraction falls short of such quantity.*
- (4) *In case the actual extraction exceeds the minimum guaranteed quantity, such mineral may be removed from the lease area only after payment of royalty, additional charge, amount of contribution payable to the District*



Mineral Foundation and an amount of contribution payable to the Environment Management Fund on pro-rata basis.

- (5) *The royalty, additional charge, amount of contribution to the District Mineral Foundation and amount of contribution payable to the Environment Management Fund for the period up to commencement of the next year shall be paid on a pro-rata basis before the execution of lease deed.*
- (6) *For the purpose of determination of minimum guaranteed quantity in the cases where the lease has been executed on or after the 1st April, the minimum guaranteed quantity for the first financial year shall be equal to the minimum guaranteed quantity divided by twelve and multiplied by the number of months remaining in the first year of the lease, treating part of any month as full month.*
- (7) *The lessee shall pay, in addition to the surface rent, dead rent or royalty, additional charge, amount of contribution payable to the District Mineral Foundation and to the Environment Management Fund, fees for compensatory afforestation at rates as may be specified by the Government from time to time.*

33. *Conditions of quarry lease.—*

- (15) *The lessee shall keep correct accounts of minor minerals other than specified minor minerals quarried and dispatched and shall furnish a quarterly return in Form-P and annual return in Form-K to the Competent Authority and the Director.”*

9. This Court had the occasion to interpret aforesaid rules in the case of *Smt. Lili Meher Vs. State of Odisha and others, WP(C)*



No.403 of 2026, disposed of vide Judgment dated 17th March, 2026. It came to hold as follows:

“10. Once the authorities have demanded on a specified ground, the other ground not germinating therefrom cannot be permitted to be allowed, more particularly, at the time of the hearing, and, therefore, we do not accept the contention of the State in this regard. The Royalty and the other dues are demanded because of the violation of Rule 32 and Rule 33 (15) of the OMMC Rules, 2016, and, therefore, the determination has to be squeezed within its circumference and not beyond the same.

Sub-rule (2) of Rule 32 of the OMMC Rules, 2016 gains significant importance in ascertaining the liability to make the payment towards the Royalty. Though the said sub-section ordained the lessee to pay to the State Government yearly dead rent and surface rent at the rate specified in Schedule-1 and the Royalty at the rate specified in Schedule-II, but the 2nd proviso appended thereto appears to be contingent so far as the liability to make payment of Royalty. In order to arrive at the decision that the payment of Royalty is contingent, we can safely look upon the language employed therein. The expression “lessee becomes liable for payment of Royalty”, has to be understood in a general sense that the liability is contingent and depends upon the happening of an event. If the payment of Royalty is not dependent upon any contingency, the legislature could not have used the expression “becomes liable for payment of Royalty” in the said statutory provisions. Once the expression “becomes liable” is used, it eradicates the liability in all situations even non-happening of any event, and, therefore, has to be understood in such sense. The said expression “lessee becomes liable for payment of Royalty” is further qualified and brings the concept of contingency by using



the expression “any minor minerals removed or consumed”.

- 11. A conjoint reading of the aforesaid expressions, conveys a laudable intention of the authorities that the moment the minor mineral is removed or consumed, the lessee “becomes liable for payment of Royalty”. Once the liability is controlled by a contingency to happen, such liability cannot be imposed unless there is an eminent existence of such contingency. We are conscious that the enabling provision of sub-rule (2) of Rule 33 mandates the payment of Royalty as specified in Schedule-II, but once the proviso is appended, it not only controls the applicability of the main portion of the Section or the provision, but also at times be used as clarificatory and/or explanatory. The importance of using the proviso into the statutory form is to eradicate any ambiguity to happen in applicability thereof, and therefore, if the liability to make payment of the Royalty is dependent upon, the removal and conjunction on the minor mineral, it has to be understood as a contingent liability and not otherwise. Even sub-rule (15) of Rule 33 of the OMMC Rules, 2016, relied upon by the authorities relates to maintenance of a correct account of the minor minerals, so quarried/extracted and dispatched and an obligation is cast on the lessee to furnish the quarterly and annual return in the prescribed form to the competent authority. That provision certainly attracts the responsibilities, the obligations and the liability of the lessee in not only maintaining but also furnishing the details and/or information(s) in the prescribed form. However, it cannot be correlated even remotely in relation to the charging of the Royalty. The cumulative effect of the provisions contained under Rule 32 and Rule 33 (15) of the OMMC Rules, 2016 appears to us that apart from the liability, the other dues being not contingent, the petitioner cannot escape from its liability to make the payment thereof.”*



- 10.** It is trite that provisions imposing liability is required to be construed strictly. Faced with the language of Rule 32 and Rule 33 as referred to above, one has to look merely at what is clearly said and when the language is unambiguous, there is no room for any intendment. It is admitted by the Mining Officer that the royalty should have been charged at the time of issue of transit pass, *i.e.*, at the juncture of removal of mineral from the leased out area. There is no denial of the fact that the petitioner did not operate the sand quarry since 2022-23, even though agreement was entered into on 24th January, 2023. It is not unreasonable for him to seek for adjustment of royalty as has already been deposited against the liability that may arise on account of removal of sand.
- 11.** This Court having perused the demand notice dated 30th October, 2024 (Annexure-9) issued by the Mining Officer, Boudh, Competent Authority, Minor Minerals for the year 2024-25 in respect of *Kharasankuloi* Sand Bed, does not find it sustainable inasmuch as the event of liability as contemplated under the OMMC Rules has not yet arisen. In view of the aforesaid position of law as well as the factual matrix, this Court is inclined to quash the said demand notice. The matter is now remitted to the Mining Officer, Boudh-Competent Authority, Minor Minerals for taking appropriate decision keeping in view that the petitioner could not operate the sand source for a certain period despite execution of the agreement and in the light of the observations made *supra* after affording opportunity of hearing to the petitioner.



12. In view of the aforesaid observation and direction, the writ petition stands disposed of and pending Interlocutory Application(s), if any, shall stand disposed of.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

Laxmikant