



IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.31129 of 2025

Sagar Kumar Ray

....

Petitioner

Mr. Janmejaya Katikia, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Ms. Aishwarya Dash,
Additional Standing Counsel

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

ORDER

17.03.2026

Order No.

02. *1.* The petitioner was declared successful bidder for operating *Bhargabi River Sand Source* quarry under Achyutpur for a period of five years commencing from the date of execution of lease agreement. Though lease agreement was executed on 6th August, 2021 and amount of Rs.2,30,27,980/- was deposited by the petitioner, no work order was issued; which compelled the petitioner to approach the Tahasildar, Balipatna, Mining Officer, Khordha and Collector, Khordha to seek for refund of the said amount.
- 2.* It is submitted by Shri Janmejaya Katikia, learned counsel for the petitioner that by letter dated 13.09.2024 (Annexure-6), the Mining Officer (I/C), Khordha transmitted the record relating to M.M. Case No.05/2020-21 (*Bhagarvi River Sand Source*



Achyutpur) for disposal of the same for consideration of refund of the deposited amount. Said case being not considered as yet, the learned Advocate for the petitioner sought for a direction to the appropriate authority for considering the application for refund of amount deposited in respect of aforesaid sand source.

3. Ms. Aishwarya Dash, learned Additional Standing Counsel submitted that the authority concerned shall consider the grievance of the petitioner for refund of the amount, if direction is issued to dispose of aforesaid M.M. case.
4. Considering the submission, perusal of records reveals that the petitioner has made an application for refund of amount deposited towards royalty, EMD and the additional charges *etc.* along with interest thereon *vide* letter dated 16.07.2024 addressed to the Mining Officer, Khordha (Annexure-5). However, by letter dated 13.09.2024 (Annexure-6), the Mining Officer, Khordha transmitted M.M. Case No.05/2020-21 for disposal at the end of the Tahasildar, Balipatna.
5. This Court is conscious about amendment being enforced in the Odisha Minor Mineral Concession Rules, 2016. By virtue of the Odisha Minor Minerals Concession (Second Amendment), Rules, 2022, the Mining Officer, Khordha is now empowered to deal with the matter relating to minor mineral and the Tahasildar, Balipatna is ceased to have jurisdiction to deal with such matter.



5.1. It is trite that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden (in *Nazir Ahmed Vs. King Emperor, reported in AIR 1936 PC 253*).

5.2. Said principle has been followed subsequently in very many cases; suffice it to have regard to *State of U.P. Vs. Singhara Singh, AIR 1964 SC 358*, *Dhanajaya Reddy Vs. State of Karnataka, AIR 2001 SC 1512*, *Chandra Kishore Jha vs. Mahabir Prasad and others, AIR 1999 SC 3558*, *Gujrat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd., AIR 2008 SC 1921*, *Ram Deen Maurya Vs. State of U.P., (2009) 6 SCC 735*; *Deepak Agro Solution Limited Vrs. Commissioner of Customs, Maharashtra, (2008) 8 SCC 358* and *Central Potteries Ltd., Nagpur Vs. State of Maharashtra and others, (1962) SCC OnLine SC 213*.

5.3. At this juncture, reference to Rule 13 of the Odisha Minor Minerals Concession (Second Amendment) Rules, 2022 may be made for better understanding of the jurisdictional fact, which reads as follows:

“13. In the said Rules, in Rule 66, after sub-rule (2), the following sub-rule shall be inserted, namely:

‘(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 & Mines Department.”

- 5.4. In *Subash Chandra Nayak Vrs. Union of India*, 2016 (I) OLR 922, it has been observed as follows:

*“*** the statute prescribed a thing to be done in a particular manner, the same has to adhered to in the same manner or not at all. The origin of the Rule is traceable to the decision in Taylor v. Taylor, (1875) LR I Ch D 426, which was subsequently followed by Lord Roche in Nazir Ahmad v. King Emperor, AIR 1936 PC 253(2). But the said principle has been well recognized and holds the field till today in Babu Verghese v. Bar Council of Kerala (1999) 3 SCC 422, and Zuari Cement Limited v. Regional Director, Employees’ State insurance Corporation, Hyderabad and others, (2015) 7 SCC 690 and the said principles has been referred to by this Court in Manguli Behera v. State of Odisha and others (W.P.(C) No. 21999 of 2014 disposed of on 10.03.2016)”.*

Similar view has also been taken in *Rudra Prasad Sarangi v. State of Orissa and others*, 2021 (I) OLR 844; *Bamadev Sahoo v. State of Orissa*, 132 (2021) CLT 927 and in *Shaswata Pratika Pradhan v. State of Odisha and others*, 2022 (Supp.) OLR 601.

- 5.5. It needs to be highlighted as enunciated in *Deepak Agro Foods v. State of Rajasthan*, (2008) 7 SCC 748 that,

“All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without



jurisdiction, null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See Kiran Singh v. Chaman Paswan, AIR 1954 SC 340.) However, exercise of jurisdiction in a wrongful manner cannot result in a nullity— it is an illegality, capable of being cured in a duly constituted legal proceedings.

In Rafique Bibi Vrs. Sayed Waliuddin, (2004) 1 SCC 287 explaining the distinction between null and void decree and illegal decree, this Court has said that a decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction. The Court further held that a distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable.”

- 5.6. It has been laid down in *Central Potteries Ltd. Nagpur Vrs. State of Maharashtra*, 1962 SCC OnLine SC 213 as follows:

“In this connection it should be remembered that there is a fundamental distinction between want of jurisdiction and irregular assumption of jurisdiction, and that whereas an order passed by an authority with respect to a matter over which it has no jurisdiction is a nullity and is open to collateral attack,



an order passed by an authority which has jurisdiction over the matter, but has assumed it otherwise than in the mode prescribed by law, is not a nullity. It may be liable to be questioned in those very proceedings, but subject to that it is good, and not open to collateral attack.”

6. Since by virtue of aforesaid amendment, the Steel and Mine Department is the competent department to deal with the minor minerals, it is felt expedient to direct the Tahasildar, Balipatna (opposite party no.5) to re-transmit the record relating to M.M. Case No.05/2020-21 (Bhagarvi River Sand Source Achyutpur) to the Mining Officer, Khordha along with necessary evidence indicating deposits made by/received from the petitioner within a period of fifteen days from today. On receipt of the material as aforesaid, the Mining Officer, Khordha (opposite party no.4) shall consider the application for refund of the amount *vide* aforesaid M.M. Case within a period of four weeks thereafter. The Mining Officer, Khordha (opposite party no.4) shall pass a reasoned order and communicate the same to the petitioner forthwith.
7. With the aforesaid observations and direction, the writ petition stands disposed of.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

Aswini

Signature Not
Verified

Digitally Signed
Signed by: ASWINI KUMAR
SETHY
Designation: Personal
Assistant (Secretary-in-
charge)
Reason: Authentication
Location: ORISSA HIGH
COURT, CUTTACK
Date: 19-Mar-2026 17:20:44