

**A.F.R.**

**HIGH COURT OF ORISSA: CUTTACK**

**W.P.(C) No.5754 of 2011**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

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Sri Bhramarabar Das,  
S/o. Late Raghunath Das,  
At: Dhabeneswar Market,  
P.O. Panposh, P.S. Raghunathpali,  
Rourkela, Dist: Sundargarh

... Petitioner

-Versus-

State of Orissa & Others

... Opp. Parties

For Petitioner : Mr. B.M. Pattnaik, Sr. Advocate

For Opp. Parties : Mr. R.K. Mohapatra,  
Government Advocate

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P R E S E N T:

**THE HONOURABLE THE CHIEF JUSTICE SHRI.V.GOPALA GOWDA  
AND**

**THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA**

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Date of Judgment: 28.03.2012

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**B.N. Mahapatra, J.** This writ petition has been filed with a prayer to declare Rules 35 and 36 of the Orissa Minor Mineral Concession Rules, 2004 (for short, "OMMC Rules, 2004") violative of Articles 14 and 21 of the Constitution and to quash the order dated 14.01.2011 (Annexure-4) rejecting the petitioner's application for renewal of the lease and the auction notice dated 15.02.2011 (Annexure-5) issued by opposite party

No.3-Sub-Collector, Rourkela and published on 25.02.2011 in the Odia daily "The Sambad".

2. The petitioner's case in a nutshell is that he is engaged in manufacturing stone chips and metals since 1993 in the name and style of "M/s. Jharabahal Stone Quarry", which comes within micro small scale industry and has been allotted entrepreneurs' Memorandum No.210311100289 on 28.06.2008 by the Project Manager, District Industries Centre, Rourkela. Since 1993 the petitioner was operating the stone quarry on lease basis from the Government of Orissa. Jharabahal Stone Quarry No.1 was granted/renewed in favour of the petitioner in 2007 by the opposite party No.4-Tahasildar, Rourkela on 11.09.2007 for a period of four years starting from the financial year 2007-2008 till 2010-2011 and the said lease was to expire on 31.03.2011. Since the lease was to expire on 31.03.2011, the petitioner filed an application for renewal of Jharabahal (RTU-47) Stone Quarry lease before Opposite Party No.4. The said application has been duly received by the office of opposite party No.4 on 20.12.2010 along with all necessary documents like the solvency certificate, clearance certificate obtained from the Asst. Commissioner of Sales Tax, a treasury challan of Rs.1000/- etc. Opposite party No.4 by his order dated 14.01.2011 rejected the said renewal application on the ground that the Government of Orissa as well as the Board of Revenue in their various circulars and instructions have made it clear to settle the Miner Mineral

through annual auction only and not through lease. Hence, the present writ petition.

3. Mr. B.M. Pattnaik, learned Senior Advocate appearing for the petitioner submitted that the OMMC Rules, 2004 which provides for auctioning of the mineral sources every year will lead to closure of micro level crusher units due to lack of raw materials. Micro level entrepreneurs because of their size cannot afford to remain in manufacturing by sourcing stones from the quarry owners in case of auction of the quarries. The duty of the Government is not only to get revenue but it is equally the duty and responsibility of the Government to ensure that the Micro level manufacturers also survive and have reasonable access to the sources of new materials. Rules 35 and 36 of the OMMC Rules, 2004 put unreasonable restriction on business of unemployed youths inasmuch as the auction will be for a period of one year only. The cost for setting up of a crusher unit is about Rs.20 to 25 lakhs. Besides arranging finance from Banks, for getting licence under the Explosive Act, Pollution Control Act, Sales Tax/Value Added Tax Act etc. cumulatively it will take minimum 3 to 6 months' time. Rule 27 of the OMMC Rules, 2004 mandates that in case of renewal, a person who has been operating an industry based on minor mineral shall be given priority. The aim behind such a legislation is to see that if a person, applying for renewal of his quarry, who has set up an industry based on minor minerals is given priority as because the same

individual must have expended a huge sum of money in setting up the said industry and if the lease deed is not renewed, it may so happen that the said person may not be able to pay back his debts and the industry may come to a standstill position. The petitioner is running a manufacturing unit based on the minerals quarried from the stone quarry, which is evident from the certified copy issued by the DIC, Rourkela under Annexure-1. The petitioner has taken all pains and has expended a large sum of money to obtain necessary permissions from various statutory authorities to operate the stone quarry and the manufacturing unit. The petitioner has also received huge sum of money as loan from various financial institutions to carry on its manufacturing unit. The petitioner is providing bread and butter to a large number of local people. It is asserted here that after signing of the lease deed the petitioner reasonably expected that the lease over the stone quarry would be renewed after expiry of four years if he could set up a manufacturing unit based on the said minor mineral. Accordingly, loans and advances of huge amount and due permissions for a longer term were obtained from the financial institutions and the statutory authorities. The provisions enshrined under Rule 27 of the OMMC Rules, 2004 have been laid down keeping in view the doctrine of Legitimate Expectations. The petitioner while submitting his application for renewal of Jharabahal (RTU-47) Stone Quarry in his favour had expressed his willingness to pay the upset price fixed by him. It was submitted that

the provisions of Rules 35 and 36 of the OMMC Rules, 2004 have not been made in consonance with Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, "MMDR Act, 1957").

4. Mr. Pattnaik, learned senior advocate further submitted that in the meantime opposite party no.4 on the direction of opposite party No.3 has issued and published a notice in the newspaper on 15.02.2011 being auction notice No.485 to auction several sources of minor mineral including Jharabahal (RTU-47) Stone Quarry No.1 on 15.03.2011 at 11 A.M. for the year 2011-12 only. In case the minor mineral sources are put to public auction and the petitioner fails to get the same, it will amount to closure of the unit affecting the life and livelihood of not only the petitioner but all other persons directly and/or indirectly depending on the said industry for their livelihood. It is also submitted that various circulars and instructions as have been issued by the Government and other authorities to put the minor mineral sources specified in item No.(i) of Schedule-III to public auction, so also Rules 35 and 36 clearly show that the intention of the Government is only to get maximum revenue, which can also be achieved by giving lease of sources to the existing manufacturing units by fixing higher upset price and thereby both the objectives can reasonably co-exist i.e. the stone crusher owners will be certain of their business being assured of raw materials and the Government will also get higher revenue.

5. Placing reliance on the decisions of the Hon'ble Supreme Court in the cases of *Ramana Dayaram Shetty v. International Airport Authority of India*, AIR 1979 SC 1628; *D.K. Trivedi and Sons v. State of Gujarat*, AIR 1986 SC 1323; *Vasanlal Maganbhai Sanjanwala v. State of Bombay*, AIR 1961 SC 4, *M/s. Khoday Distilleries Ltd. etc. v. State of Karnataka and others*, AIR 1996 SC 911, *State of A.P. and others, etc. v. McDowell and Co. and others etc.*, AIR 1996 SC 1627, Mr. Pattnaik submitted that the decisions of the Hon'ble Supreme Court in the cases relied upon by opposite parties are not applicable to the case of the petitioner.

6. Per contra, Mr. R.K. Mohapatra, learned Government Advocate appearing on behalf of opposite party nos.2,3 and 4 submitted that different sairats owned by the Government are utilized for generation of revenue. Individual hardship cannot be a ground to decide the constitutional validity of any provision. In several decisions, the Hon'ble Supreme Court has held that the auction is the best method to grant lease/licence of State property. The petitioner is not debarred from participating in the auction to be held as per public notice issued for settling the stone quarry. It is stated that the Government in Revenue Department vide letter No.ST-4/2005 36665/R BBSR dated 06.09.2005 have issued instruction that the sairat sources shall only be settled in public auction as per the provisions laid down in Chapter-VI under the OMMC Rules, 2004 and 53 of the Manual of Tahasil accounts. In view of the Government instruction no

lease is permissible and the sources will be settled only by way of auction and as such the averment of the petitioner is not acceptable.

7. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Ramana Dayaram Shetty (supra)*, Mr. Mohapatra submitted that all the State largesse should be put to public auction. Further placing reliance on the decision of the Hon'ble Supreme Court in the case of *Union of India vs. International Trading Co., AIR 2003 SC 3983*, Mr. Mohapatra, submitted that the State has right to dispose of its mineral recourses through auction to generate more revenue and that does not violate Articles 14 and 21 of the Constitution. It was also submitted that Rules 35 and 36 of the OMMC Rules have been framed in accordance with Section 15 of the MMDR Act, 1957, which do not suffer from any lack of legislative competency or excessive delegation. Further placing reliance on the decision of the Hon'ble Supreme Court in the case of *State of Bihar vs. Bihar Distilleries, (1997) 2 SCC 453*; *Asst. Director of Inspection vs. A.B. Santi, (2002) 6 SCC 259*, it was submitted that always the presumption is that the Statute is constitutional and valid. Rule 35 of the OMMC Rules, 2004 starts with a non-obstante clause and therefore, the provisions of Rule 35 will override the other provisions of the OMMC Rules, 2004. The makers of this Rule in their wisdom limited the period of lease upto one year. Different States having prescribed different periods, the provisions of Rule 36 are not open to challenge. Chapter-VI of the OMMC Rules, 2004

contains the detailed procedure with regard to auction. The circular dated 06.09.2008 issued by the Board of Revenue is in accordance with the provisions of OMMC Rules, 2004 and there is no infirmity, hence, the writ petition is liable to be rejected. The petitioner has no right to claim negative equality. Placing reliance on the decision of the Hon'ble Supreme Court in the cases of *OM Prakash and others vs. State of U.P. and others*, (2004) 3 SCC 402; *Doiwala Sehkari Shram Samvida Samiti Ltd. vs. State of Uttaranchal and others*, (2007) 11 SCC 641; *Union of India and another vs. International Trading Co. and another (supra)*, Mr. Mohapatra submitted that the State has power to impose reasonable restrictions. Therefore, Article 19(1) (g) of the Constitution is not violated. Further placing reliance on the judgment of the Hon'ble Supreme Court in the case of *State of Tamil Nadu vs. M/s. Hind Stone and others*, AIR 1981 SC 711, it was submitted that the petitioner has no vested right for grant of lease in his favour. Placing reliance in the case of *Defence Enclave Residents Society vs. State of U.P. and others*, (2004) 8 SCC 321, it was submitted that in contractual matters, the writ petition is not maintainable.

8. On the rival contentions advanced by the parties, the following questions fall for consideration by this Court:-

- (i) Whether the present writ petition is maintainable?
- (ii) Whether the provisions of Rules 35 and 36 of the OMMC Rules, 2004 are not in consonance with Section 15 of the MMDR Act, 1957 and those are violative of Articles 14



and 21 of the Constitution being arbitrary and discriminatory in nature and therefore, those are not valid?

(iii) Whether the State Authorities are justified in rejecting the petitioner's application for renewal of lease granted in respect of Jharbahal (RTU-47) Stone Quarry No.1 and put the same in public auction for the purpose of sale and disposal?

(iv) What order?

9. Question No.(i) is with regard to maintainability of the writ petition. Raising the preliminary objection of maintainability of the writ petition, Mr.R.K.Mohapatra, learned Government Advocate submitted that the Writ Court should not entertain the present writ petition as the transaction between the parties is purely a commercial one. It is further submitted that pure contractual dispute between the parties cannot be gone into by the Writ Court. In support of his contention, Mr.Mohapatra placed reliance upon the decisions of the Hon'ble Supreme Court in the cases of **Central Bank of India Vs. Rooplal Bansal**, reported in (1999) 9 SCC 254 and **Defence Enclave Residents Society** (*supra*). There is no dispute over the position of law settled by the Hon'ble Supreme Court in the above two cases. But in the present case, the prayer of the petitioner basically is of two fold; his first prayer is that Rules 35 and 36 of OMMC Rules, 2004 are not valid being violative of Articles 14 and 21 of the Constitution of India. His second prayer is that the opposite party-

authorities are not justified in rejecting his application for renewal and going for a fresh tender in respect of Jharabahal (RTU-47) Stone Quarry-1. The decision making process of opposite party-authorities is arbitrary and unreasonable. In view of the prayers made in the writ petition, the contention taken by Mr.Mohapatra, learned Government advocate is not sustainable and the decisions of the Hon'ble Supreme Court relied upon by him are of no help to him. Considering the nature of the prayer made in the writ petition, we are of the view that the writ petition is maintainable.

10. Question No.(ii) is whether provisions of Rules 35 and 36 of the OMMC Rules, 2004 are violative of Articles 14 and 21 of the Constitution being arbitrary, discriminatory in nature and therefore, they are not valid.

Section 15 of Act, 1957 empowers the State Government to make Rules in respect of all minor minerals. It provides that the State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry lease, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. In exercise of power conferred by sub-section (1) of Section 15 of the Act, 1957 the State Government made the Rules, 2004 for regulating grant of mineral concession in respect of minor minerals. Chapter-VI of the said Rules deals with auction of minor minerals. Rule 35 provides that notwithstanding anything mentioned in the rules, sources of minor minerals specified in Item I(i) of Schedule III shall be sold or disposed of by

public auction on such terms and conditions as may be specified in the auction sale notice by the competent authority. Rule 36 provides that the auction shall be valid for a maximum period of one year from the date of execution of auction agreement. Rule 37 provides for fixation of upset price. Rule 38 provides that when an area containing minor minerals is to be disposed of through public auction the competent authority shall issue a notice giving reasonable publicity so as to obtain best possible price. Therefore, it cannot be said that Rules 35 and 36 of the OMMC Rules, 2004 suffer from any lack of legislative competence or excessive delegation.

11. The Hon'ble Supreme Court in the case of ***D.K.Trivedi and Sons & Ors., (supra)***, held that sub-section (1) of Section 15 is constitutional and valid and the rule-making power conferred thereunder upon the State Government does not amount to excessive delegation of legislative power to the executive. Sub-section (2) of Section 13 which is illustrative of the general power conferred by Section 13(1) contains sufficient guidelines for the State Government to follow in framing the rules under Section 15(1), and the same way, the State Governments have before them the restrictions and other matters provided for in Sections 4 to 12 while framing their own rules under Section 15(1). The guidelines for exercise of the rule-making power under Section 15(1) are, thus, to be found in the object for which such power is conferred (namely, "for regulating the grant of quarry leases, mining leases or other mineral

concessions in respect of minor minerals and for purposes connected therewith”).

12. The Hon’ble Supreme Court in the case of **Quarry Owners Association Vs. State of Bihar**, reported in AIR 2000 SC 2870 held as follows:

“Every word of a language is impregnated with and is flexible to connote different meaning, when used in different context. That is why it is said, words are not static but dynamic and Courts must adopt its that dynamic meaning which uphold the validity of any provision. This dynamism is the cause of saving many statutes of it being declared void, it dissolves the onslaught of any rigid and literal interpretation, it gives full thrust and satisfaction to achieve the objectivity which the legislature intended. Whenever there are two possible interpretations, its true meaning and legislature's intent has to be gathered, from the 'Preamble,' Statement of Objects and Reasons and other provisions of the same statute. In order to find true meaning of any word or what the Legislature intended, one has to go to the principle enunciated in Heydon's case (1584) 76 ER 637 : 3 Co Rep 7a, 9.7, which laid down the following principle as early in the sixteenth century. (1) What was the law before making of the Act; (2) What was the mischief or defect for which the law did not provide; (3) What is the remedy that the Act has provided; and (4) What is the reason of the remedy. The Court must adopt that construction which suppresses the mischief and advances the remedy.”

13. Law is well settled that there is always presumption of constitutional validity of the statute. The Hon’ble Supreme Court in the case of **State of Bihar & Ors. Vs. Bihar Distillery Ltd. & Ors.**, reported

in (1997) 2 SCC 453 held that an Act cannot be struck down merely by saying that it is arbitrary. Court should try to sustain its validity to the extent possible by ironing out defects, if any, in drafting. An Act should be declared as void only when its unconstitutionality is clearly established. An interpretation which renders the enactment an exercise in futility should be avoided.

14. Chapter-VI of the Rules, 2004 contains the detailed procedure with regard to auction of Sairats. Moreover, considering the nature of the Sairat, Rule 35 provides that minerals specified in Item 1(i) of Schedule-III are to be disposed of by public auction. The minor minerals specified in item 1(i) of Schedule-III are:- Ordinary clay, silt, rehmatti, ordinary sand other than used for industrial and prescribed purposes, brick-earth, ordinary earth, moorum, laterite slabs, ordinary boulders, road metals including ballasts, chips, bajri and rock fines generated from stone crushers, gravels of ordinary stones and river shingles and pebbles.

15. Chapter-VI of the OMMC Rules, 2004 is framed to get the best price from leasing out different sairats which are owned by the Government. Generation of maximum revenue with a view to secure maximum benefit to the community is in the larger public interest and individual hardship cannot be a ground to decide the constitutional validity of any provision, if such provision is otherwise validly enacted. The petitioner cannot claim any right to enjoy State largesse in perpetuity,

contrary to the specific provision of law. Law is well settled that the auction is the best method to grant lease / licence of State property in order to make the procedure fair, equitable and transparent and to generate maximum revenue for the State. In such process, the petitioner is also getting an opportunity to participate in the auction. Since Rules 35 and 36 of the OMMC Rules, 2004 have enacted for larger interest of the Society and fair opportunity was given to everybody, it can not be said that the provisions of Rules 35 and 36 of the OMMC Rules, 2004 are arbitrary and discriminatory in nature and violative of Articles 14 and 21 of the Constitution of India and therefore, invalid.

16.           Apart from the above, Rule 35 of the Rules, 2004 starts with a non-obstante clause, i.e., notwithstanding anything mentioned in the Rules. Therefore, the provisions of Rule 35 will override the other provisions of the Rules, 2004. The makers of the said rule, in their wisdom, thought it appropriate to limit the period of auction up to a maximum period of one year, because it will encourage competition among the interested persons and prevent monopoly of any particular person. Therefore, the maximum period of auction prescribed in Rule 36 of the Rules, 2004 is reasonable, fair, non-arbitrary and non-discriminatory and for this reason also it cannot be said Rules 35 and 36 of the OMMC Rules, 2004 are violative of Articles 14 and 21 of the Constitution.

17. Question No.(iii) is whether the State Authorities are justified in rejecting the petitioner's application for renewal of lease granted in respect of Jharabahal (RTU-47) Stone Quarry No.1 and put the same in public auction for the purpose of sale and disposal ?

18. Law is well settled that no person has any right of renewal of the Government property.

The Hon'ble Supreme Court in the case of ***State of Tamil Nadu Vs. M/s Hind Stone etc. etc., (supra)***, held that no one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested right in anyone, an application for lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application.

19. In ***Sachidanand Pandey & Anr. vs. State of West Bengal & Ors., AIR 1987 SC 1109***, the Supreme Court held that while dealing with public property, the executive must make an endeavour to dispose it of by public auction or by inviting tenders, though that is the ordinary rule, may not be an invariable rule. Where there are compelling circumstances necessitating the departure therefrom then the reasons for the departure must be rational and should not be suggestive of discrimination.

Appearance of public justice is as important as doing justice. Therefore, in case of dealing with public property, certain percepts and principles have to be observed and public interest is the paramount consideration and when a public property is disposed of, they should try to get the maximum price.

20. In ***Ram & Shyam Co. vs. State of Haryana, AIR 1985 SC 1147***, the Hon'ble Supreme Court held as under:

“A welfare State exists for largest good of the largest number, more so when it proclaims to be the socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater is the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraints may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages the setting-up of a Welfare State.”

21. In ***Nagar Nigam, Meerut vs. A1 Faheem Meat Exports Pvt. Ltd. & Ors., (2006) 13 SCC 382***, the Hon'ble Supreme Court held as under:

“The law is, thus, clear that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well known newspapers having wide circulation, so that all eligible persons will have an opportunity to bid in the bid, and there is total transparency. In our opinion, this is an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence.”



22. The Hon'ble Supreme Court in ***Aggarwal & Modi Enterprises***

***(P) Ltd. & Anr. Vs. New Delhi Municipal Council***, reported in (2007) 8

SCC 75 held as under:-

“22. The mandate of Section 141(2) is that any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. The crucial expression is "normal and fair competition". In other words, NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for such immovable property. The methodology which can be adopted for receiving maximum consideration in a normal and fair competition would be the public auction which is expected to be fair and transparent. Public auction not only ensures fair price and maximum return it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. The courts have accepted public auction as a transparent mean of disposal of public property. (See *State of UP v. Shiv Charan Sharma*, AIR 1981 SC 1722, *Sterling Computers Ltd. v. M and N Publications Ltd.* (1993 (1) SCC 445), *Mahesh Chandra v. Regional Manager, UP Financial Corporation* (1993 (2) SCC 279), *Pachaivappa's Trust v. Official Trustee of Madras* (1994 (1) SCC 475), *Chairman and M.D. SIPCO v. Contromix Pvt. Ltd.* (1995 (4) SCC 595), *New India Public School v. HUDA* (AIR 1996 SC 3458), *State of Kerala v. M. Bhaskaran Pillai* (1997 (5) SCC 432) and *Haryana Financial Corporation v. Jagdamba Oil Mills* (2002 (3) SCC 496).

23. Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participation in public auction ensures

transparency and it would be free from bias or discrimination and beyond reproach.

23. This Court in ***Jagannath Pradhan Vs. State of Orissa & Ors.***, reported in 93(2002) CLT 369 held as under:-

“As and when the question of granting lease of a permanent source of minor mineral comes for consideration, the only way in which the said source can be settled, is by adopting the procedure laid down under Rule 22 of the Rule and by holding public auction, but then circumstance may occur, as has occurred in the present case, where exigencies may require removal of minor minerals from a temporary source created or come into existence due to act of Nature, like heavy flood, cyclone, earthquake etc. If such an eventuality occurs, the Government is free to invoke the authority conferred upon it under rule 18(3) to meet the emergent situation. However, such power should not be utilized or invoked in ordinary course and can only be exercised in exceptional cases and in situation over which the State has no control. All endeavour should be first made up dispose of minor minerals only by auction so that the State does not suffer and best advantage is gained.”

24. In the present case, the Jharabahal Stone Quarry No.1 was leased out in favour of petitioner in the year 2007 by the Tahasildar, Rourkela (O.P.No.4) on 11.09.2007 for a period of four years starting from 2007-08 till 2010-11 and the lease was to expire on 31.03.2011 and the petitioner filed an application for renewal of the said Stone Quarry after expiry of the lease on 31.03.2011. Since the lease was granted up to 31.03.2011, after 31.03.2011, the petitioner has no right to claim renewal of the lease.

25. Petitioner's legitimate expectation does not merit consideration since the petitioner knowing pretty well the provisions of Rules 35 and 36 of the Rules, 2004 has established his business of manufacturing stone chips and metals. Therefore, he cannot not claim that he has any right to be granted for renewal of lease. Since Chapter-VI has overriding effect and the Hon'ble Supreme Court and the High Courts have consistently held that the State largessee should be sold or disposed of by public auction and the State Government for larger public interest decided to dispose of the Sairat in question covered under Rule 35 by public auction, the provision contained in Rule 27 is of no help to the petitioner.

It is not even the case of the petitioner that the lease of minor minerals in question in respect of which the petitioner sought for renewal is not coming under Item 1(i) of Schedule-III.

26. In view of the above, opposite party No.4-Tahasildar, Rourkela acting as per the order of opposite party No.3-Sub-Collector, Rourkela has rightly rejected the application of the petitioner for renewal of lease in question and issued the auction notice dated 15.02.2011 (Annexure-5).

27. At this juncture, it would be useful to refer to the order dated 27.2.2012 passed by the Hon'ble Supreme Court in the case of **Deepak Kumar etc. V. State of Haryana and others etc.** in I.A. Nos.12-13 of 2011 arising out of Special Leave Petition (C) No.19628-19629 of 2009. In Deepak Kumar's case referred to supra, the Hon'ble Supreme Court

referred to the provisions the MMDR Act, 1957 and also referred to the Environmental Impact Assessment Notification of 2006 and several instances across the country drawn to the notice of MoEF regarding damage to lakes, riverbeds and groundwater leading to drying up of water beds and causing water scarcity on account of quarry/mining leases and mineral concessions granted under the Mineral Concession Rules framed by the State Governments under Section 15 of the MMDR Act, 1957. MoEF noticed that less attention was given to environmental aspects of mining of minor mineral since the area was small, but it was noticed that the collective impact in a particular area over a period of time might be significant and taking note of those aspects a Core Group was constituted under the Chairmanship of the Secretary (E&F) to look into the environmental aspects associated with mining of minor minerals, vide its order dated 24.03.2009. The terms of reference to the Group were as under:

- « (i) To consider the environmental aspects of mining of minor minerals (quarrying as well as river beds mining) for their integration into the mining process.
- (i) Specific safeguard measures required to minimize the likely adverse impacts of mining on environment with specific reference to impact on water bodies as well as groundwater so as to ensure sustainable mining.
- (ii) To evolve model guidelines so as to address mining as well as environmental concerns in a balanced manner for their adoption and implementation by all the mineral producing States »

Reference was also made to the meeting held on 07.07.2009 by the said Core Group which has discussed the impact that may be caused by quarrying/mining of minor minerals on riverbeds and ground waters. It was noticed that individual mines of minor minerals being small in size may have insignificant impact; however, their collective impacts taking into consideration various mines on a regional scale, is significantly adverse. And thereafter following issues were brought up for consideration:

- (i) the need to re-look the definition of minor mineral,
- (ii) minimum size of lease for adopting eco friendly scientific mining practices,
- (iii) period of lease,
- (iv) cluster of mine approach for addressing and implementing EMP in case of small mines,
- (v) depth of mining to minimize adverse impact on hydrological regime,
- (vi) requirement of mine plan for minor minerals, similar to major minerals, and
- (vii) reclamation of mined out area, post mine land use, progressive mine closure plan etc.

The report of Core Group, which is referred to in the order clearly indicates that portion of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a re-look to the definition of “minor” minerals per se. The necessity of the preparation of “comprehensive mines plan” for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.

28. Further, in the Core Committee report, it is recommended that States and Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan. It is further observed that a proper framework has also to be evolved on cluster of mining of minor mineral for which there must be a Regional Environmental Management Plan. There are eight recommendations made in the report of the Mineral Concession Rules for mining of minor minerals under Section 15 of MMDR Act, which reads thus:

- (1) Minimum size of mine lease should be 5 ha.
- (2) Minimum period of mine lease should be 5 years.
- (3) A cluster approach to mines should be taken in case of smaller mines leases operating currently.
- (4) Mine plans should be made mandatory for minor minerals as well.
- (5) A separate corpus should be created for reclamation and rehabilitation of mined out areas.
- (6) Hydro-geological reports should be prepared for mining proposed below groundwater table.
- (7) For river bed mining, leases should be granted stretch wise, depth may be restricted to 3m/water level, whichever is less, and safety zones should be worked out.
- (8) The present classification of minerals into major and minor categories should be reexamined by the Ministry of Mines in consultation with the States.

29. The draft rules called The Minor Minerals Conservation and Development Rules, 2010 were also put on the website. Section 15(1A)(i) of the MMDR Act specifies the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reasons of any quarrying or mining operations shall be made in the same area or in any other area once selected by the State Government, either by way of reimbursement of the cost of rehabilitation or otherwise by the persons holding the quarrying or mining lease. The State Government/Union Territories have to give due weightage to the above mentioned recommendations of the MoEF which are made in consultation with all the State Governments and Union Territories. The Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and bio-diversity point of view.

30. After referring to the above said report and recommendations, the Hon'ble Supreme Court felt the necessity to have an effective framework of mining plan and further made observation after taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March, 2010 followed by the Model Rules, which is in the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution. Having said so, the Hon'ble Supreme Court at paragraph 17 of the judgment directed the States and Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations

made by MoEF in its report of March, 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months from the date of that judgment and submit their compliance reports.

31. In view of the above said direction, the State Government is required to reframe the Minor Minerals Concession Rules in the light of the model guidelines framed by the Ministry of Mines, Government of India referred to supra keeping in view various aspects highlighted by the Core Committee and issues raised by it and recommendations made by the Government of India. Further, keeping in view the size of the leased area, the definition of the minor mineral and environmental impact, the Hon'ble Supreme Court has said that lessee may be permitted to quarry the mineral from the sairat source in question at least for a period of five years.

32. Therefore, the application of the petitioner, who is already lessee may be considered by putting the sairat source to public auction. It is open for any category of applicant referred to in Rule 27 including the petitioner to participate in public auction of minor mineral and in case the petitioner is not found to be the highest bidder, but agrees to match with the price at which the bid is knocked, preference shall be given to him even though he is not the highest bidder. We make this observation keeping in view the provision of Rules 27, 35 and 36 of the OMMC Rules, 2004 vis-à-vis interest of the State which really means the larger interest of the people of the State. If the sairat is settled in favour of the petitioner, then the same



may be renewed at least for a period of five years in terms of the observation made by the Hon'ble Supreme Court in its order in the case of **Deepak Kumar etc** (*supra*) subject to payment of consideration money in each succeeding year which shall be fixed by increasing 15% of the consideration money of the immediate preceding year.

33. With the above observations and directions, the writ petition is allowed to the extent indicated above.

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B.N.Mahapatra, J.

**V. Gopala Gowda, C.J.**      *I agree*

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Chief Justice