

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Original Application No. 604/2018

IN THE MATTER OF:

Sarbeswar Behura

Applicant

Versus

Union of India & Ors.

Respondent(s)

**REPLY ON BEHALF OF
RESPONDENT NO. 11**

PAPER BOOK
(FOR INDEX- KINDLY SEE INSIDE)

MUKUL KUMAR – COUNSEL FOR THE RESPONDENT

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**REPLY ON BEHALF OF
RESPONDENT NO. 11**

MOST RESPECTFULLY SHOWETH:

1. The Applicant has filed the present Original Application which is pending for adjudication before this Hon'ble Court.
2. That all facts, averments, statements, submissions and contentions raised by the Applicant in the aforesaid Original Application as are contrary to and not in consonance with this Reply, are singularly and specifically denied. The answering Respondent is filing the present reply with liberty to file a para-wise reply if directed by this Hon'ble Tribunal.
3. That the Applicant in the Original Application has been constantly moving against the present Respondent in different Forums including before the Hon'ble High Court of Orissa, wherein, he had filed W.P.(C). No. 18589 of 2017 as a Public Interest Litigation seeking a relief of closure of the mines at Dankari Hills wherein, the present Respondent was carrying on mining operations by exercising his legal rights under the mining lease(s) granted by the State Government as per law. The Hon'ble

High Court of Orissa while finally disposing of the aforesaid Writ Petition vide order dated 18.06.2018 was pleased to hold that the mining activities in the area cannot be prohibited, if the Government auctions the mining areas as per law. The relevant portion of the order dated 18.06.2018 is reproduced herein below for ready reference:

“4. Since the petitioner has not placed on record any document to show that the Government Department / Revenue Department has prohibited carrying on mining activities in the said area, thus, in our view, under the garb of stopping illegal mining, we cannot restrain the opposite parties from auctioning the area where mining can be permitted as per law.”

Copy of W.P.(C) No. 18589/2017 dated 31.8.2017 is annexed herewith as **Annexure R11/1**

Copy of order dated 18.6.2018 passed by Hon’ble High Court in W.P.(C) No. 18589/2017 is annexed herewith as **Annexure R11/2**

That it further pointed out that the Applicant had earlier filed a Writ Petition bearing No. 23197 of 2015, wherein he had also made similar claims, but had withdrawn the same. The order dated 03.05.2017, is quoted herein below for ready reference:

“Mr. Pradhan, learned counsel for the petitioner has filed a Memo praying for withdrawal of the writ petition with liberty to file a better writ petition.

The writ petition is accordingly dismissed as withdrawn with liberty as prayed for. Memo be kept on record.”

Thus, having failed to obtain any favourable order from the Hon’ble High Court, the Applicant, approached this Hon’ble Tribunal by way of OA No. 604/2018.

4. That it further humbly submitted here that, there are many other operators carrying on mining activities in and around the Dankari hill region, however, the Applicant is selectively targeting the mining operations carried on by the present Respondent by moving several frivolous litigations against him in different Forums by resorting to “Forum Shopping”.
5. It may also be pertinent to point out the conduct of the Applicant himself. Applicant who instituted the complaint before the Hon’ble NGT, triggering the impugned order is a man with highly questionable credibility and is involved in extortion, illegal extraction and transportation of minerals etc.
6. That the Applicant has been found to be a chronic violator of lease conditions having been caught in illegal extraction of minor mineral and

imposed with a huge penalty of Rs.250 crore. This shows that there is complete lack of bonafide by the petitioner and he is abusing the present forum and filling purely private interest litigation. Copy of letter dated 26.12.2023 of Collector and District Magistrate, Jajpur is annexed herewith as **Annexure R11/3**.

7. It may be mentioned here that the Applicant was arrested on 14.06.2023 in connection with FIR No. 384 dated 13.6.2023 under section 379/34 IPC r/w Section 21 of MMDR Act for extracting and transporting morrum illegally from government land which was dumped on private land owned by the Applicant. This arrest of Applicant had been on the written complaint made Government Official - the Tahasildar, Dharamsala, no less. Applicant had hired / rented vehicles for excavating and transporting earth/morrum from Govt land in the village of Saroi under Dharamshala Tehsil, District Jajpur. The Tehsildar Dharamshala was able to seize five (5) numbers of tractors and one (1) JCB machine from the spot with police help and also lodged an FIR in that connection in the Dharamshala police station which was registered as Dharamshala P.S Case no. 384 dated 13.06.23 for offences punishable under sec 379/ 34 of the Indian Penal Code r/w sec 21 of the MMDR Act. Accordingly, C.T No. 1037/2023 has been instituted before the Court of the learned JMFC, Chandikhole.

8. That besides the above, the Applicant is also accused in the following cases: Dharmasala P.S. Case No. 145 dated 20.05.2009 u/s 341/294/379/506/323/34 IPC, Dharmasala P.S. Case No. 90 dated 20.04.2011 u/s 294/506 IPC/Sec 3 SC & ST (PA) Act, Dharmasala P.S. Case No. 239 dated 09.07.2017 u/s 341/294/506/34 IPC, Dharmasala P.S. Case No. 261 dated 11.05.2022 u/s 341/294/34 IPC/3(1)(r)(s)/2(va) SC & ST (PA) Act, Jenapur P.S. Case No. 119 dated 3.10.2016 u/s 147/148/294/323/307/436/120(B)/149 IPC.
9. Applicant claims himself to be a RTI Activist who files cases before different forums including Hon'ble Lokayukta Odisha, the Hon'ble High Court and the Hon'ble NGT. He has thereafter proceeded to misuse and abuse the provisions of the RTI Act by blackmailing and extorting money from various public offices at all existing levels besides receiving monthly payments from several contractors and business persons primarily in Dharmasala area of District Jajpur, whom he has been successful in blackmailing and victimizing through his extortionist means. Applicant has in fact made himself into a "professional extortionist" threatening everyone around while having no credibility of his own, being involved in different illegal activities.
10. That it is settled law that the law machinery cannot be set into motion at the instance of an unscrupulous litigant. In Divine Retreat Centre Vs. State

of Kerala & Ors., (2008) 3 SCC 542, this Hon'ble Court reiterated that public interest litigation can only be entertained at the instance of bonafide litigants. It cannot be permitted to be used by unscrupulous litigants to disguise personal or individual grievances as public interest litigations. In Ashok Kumar Pandey v. State of W.B., (2004) 3 SCC 349, it was observed that, "4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant or poke one's nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A

person acting *bona fide* and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.”

11. That the answering Respondent is the long term mining lease holder with respect to Dankari Stone Quarry, the lease having been legally granted by the State of Orissa. Answering Respondent was granted quarry lease for an area of Ac.41.50 decimals out of an area of Ac.773.60 decimals, pertaining to Plot No. 600, under Khata No. 221 of Village - Dankari on 1.11.2002 for 3 years on long term basis. Subsequently, the lease fell for renewal and the same was renewed for a period of 3 years i.e. from 1.11.2005 to 31.10.2008. That subsequently, the lease fell due for renewal on 31.10.2008 and upon proper application the lease was renewed for period of 3 years i.e. from 11.11.2008 to 31.10.2011.
12. That thereafter Respondent was granted the long term lease for Quarry No.1 in Dankari vide order dated 28.03.2012 of the Hon’ble High Court, Odisha passed in W.P.(C) No.20799 of 2011 for a period of five (5) years. The operative portion of the order is reproduced herein below for ready reference of this Hon’ble Court:-

“In view of the above said direction, the State Government is required to frame 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 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. 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."

Copy of order dated 28.03.2012 of the Hon'ble High Court, Odisha passed in W.P.(C) No.20799 of 2011 is annexed herewith as **Annexure R11/4**

13. That for the purpose of operating the said mine, the ¹⁹answering Respondent was also granted Consent Order from the State Pollution Control Board on 26.11.2012 and thereafter Agreement was executed by the appropriate authority with the Respondent on 5.12.2012 – Copy of Agreement dated 5.12.2012 is annexed herewith as **Annexure R11/5**. The same was in terms of the order dated 3.10.2012 passed by the Hon'ble High Court of Orissa in W. P. (C) No. 10886 & 9876 of 2012 which is annexed herewith as **Annexure R11/6**. The operative portion of the order is reproduced herein below for ready reference of this Hon'ble Court:-

“The only interest of the intervening petitioners is to see that environment and ecology shall be maintained in any area in question by obtaining necessary consent from the Pollution Control Board. The intervening petitioners have got interest to that extent. This aspect can be remedied by giving direction to the competent authority and the petitioners herein are also directed to move the Pollution Control Board to get the consent order as per the observation made at paragraph – 32 of the judgment in W.P.(C) No. 20799 of 2011 referred to supra on the basis of the judgment of the Supreme Court in the case of Deepak Kumar etc. supra. The Pollution Control Board shall decide the matter within a period of two weeks from the date of receipt of application filed by the petitioners. While issuing the consent order the Pollution Control Board shall see that environment and ecology shall be maintained in the area in question. Further, we direct that

competent authority should proceed with the matter and finalize the bid in respect of stone sairat source which has already been leased out upon the highest bid that would be offered by giving certain benefits pursuant to the order of the Supreme Court in the case of Deepak Kumar etc. supra.”

14. That, thereafter the Tahasildar issued letters dated 25.10.2012 and 26.10.2012 directing the answering Respondent to obtain the consent from the pollution control board pursuant to the aforementioned order of Hon’ble High Court.
15. That, due application was made by the answering Respondent, and consent was issued by the Pollution Control board vide letter dated 26.11.2012 for five years subject to execution in favour of the answering Respondent.
16. That, the lease was accordingly executed on 05.12.2012 for a period from 26.11.2012 to 25.11.2017.
17. In the interregnum, by way of abundant caution, the answering Respondent had also applied for Mining Plan, which is essential for grant of Environmental Clearance, before the appropriate authority in 2013. The application by the answering Respondent was complete in all respects and the answering Respondent has also paid the requisite fees.
18. Thereafter State Pollution Control Board further granted the enhanced Consent Order in favour of the present Respondent vide letter dated

17.1.2013, thereby increasing the production quantity to 1,20,200 M.T. per month in the mining leased area of the present Respondent.

19. Answering Respondent had also been from time to time obtaining Environmental Monitoring Reports and as per the Reports, the answering Respondent was strictly complying with all the environmental requirement including maintaining Air Quality and noise pollution and water pollution within permissible limits. Answering Respondent, on his own initiative, in 2015 appointed an Agency for preparation of Air Pollution Monitoring Report and Water Pollution Monitoring Report. As per both the reports, the Respondent was fully complying with the environmental requirements and the air and water emissions are well within the permissible environmental standards.
20. All of a sudden, vide letters dated 18.08.2014 and 15.01.2015 issued by the Pollution Control Board, the Respondent was directed to obtain the consent to operate on the basis of the Orissa Minor Minerals Concession (Amendment) Rules, 2014 which was enacted in September 2014. It needs to be emphasized here that the Respondent is a lessee of the year 2012 on the strength of an order of the Hon'ble High Court and the Respondent had two more years of lease period left to operate before the commencement of the amended rules.

21. That, after several communications between the answering Respondent and the competent authority on the above issue, while the answering Respondent was getting ready to furnish all necessary documents, vide order dated 26.11.2015 the Pollution Control Board issued a letter to the Collector and District Magistrate to stop operation of the Quarry forthwith.
22. That it may be mentioned here that on 27.11.2015, Tahasildar had issued a letter to the answering Respondent to stop the mining / quarry activities in the Black Stone quarry forthwith. In pursuance thereto, the answering Respondent stopped mining activities with relation to his Dankari Stone Quarry.
23. That, while the matter stood thus, in the meantime the Govt. of Odisha enacted the Orissa Minor Mineral Concession Rules, 2016 by virtue of which cluster mining approach was mandatorily enforced for all individual Quarries with an area of less than 5 hectares and not more than 100 hectares in total. The relevant provision is reproduced hereinbelow for ready reference of this Hon'ble Court:

“31. Adoption of cluster approach in small quarries: (1) Individual quarries covering an area less than five hectares and in total not more than one hundred hectares in a development block may be clubbed and declared as a cluster by the Competent Authority.”

24. It is very much pertinent to mention here that thereafter the Joint Director of Mines, Directorate of Mines, Odisha vide his letter dated 18.01.2016 granted approval of the Mining Plan of the present answering Respondent with respect to his Dankari Granite Black Stone Quarry. Copy of letter dated 18.1.2016 is annexed herewith as **Annexure R11/7**. Subsequently, the Tahasildar, Dharmasala has, in his letter dated 22.01.2016 addressed to the State Environment Impact Assessment Authority, Odisha (SEIAA), resubmitted the proposal for Dankari Black Stone Quarry along with the duly approved Mining Plan and requisite fees, for necessary environmental clearances. Copy of letter dated 22.1.2016 is annexed herewith as **Annexure R11/8**.
25. That, the operation of the present quarry remained in limbo for several years thereafter and in 2020, vide letter no.124 dated 13.01.2020 the present quarry in dispute was included under the cluster 5A in the Dankari region within the 100 acres limit. Further, pursuant to Rule 31 (2) and 31 (3) of the OMMC Rules, 2016, environmental clearance for the entire cluster is required to be obtained and thereafter the whole source may be leased out as a single source or individual sources within a cluster may be leased out separately. The relevant provisions are reproduced hereinbelow for ready reference of this Hon'ble Court:

“31 (2) For a cluster of mineral concession, an environmental management plan shall be got prepared by the Competent Authority and submitted to the appropriate authority authorised to grant the environmental clearance under the provisions of the Environment (Protection) Act, 1986.

(3) After obtaining environmental clearance for the entire cluster of sources, the whole source may be leased out as a single source or individual sources within a cluster may be leased out separately, as will be decided by the Competent Authority. However, the terms and conditions provided in the environmental clearance have to be obeyed by all the lessees.”

25. That it is vehemently denied that the answering Respondent has indulged in any unlawful or illegal activity or has been conducting any illegal or unlawful quarrying activities continuously without obtaining the mandatory clearances by the Central Government and the State Governments or caused any degradation of the environment and ecology as alleged by the Applicant.
26. That it is wrongly alleged by the Applicant that Respondent No.11 has been deliberately using illegal wagon blasting techniques for the excavation of minerals which has resulted in severe vibrations, cracks in the walls of surrounding houses, and diminishing of the mountain. The

said allegations are patently false and do not relate to the answering Respondent.

That further vehemently denied that any act of Respondent No. 11 has resulted in the death of any poor villager due to kidney-related ailments caused by the contamination of drinking water accompanied by severe pollution, groundwater, depletion, etc. As stated hereinabove, prior to 27.11.2015 when the answering Respondent was carrying out the mining activity, the Respondent was fully complying with all regulations, the environmental requirements and the air and water emissions were well within the permissible environmental standards.

Further, as stated by the State in it's reply, the source is non-operational and no illegal mining activity is being carried out by the answering Respondent.

27. That in response to the averments made by the State in Paras 14 and 15 of it's reply, it is submitted that while it's true that the Hon'ble High Court was pleased to quash the order of demand against the present Opp. Party on ground of lack of opportunity it is also a fact that till date the Opp. Parties have not been able to provide base extraction figures of the quarry prior to the grant of lease to the answering Respondent. These extraction figures would also establish the quantity already extracted prior to the answering Respondent taking over the quarry. The survey

has also not determined what is the extraction which has in fact been done by the answering Respondent. It is also the admitted position that at the time of grant of quarry to the answering Respondent, there was no requirement of mining plan vis-à-vis the minor minerals. After three years of operation the answering Respondent stopped the quarry on the order of the Pollution Control Board. There was also no clarity as to who will grant environmental clearance the state or district environmental authority i.e., the SEIAA or the DEIAA. There was no accurate system of measurement to know access the extraction quantity of the mineral. Therefore, the said demand was completely unfounded and could not have been levied upon the answering Respondent hence the Hon'ble High Court has quashed it. Since State could not substantiate the said demand and the same order of the Hon'ble High Court is the final there being no appeal against the said order in any higher court. The allusion to the said order of demand of the Hon'ble High Court in the present proceedings is without any basis.

That, further the pendency of the case in the court of learned JMFC for infraction of environmental laws is to be decided in due course by the appropriate court which is the JMFC Court. Therefore, alluding to the pendency in the present case is without any basis rather the Applicant should explain his own conduct having been found to be a chronic

violator of lease conditions having been caught in illegal extraction of minor mineral and imposed with a huge penalty of Rs.250 crore as is evident from Annexure R11/3 filed herewith. This shows that there is complete lack of bonafide by the Applicant and he is abusing the present forum and filling purely private interest litigation. This Hon'ble Tribunal may be pleased to call for the record of the enquiry instituted against the Applicant to ascertain the extent of illegal extraction carried out by Applicant himself. It is settled law that the law machinery cannot be set into motion at the instance of an unscrupulous litigant.

In the light of the above facts and circumstances and in the interest of justice, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to dismiss the present Original Application with costs.

FILED BY:



MUKUL KUMAR
Counsel for the Respondent No. 11,
Chamber No. 414, Block D,
Additional Building Complex,
Supreme Court of India
New Delhi-110001,
Mob. No. 9891766002
Email: mukulkr1722@gmail.com

Place: New Delhi
Dated: 19.3.2025

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Original Application No. 604/2018

(MA No. 1286/2018)



SarbeswarBehura

Applicant

Versus

Union of India & Ors.

Respondent(s)

AFFIDAVIT

I, Sribash Jena, aged about 61 years, S/o Late Shri Muralidhar Jena, R/o Village Saroi, P.O. Haridaspur, P.S. Dharmasala, DistJajpur, Odisha; do hereby solemnly affirm and declare as under:

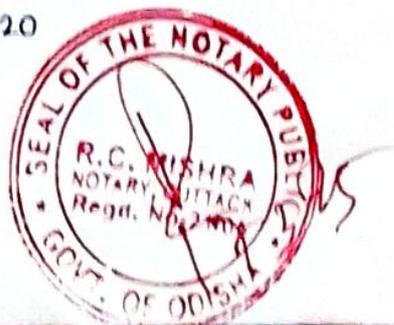
1. That I am the Respondent No. 11 in the above mentioned OA and am fully conversant with the facts of this case and hence, am competent to swear this affidavit.
2. That the accompanying Reply has been drafted by my counsel upon my instructions and the same have been read over to me and have been explained to me and understood by me to be true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.
3. That the annexures are true copies of their respective originals.



Identified By

Amritha
Advocate
0-594/2020

Sribash Jena
DEPONENT



VERIFICATION:

Verified at Cuttack on this 1st day of March, 2025 that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Identified By

[Signature]
Advocate
e-699/2020

[Signature]
DEPONENT

~~sworn affidavit on in State by the Dependent
at Cuttack on 1st day of March 2025 being identified
by *[Signature]*
Advocate Adv's Cert. No. 1000 of the territory
essentially, that the facts stated herein are
true to the best of my knowledge.~~

~~RAMA CHOUJKA WISHKA, NOTARY
CUTTACK TOWN, REGD. No. 1000~~

In the High Court of Orissa: Cuttack

(Original Jurisdiction Case)

W.P. (C) No.18589 /2017

Code NO.219900

In the matter of: An application under Article 226 of the
Constitution of India

And

In the matter of: An application challenging the illegal
advertisement No-3601 dt. 09.08.2017 (Annexure
-9) issued by the Tahasildar Dharmasala (O.P.
No.8) for holding auction to lease out the Sairats
(Stone quarry) in and around Dankari Hills in the
district of Jajpur, i.e. the site marked and selected
for the Strategic Petroleum Reserve -II Project
ignoring the letter/instruction issued by Union of
India not to take any quarry operation in the area;

And

In the matter of: An application seeking for a direction to opposite
parties to produce all the relevant materials for
the satisfaction of this Hon'ble Court as regards to
action taken against the erring personnel and
extraction minor mineral like Black stone, blasting
of hills using explosives, taking quarry activities
beyond the leased out area for the period 2003 to
2015, to recover the loss sustained by the state
and measures taken to safe guard the life and

property of the local people /inhabitants, historical monuments, medicinal plants/environment prior to issuance to advertisement for auction of the quarry in Dankari hills;

And

In the matter of: Sarbeswar Behura aged about 48 years S/o Kangali Behura at-Saroi, P.S.- Dharmasala, Distt. Jajpur.

....Petitioner

Versus

1. Union of India represented through its secretary to in Department of Petroleum and Natural gases.
2. State of Odisha, represented through its Secretary to Government Department of Revenue, Secretariat Building, Bhubaneswar, Dist. Khurda.
3. State of Odisha represented through its Secretary to Government, Department of Forest and Environment, at- Secretariat Building, Bhubaneswar, Dist. Khurda.
4. State of Odisha represented through its Secretary to Government, Department of Health and Family Welfare, At-Secretariat Building, Bhubaneswar, Dist. Khurda.

5. Revenue Divisional Commissioner, Central Zone, At-Revenue Building, Cuttack, PO-Chandinchowk, P.S. Lalbag, Town/Dist. Cuttack.
6. Collector-Cum-District Magistrate, Jajpur, At-Collectorate Building, Jajpur, PO/PS/Dist. Jajpur
7. Sub-Collector, Jajpur, At-Collectorate Building, Jajpur, PO/PS/Dist. Jajpur.
8. Tahasildar, Dharmasala, At PO/PS-Dharmasala, Dsit. Jajpur.
9. Member Secretary, State Pollution Control Board, At/PO Bhubaneswar - 12, Khurda.
10. Deputy Director Mines, At/PO Jajpur Road, Dsit. Jajpur
11. Director General Vigilance, Odisha, AT/PO-Buxibazar, Distt. Cuttack
12. Sribash Jena, S/o Muralidhara Jena, At-Saroi, P.S.- Dharmasala, Dsit. Jajpur.

....Opposite Parties.

The matter out of which this Writ Application arises was never before this Hon'ble Court in its present form but a part of the claim was in form of W.P. (C) (PIL) No.23197 of 2015, disposed of on dt. 03.05.2017 as with drawn, as per instruction obtained from the petitioner. Matters involving illegal and unauthorized operation of quarry, extraction of the minerals beyond the limit, violation of terms

and conditions of the lease, loss caused to the state is pending before this Hon'ble Court in form of W.P. (C) NO.13916/2014 and W.P. (C) No.19232/2015.

To

The Hon'ble Sri Justice Vineet Saran, LL.B, Chief Justice of Orissa High Court and His Lordship's other companion Justices of the said Hon'ble Court.

The humble petition of the petitioner above named:

MOST RESPECTFULLY SHEWETH:

1. That the present petition under article 226 of the Constitution of India is being filed by way of public interest litigation and the petitioner has no personal interest. The petition is being filed in the interest of the people of Village Dankari in the district of Jajpur.
2. That the petitioner is a resident of village Sarol in the district of Jajpur, within the Jurisdiction of this Hon'ble Court and prefers this writ petition for the benefit of the villagers of village Dankari and nearby villages. It also involves the interest of the State. The petitioner has filed other PIL prior to this petition.
3. That the petitioner is filing this petition on his own and not at the instance of someone, for betterment of the village Dankari and some adjacent village. The litigation cost, including the advocate's fees and the travelling allowance of the lawyer, are being borne by the petitioner himself.
4. That the facts of the case in brief are as follows:

- 4.1 That Dhankari Village in the district of Jajpur under Dharmasala Tahasil is having natural resources like six thousand acres of Hill area, forest containing medicinal plants, medicinal plants and minor resources like granite and black stone. The Revenue authorities have allowed the persons for extraction of minor resources and its transportation either by negotiation or lease. But they did not ensure the safety of the local people and their property. The chronological material events in respect of the Dankari Hill Sariats, involved in the present case.
- 29.01.2003 The Black stone quarry in Dhankari Hills to the extent of an area Ac-41.50 decs was leased out in favour of one Sribash Jena on long term basis for the period dt. 01.11.2002 to dt.31.10.2005, of three years as per provisions of Mines and Mineral concession rules 1990, on negotiation basis.
- 22.12.2005 The lease granted in favour of Sribash Jena was renewed for the Period dt. 01.11.2005 to dt. 31.10.2008, without any auction.
- 24.10.2008 The lease in respect of the quarry was renewed for the second time in favour of Sribash Jena for the period dt. 01.11.2008 to dt.31.10.2011 and no auction was made.
- 15.07.2011 The application for renewal of the lease submitted by Sribash Jena was rejected in view of the circular No. 1470 dt. 06.09.2008, of the Board of Revenue, Odisha, Cuttack.

- 05.12.2012 The auction of the Dankari hill mining quarry/Sairat was knocked down in favour of Sribash Jena and lease agreement was executed in his favour for the period 26.11.2012 to 25.11.2017.
- 18.08.2014 The State Pollution Control Board intimated Sribash Jena, lessee to submit Environmental clearance.
- 26.11.2015 The State Pollution control Board issued instruction t the Collector Jajpur to stop mining activities of Dankari quarry of Sribash Jena for non submission of Environment clearance, forthwith.
- 23.03.2017 The Central Government of department of Petroleum and Natural Gas, intimated the Principal Secretary of the Revenue Department of the state and Collector Jajpur that Dankari Hill has been chosen for underground unlined rock cavern Project, in Strategic Petroleum Reserve Project, Phase-II and requested to stop any short of quarrying activity at the identified location and within 500 meters, Bufer Zone around the site.
- 09.08.2017 The Tahasildar, Dharmasala (O.P. No-8) issued advertisement No.3601(3599) dt. 09.08.2017 inviting applications for tender of 22 nos of quarry in the jurisdiction of the Tahasil including 12 quarries in any around Dankari.

4.2 That during the period from 2003 to 2017 the following circulars /instructions has been issued and changes in legal provisions was made by the Government.

2004 The Orissa Mines and Mineral Concession Rules 2004 came in to operation repealing the earlier Orissa Mines and Mineral Concession Rules 1990.

2008-2011 Commissioner-cum-Secretary to Government issued circulars/letters for monitoring the quarry/Sairat sources detecting illegal and unauthorized quarry activities. The copies of circulars dt. 25.11.2008, dt. 07.04.2009, dt. 25.01.2011 and dt. 21.06.2011 are filed herewith and marked as Annexure -1 Series.

2014 The Government Amended the Orissa Minor Mineral Concession (OMMC) Rules, amending the provision for granting long term lease of Sairats through public auction /tender only, mentioning procedure for the same.

2016 The Government Further amended the Orissa Minor Mineral Concession.OMMC Rules.

4.3 That while the quarry is operated by Sribash Jena in view of the lease granted or renewed since 2002 to 2011 and as the highest bidder in the year 2012 the following events took place.

a. Excess mineral has been extracted illegally and unauthorized beyond the quarry area causing severe loss to the state Revenue.

- b. Due to use of wagon blasting the houses in the village and nearby villages generated cracks. The Tahasildar, Dharmasala instated of taking any effective action sit idle only issuing an instruction /order to R.I. to stop illegal blasting. A copy of the letter dt. 25.10.2011 is filed herewith and marked as Annexure -2.
- c. The quarry operation continued without any valid Environmental clearance and clearance from the Forest Department causing severe air and water pollution in violation of Air (PCP) Act and Water (prevention and control of Pollution) Act. The Tahasildar as per instruction of the State Pollution Control Board issued order dt. 27.11.2015 to stop operation of the mining Quarry by Sribash Jena. A copy of the order dt. 27.11.2015 is filed herewith and marked as Annexure-3.
- d. Serious health hazards like Kidney diseases and T.B. spread in the locality due to dust pollution and contamination of water resources. The ADM Jajpur advised the CDMO to enquiry about the matter no effective steps were/are being taken till date of protect the people from the said disease. A copy of the letter dt. 03.10.2015 is filed herewith and marked as Annexure-4.
- e. In view of the inaction and callous attitude of the authorities who are competent to take care of the situation in view of the legal provision, circulars and guide lines of government and higher authority, the

people of the locality were/are compelled to bear undue hardship in their day to day life. The said news came time and again in the different News papers of the state. Copies of News items published in different News papers are filed here with and marked as Annexures-5.

- f. The authorities though well are aware of the same being in connivance with the miscreants deliberately avoided to perform their duties.
- g. Challenging the illegal action of the authorities' different approached this Hon'ble Court, seeking appropriate relief.
- h. This Hon'ble Court while considering the W.P. (C) No.715/2012, involving similar facts, after perusal of the report of the S.P. Vigilance, Cuttack, was pleased to direct the State Vigilance to take necessary criminal action against the persons involved in the offence. The order dt. 16.5.2012 is quoted below for kind reference of this Hon'ble Court.
"in this view of the matter, the Collector (O.P. No.3) is requested to consider the report of the Vigilance Department, examine the same and take necessary action for the alleged violation of the provisions of the OMMC Rules. It is open for the Vigilance Department to examine the report and take necessary criminal action against the persons who are involved in the offence by investigating into the matter."

Now Vigilance Department has charge sheeted six persons. The Writ Petition is awaiting final adjudication.

- i. The Hon'ble Orissa High Court took notice of a similar matter and initiated suo-moto PIL which is numbered as W.P. (C) No.13916/2014 and directed for filing of affidavits by the Collector Jajpur, S.P. Jajpur and Tahasildar Dharmasala. The order dt. 30.07.2014 passed in the writ petition is reproduced below for reference of this Hon'ble Court.

"Perused the news items published in the daily news paper "Dharitri" dated 28.07.2014 regarding unrestricted mining activities and destruction of hills and mountains resulting in revenue loss to Government.

The aforesaid said news reveals that without any auction, illegal supply to stone from Baghua mountain of Dharmasala continues unabated. The local administration is in slumber and is not taking any steps for protecting the same. It further reveals that recently a huge stone sliding occurred due illegal blasting in Dankari Mountain. From one mining spot, 41 acres of area has been encroached by an influential person and the illegal supply of stone is continuing. More than rupees 20 lakhs of monthly revenue of the government is being lost by the illegal supply of sand from Panturi to Imamnagar and Raghunathpur sand supply Zone for

years. The mountains of Dharmasala of Jajpur district are diminishing day-by-day due to unlawful basting.

Considering the gravity of the news items as stated above, this Court directs the Collector, Jajpur, Superintendent of Police, Jajpur and the Tahsildar, Dharmasla to file affidavits individually on or before 05.08.2014."

The matter is awaiting final adjudication after receipt of the affidavits.

- j. The Writ Petition filed W.P. (C) No.23197 of 2015 assailing the illegality in respect of Dankari Hills and same was withdrawn with liberty to file better Writ Petition, on dt. 03.05.2017.
- k. The Tahasildar issued a demand of fine of Rs.58,62,79,633.50/- to Sribash Jena due to illegal, excess extraction of the stone from quarry against the allotted quantity, return filed and lease granted. The said demand notice was set-aside/quashed by the Hon'ble Orissa High Court in W.P. (C) No.9885/2016, preferred by Sribash Jena on the ground that he has not been provided any prior notice to defend the same with liberty to take appropriate action afresh. Copies of the order dt. 28.05.2016 of the O.P. No.8, is filed herewith and marked as Annexure -6.
- l. That the Tahasildar, Dharamasala took up the matter pursuant to order of Government and dropped the

proceeding on the finding that the fact of illegal extraction is based on assumption. Fresh auction proceeding can only be initiated after receipt of toposheed of the quarry as on 222-2003. From the Director Geological Survey of India unlawful activity is established. He declined to take any coercive action against the lessee Sribash Jena on plea that no unlawful activity is established.

- m. The petitioner has obtained information under R.T.I. Act that it has been proposed to take disciplinary action against the erring of government Officials, such as ten numbers of R.I., ten numbers of Tahasildar and Six numbers of Sub-Collector. Copies of the information is filed herewith and marked as Annexure -7.
- n. The Union of India after survey chose Dankari Hill at Chandikhol of Odisha for its Phase-II Strategic Petroleum Reserves Project and its Secretary accordingly issued instruction to state authorities to stop quarry activities in Dhankari Hill and area within 500 meters buffer zone, with further instruction that any quarrying activity will be detrimental to the cavern rock project. It has also been intimated that the land would be acquired soon after approval of the Cabinet which was duly intimated by the Secretary of the State to the Collector Jajpur and the Tahasildar Dharmasala. Tahasildar Dharmasala has also directed the RI to

inspect filed and take appropriate action. Copies of the letters issued by Secretary Union of India, Secretary State and the Tahasildar are filed herewith and marked as Annexure -8 series.

- 4.4 That recently Tahasildar issued advertisement No.3601(3500) dt/ 09.08.2017 in Odia daily News Paper and upload the same in website of the district inviting bidders to participate in auction for 22 numbers of sairats in the district where in the Sairats mentioned in serial No.1 to 4 and Sl. No.15-21 are coming within proposed Reserve project site and its buffer zone. A copy of the advertisement is filed herewith and marked as Annexure-9.
5. That the source of information of the facts pleaded is based on personal knowledge, heard from people of locality and news published in news papers, data available in the web site of the district.
6. That the petitioner has approached the opposite parties for the said purpose. Since the date for opening of the tender as aforesaid has been fixed to be dt. 30.08.2017, in view of the urgency the petitioner is constrained to approach this Hon'ble Court without awaiting any further. A copy of the representation filed by the petitioner is filed herewith and marked as Annexure -10.

7. That to the best of knowledge of the Petitioner no other Public Interest Petition raising the same issued is filed before this Hon'ble Court or before any other Court.
8. That the present petition has been filed on the following amongst other;

GROUND

- a. Continuance of operation of the quarry without taking safety measures to save the people from disease may turn to epidemic leading the situation out of control.
- b. Due to operation of the quarry the houses of the local people are likely to be damaged.
- c. Most astonishingly, when in view of the circulars vide Annexure-1 series Tahasildar is accountable and responsible for illegal quarry activities, he himself is conducting the proceeding against the lessee. Thereby misusing his official power to exonerate the lessees and himself. Hence the attempt to lease out the sairats as afore mentioned is nothing but a preplanned attempt to wipe out the evidences.
- d. While the Secretary of the Union and State instructed not to operate any quarry at the site the advertisement issued by the Tahasildar causes insubordination.
- e. As it has already been mentioned in the letter of the Secretary of the Union vide Annexure-8 that any quarry activity will be

detrimental to craven rock, the act of the Tahasildar to lease the quarry for mining is against the establishment of project, as such goes against the interest of the State as well as the Union.

- f. The notice inviting tender for auction suffers irregularities, against the provisions of law and settled principles.
- g. That since life and property of the inhabitants and the interest of the state is in danger from the side of the executive, this Hon'ble Court should interfere into the matter, in order to protect the interest of the state and public, deprecate such action and pass necessary orders for the ends of justice.
9. That the petitioner most respectfully prays that this Hon'ble Court may be pleased to pass following order(s):
 - A. The advertisement vide Annexure-9 in respect of S.No. 1 to 4 and Sl. Nos. 15-21 be declared illegal and illegal operation of quarry in Dankari Hill may kindly be enquired into by any independent agency.
 - B. The opposite parties be directed to recover the loss sustained by the state from the persons including officers found responsible for illegal extraction of ores.
 - C. The opposite parties be directed to preserve the Dankari Hill and its surroundings for the proposed project.

D. The opposite parties be directed to produce all the relevant/connected records for the satisfaction of this Hon'ble Court as regards to steps taken to save the people of the locality from air and water pollution and diseases caused due to such pollution.

PARYER

It is therefore prayed that this Hon'ble Court may graciously be pleased to admit this writ petition, issue RULE NISI calling upon the opposite parties to show cause, and if the opposite parties fail to show cause or show insufficient cause, the said rule be made absolute in granting the relief prayed for;

And may further be pleased to pass any other order (s) as deem fit and proper.

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

Cuttack

Date: 31.08.2017

By the petitioner through

Advocate

TRUE COPY

IN THE HIGH COURT OF ORISSA, C U T T A C K

W.P.(C) No. 18589 of 2017

09. 18.06.2018

This is a writ petition filed in the nature of Public Interest Litigation praying for quashing of the advertisement dated 09.08.2017 for grant of lease for mining in certain areas having been shown at Sl. Nos.1 to 5 and 15 to 21 of the advertisement filed as Annexure-9 to the writ petition.

2. Learned counsel for the petitioner has vehemently submitted that there are several orders and letters issued by the State Government and the Central Government with regard to stopping of illegal mining being carried on in the said area. He specifically relies on the communication dated 02.05.2017 issued by the Government of Odisha in this regard whereby the Collector, Jajpur has been requested to take immediate steps to stop the illegal mining of minerals in that area.

3. By the advertisement, which is impugned in this writ petition, it has been stated that lease/licence for mining is to be given on payment of requisite royalty. In fact, the whole issue is with regard to stoppage of illegal mining in the area, which is alleged to be carried on for a substantial period as it appears from various communications which have been filed with this petition. From no such document filed along with the petition,

learned counsel for the petitioner has been able to show that the mining in that area is not to be permitted. All the communications merely state that illegal mining in that area should be stopped, which is absolutely justified because no illegal mining can be permitted in any area. By the advertisement, which is impugned in this writ petition, the petitioner is particularly aggrieved by the areas shown at Sl. Nos.1 to 5 and 15 to 21, and has thus prayed that this area should not be given for mining.

4. Since the petitioner has not place on record any document to show that the Government Department/Revenue Department has prohibited carrying on mining activities in the said area, thus, in our view, under the garb of stopping illegal mining, we cannot restrain the opposite parties from auctioning the area where mining can be permitted as per law.

As such, we do not find any merit in this writ petition, which is dismissed accordingly.

(Vineet Saran)
Chief Justice

(Dr. B.R. Sarangi)
Judge

True Copy

COLLECTORATE, JAJPUR

Ph 06728-222001(O) 222330 (R) Fax -222087
E-mail: dm-jajpu@nic.in. Web site: www.jajpur.nic.in
(Revenue Section)]

Letter No. 14613 /Date. 26/12/2023

From

Shri Chakravarti Singh Rathore, I.A.S
Collector & District Magistrate, Jajpur

To

The Tahasildar, Darpan

Sub:

Regarding calculation of Royalty, Addl. Charges, and penalty along with DMF, EMF and Environmental Compensation Charges for illegal extraction of minor in respect of Manduka Morrum Quarry Area under DarpanTahasil.

Ref-

Your letter No 654 dt 21.11.2023.

Sir

With reference to the letter on the subject cited above, I am to say that, as per proposal submitted by you, for fixation of penalty for illegal extraction of 253273.65 cum of morrum at Manduka Morrum Quarry Area by Sri Sarbeswar Beheuria, S/o- Kangali Behuria of Village Saroi, Po- Haridaspur, P.S. Dharmasala in the district of Jajpur, the penalty is hereby fixed at 100% of the Royalty and Addl. Charges as calculated in separate sheet and attached in the letter. Besides, as per your proposal, the D.M.F, E.M.F may be calculated for the above purpose and Environmental Compensation charges shall be calculated @ 6730/- per cum. and, demand notice issued to Sri Behuria immediately under intimation to this office.

Yours faithfully



Collector & DM, Jajpur

CALCULATION OF ROYALTY, ADDL. CHARGES PENALTY, DMF, EMF AND ENVIRONMENTAL CHARGES FOR ILLEGAL EXTRACTION OF 253273.65 CUM OF MORRUM AT MANDUKA QUARRY AREA BY SRI SARBESWAR BEHURIA.		
SI No.	Item Description	Amount
1	As per OMMC Rule-2016, Royalty @ Rs.35/- for 253273.65m ³	8864578.00
2	As per the letter no.18209/ dated.5.12.2022 of District Office,Jajpur Addl Charges @ Rs.1100/- for 253273.65m ³	278601015.00
	Total	287465593.00
	Penalty levied (100 % of the Royalty and Addl. Cahrges)	287465593.00
	Royalty and Penalty	574931186.00
3	As per the letter no.5524/ dated.29.05.2023, of Steel & Mines Department,Govt. of Odisha DMF calculated @ 30% Royalty only	2659373.00
4	As per the letter no.5524/ dated.29.05.2023, EMF calculated @ 5% Royalty only	443229.00
5	Environment Compensation @ 6730.00 per cum for 253273,65 cum	1704527290.00
	Grand Total Total amount liable to pay by Sri Behuria.	2282561078.00



COLLECTOR, JAJPUR

TRUE COPY

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.

Sri Bhramarabar Das,
S/o. Late Raghunath Das,
At: Dhābeneswar 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

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE SHRI.V.GOPALA GOWDA
AND
THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA**

Date of Judgment: 28.03.2012

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.

6

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 constrains may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activates primarily for which the Constitution envisages the setting-up of a Welfare State."

21. In *Nagar Nigam, Meerut vs. Al 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), *Pachaiyappa'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 largesee 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.

V. Gopala Gowda, C.J.

I agree

.....
B.N.Mahapatra, J.

.....
Chief Justice

Orissa High Court, Cuttack
Dated 28th March, 2012/ssd/sss/skj

True copy

AGREEMENT BOND

(See Rule-53 of OMMC Rule 2004)

SAIRAT SOURCE NO. 91/2012-13

This agreement is made the 5th day of December 2012

BETWEEN

The Governor of Orissa represented by Sub-collector, Jajpur,

District- Jajpur (here in after called the Competent Authority)

And

Sri Sribash Jena aged about 49 years S/o Late Muralidhar Jena Village:- Saroi P.O. Haridaspur P.S. Dharmasala in the District of Jajpur by caste khandayat occupation business, (hereinafter referred to as the auction holder) which expressed shall where the context so admits be deemed to include his heirs, executors, administrators and permitted assignees of the other part.

WHERE AS the auction holder has taken the above Sairat source from Competent Authority in accordance with the provisions of the Orissa Minor Minerals Concession Rule-2004 and as per order passed by the Hon'ble High Court in W.P.(C) 20799 of 2011, W.P.(C) 10886/2012 & W.P.(PIL) No. 9876 of 2012 in respect of the lands described in Part-I of the Schedule and has deposited a sum of Rs.12,00,000/- (Rupees Twelve Lakhs) only towards bid amount.

Now this agreement witness as follows:-

The Auction holder here by demises to the auctioned Sairat and the land described in Part-I of the Schedule here under written and delineated in the Map hereunto annexed. The auction holder shall hold the said demises pieces of Land from 26.11.2012 to

25.11.2017 subject to the terms covenants, conditions herein proved. In witness where of these presents have been executed in manner here under appearing the day and year first above written.

The Schedule above referred to:

PART-I

LOCATION AND AREA OF THE AUCTIONED SAIRAT SOURCE

Mouza	Khata No.	Plot No.	Kisam	Area
Dankari	221	600	PAHADA	Ac.41.50

PART-II

TERMS AND CONDITIONS OF AUCTION

This lease is subject to the conditions laid down in Rule-56 along with all other conditions pertaining to auction sale of Sairat source as provided in OMMC Rule 2004. Besides, terms and conditions laid down in Office Memorandum of State Pollution Control Board vide letter No. 3517/SQ-02 dt. 26.11.2012 along with order passed in W.P.(C) 20799 of 2011, W.P.(C) 10886/2012 & W.P.(PIL) No. 9876 of 2012.

Terms and conditions as per Rule 56 of OMMC Rule 2004

- (I) The auction agreement is not transferable.
- (II) The minor mineral other than for which auction is confirmed shall not be removed from auctioned area.
- (III) If any major mineral is found during the quarrying operation, the auction holder shall report the matter to the competent

authority and the Director forthwith shall not work or remove the same.

- (IV) The auction holder shall immediately report all accidents to the Competent Authority and the Collector of the District.
- (V) The auction holder shall have no right over the quarried material and other properties lying in the auction area after expiry of the term of auction and shall be deemed to be the Properties of Government and may be disposed of by public auction.
- (VI) The auction holder shall not undertake any operation in any forest area without obtaining prior permission from the concerned authority of the Forest Department.
- (VII) The auction holder shall pay to the occupier of the surface of the land just a reasonable compensation as may be agreed upon by the auction holder and owner of the land.
- (VIII) The auction holder shall not carry on quarrying operation within a distance of 50 meters from any public road, public building, temple, reservoir, dam, play ground, railway track etc.
- (IX) The auction holder shall, at his own expense, erect and at all time maintain and keep in good condition boundary mark and pillars necessary to delineate the auction area.
- (X) The auction holder shall abide by the provisions of Mines and Minerals (Development and Regulation) Act, 1957; Mines Act, 1952; Explosive Act, 1884; Explosive substances Act, 1908 and rules made there under and all other laws the time being in force relating to the working of quarries and matters

affecting safety, health, and conveniences of persons working for quarrying operation public.

- (XI) The auction holder shall obey all existing rights of way, water and other case mention.
- (XII) The auction holder shall keep correct monthly account of minor minerals quarried and dispatched and furnish a monthly return in Form-Y to the competent authority by 15th of succeeding month. He shall furnish an annual return in Form-Z to the competent authority and the Director, Odisha for the financial year or part there of within a week of the close of the financial year or expiry of the terms of the auction.
- (XIII) The auction holder shall allow the Director, Controlling authority and competent authority or any officer authorized by any of them to inspect the quarrying operation and to check the accounts of production and dispatches from the register maintained by him.
- (XIV) The auction holder shall not remove any minor form the area without obtaining prior permission from the competent authority or any other officer authorized by him. No minor mineral shall be dispatched from the area without valid transit pass issued by such officer.
- (XV) In case of literate quarry, the auction holder shall not use power cutter or any such machinery for excavation of literate.
- (XVI) The auction holder shall take all possible precaution for protection of environment and control of pollution including reclamation of the quarried out area.

- (XVII) If in any event the orders of the competent authority is revised, reviewed or cancelled by the concerned controlling authority or the auction holder fails to fulfill the terms and conditions of the auction sale due to force Majeure such as act of God, War, insurrections, riot, civil commotion, strike, earth quake, storm, tidal wave, flood, lighting, explosion fire and any other happening beyond control of auction holder, delay in development of infrastructure, acquiring of land for quarrying operation and for use of land for public purpose, the auction holder shall not claim for any compensation.
- (XVIII) The auction holder shall not use explosive in any manner without obtaining an explosive license from the appropriate authority.
- (XIX) The auction holder shall pay a wage no less than the minimum wage prescribed by the State Government from time to time under the Minimum Wages Act, 1948.
- (XX) Competent authority may impose such further condition as he may think necessary in the interest of mineral development.

Terms and conditions as per Office Memorandum of State Pollution Control Board issued vide letter No. 3517/SQ-02 dated 26.11.2012

1. This consent to establish is valid for the product, quantity manufacturing process and raw materials as mentioned in the application for a period of five years from the date of issue of proposed project has not taken place in the meantime.

2. If the stone quarry fails to start operation of the project but substantial physical progress has been made then renewal of this consent shall be sought by the proponent.
3. If the stone quarry fails to initiate construction of the project and no significant physical progress is made then, the stone quarry has to apply for consent to establish afresh after expiry of 05 years from the date of issue of this order.
4. Adequate effluent treatment facilities are to be provided such that the quality of sewage and mine drainage water satisfies the standards as prescribed under Environment protection Rule, 1986 or as prescribed by the Central Pollution Control Board and/or State Pollution Control Board or otherwise stipulated in the special conditions.
5. All emissions from the stone quarry as well as the ambient air quality and noise are to conform to the standards as laid down under Environment (Protection) Act, 1986 or as prescribed by Central Pollution Control Board or otherwise stipulated in the special conditions.
6. Adequate method of disposal of solid waste is to be adopted to avoid environmental pollution.
7. The stone quarry is to comply to the provisions of Environmental Protection Act, 1986 and the Rules made thereunder with their amendments from time to time such as the Hazardous Waste (Management & Handling) Rules, 1989, Hazardous Chemical Rules/Manufacture, Storage & Import of Hazardous Chemical Rules, 1989 etc. and amendment there

under. The quarry is also to comply to the provisions of public liability Insurance Act, 1991, if applicable.

8. The quarry is to apply for grant of consent to operate under section 25/26 of Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & control of Pollution) Act, 1981 at least 03 (three) months before operation of the stone quarry and obtain consent to operate from this Board.

SPECIAL CONDITIONS:

1. This consent to establish is granted subject to execution of Dankari Black Stone Quarry lease in favour of Sri Sribash Jena at Saroi, Post Haridaspur in the district of Jajpur.
2. Domestic wastewater shall be discharged to soak pit via septic tank constructed as per BIS specification.
3. Blasting shall be adopted as per the specification of the explosive license from the authorized department.
4. Drilling machines shall be fitted with proper dust collection, suppression and disposal arrangement.
5. Workers shall be provided with ear muffs and noise mask as safe guards against environmental hazards.
6. Water sprinkling arrangements shall be provided at all haul road, transportation roads, quarry areas, stock yard and other dust generating points to control fugitive dust emission.
7. Ambient air quality shall be maintained in order to meet the prescribed standard as per National Ambient Air Quality Standard.

8. Rejected stones shall be disposed off on low lying area inside the mine leasehold area in proper manner without causing any environmental pollution.
9. No stone crusher shall be installed inside the lease hold area without obtaining clearance from appropriate authority.
10. After the completion of the mining operations or on expiry of lease period, the mine authority shall fill and level the quarry area in order to make safe for the inhabitants.
11. The unit shall abide by the provisions under E.P. Act, 1986 and other rules framed there under.
12. The Board may impose further conditions or modify the condition as stipulated in this order during installation and/or at the time of obtaining consent to operate and may revoke this order in case the stipulated conditions are not implemented and/or information are found to have been suppressed/wrongly furnished in application form.

Terms and Conditions in W.P.(C) 20799 of 2011

The period of auction may be renewed at least for a period of 5 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 pending framing of rules.

IN WITNESS WHERE OF the parties have signed this deed on the
dates respectively.

Witness

Signature with seal of
the Competent authority

1.

2.

Auction holder

TRUE COPY

IN THE HIGH COURT OF ORISSA, C U T T A C K
(ORIGINAL JURISDICTION CASE)

W.P. (C) No.10886 of 2012

IN THE MATTER OF: An Application under Articles 226 and 227
of the Constitution of India

And

IN THE MATTER OF: An Application challenging the inaction on
the part of the Opposite parties in opening
the Tender Box; thereby violating the spirit
of the judgment, dated 28.03.2012 of this
Hon'ble Court passed in W.P. (C)
No.20799 of 2011;

And

IN THE MATTER OF: Sribash Jena, aged about 49 years
S/o Muralidhar Jena, At Village Saroi
P.O. Haridaspur, PS. Dharmasala,
District - Jajpur

Petitioner

Versus

1. State of Orissa, Represented through
Principal Secretary to Govt. of Orissa,
Revenue Department, Orissa Secretariat,
Bhubaneswar, District - Khurda
2. Collector-cum-District Magistrate, Jajpur
At/PO/Town/District - Jajpur
3. Sub-Collector, Jajpur,
At/PO/Town/District Jajpur
4. Tahasildar, Dharmashala,
At/PO-Dharmashala, District- Jajpur

WPC Nos. 10886 & 9876 of 2012

03.10.2012

Heard learned counsel for the parties.

2. This Writ petition is pursuant to the order passed by this court after referring to the judgment in the case of Deepak Kumar etc. Vs. State of Haryana & Ors. by the Apex Court directing the competent authority to put the sairat source to public auction and further made observation that it is open for the 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 and renew his licence for a period of five years in terms of the observations made by the Supreme Court in the aforesaid case. The petitioner participated in the public auction under the impression that he is the highest bidder in the public auction, but the tender itself was postponed for the reason mentioned at paragraphs 12 and 13 of the writ petition that there was public interest litigation involved in W.P. (C) No.9876 of 2012 filed by Niranjana Behera and others. It is submitted by the learned counsel for the petitioner that no notice has been issued at the time of preliminary hearing of the writ petition which fact is disputed by the intervening applicants in the aforesaid writ petition by Mr. N.K. Sahu in Misc. case No.8562 of 2012. The petitioners in the said writ petition being W.P. (C) No.9876 of 2012 filed a memo to-day along

with information obtained by them under the R.T.I. Act from the Public Information Officer on the application filed on 01.09.2012 under the RTI Act and the petitioners counsel filed a memo to withdraw the writ petition. The same is opposed by the learned counsel Mr. Sahu, appearing for the intervening petitioners in the aforesaid Misc. Case referred to supra and by placing reliance upon the judgment of the Supreme Court in the case of Sheela Barse Vs. Union of India & Ors., reported in AIR 1988 SC 2211. It is observed by the Apex Court in the aforesaid case that since the Court has already gone through and has initiated an elaborate exercise, it is not open for the petitioners to seek withdrawal of the Public Interest Litigation Petition. Therefore learned counsel appearing for the intervening petitioners submit that the petitioners shall not be allowed to be permitted to withdraw the writ petition. The only interest of the intervening petitioners is to see that environment and ecology necessary consent from the Pollution Control Board. ~~The~~ intervening petitioners have got interest to that extent. This aspect can be remedied by giving direction to the competent authority and (the petitioners herein are also directed to move the Pollution Control Board to get the consent order as per the observation made at paragraph -32 of the judgment in WPC No.20799 of 2011 referred to supra on the basis of the judgment of the Supreme Court in the case of Deepak Kumar etc. supra. The Pollution Control Board shall decided the matter within a period of two weeks from the date of receipt of application filed by the petitioners. While issuing the consent order, the Pollution Control Board shall see that

environment and ecology shall be maintained in the area in question. Further, we direct that competent authority should proceed with the matter and finalize the bid in respect of stone sairat source which has already been leased out upon the highest bid that would be offered by giving certain benefits pursuant to the order of the Supreme Court in the case of Deepak Kumar etc. supra.

3. With the aforesaid observation and direction, both the writ petitions are disposed of.

4. It is also brought to our notice by the learned counsel for the petitioners in WPC No.9876 of 2012 that in respect of sairat source over Khata No.221 and Plot No.600 under Mouza Dankari, stone quarry permission has already been granted. In respect of the aforesaid plot, the other lease holders are also required to obtain consent order from the Pollution Control Board. In this regard, the competent authority shall also inform them accordingly to comply with the Environment Laws applicable.

Urgent certified copy of this order be granted on proper application.

Sd/- V. Gopala Gowda, C.J.

Sd/- B.K. Misra, J.

True Copy

DIRECTORATE OF MINES, ODISHA

BHUBANESWAR

No.MXXXI(b)-13/13-598/D.M.

Dt. 18.1.2016

From

Sri S.K. Das,
Joint Director of Mines,
Directorate of Mines, Odisha
Bhubaneswar.

To

Sri Sribash Jena
Vill. & Post. Saroi,
P.O. Haridaspur,
Dist-Jajpur, Odisha.

Sub:- Approval of Mining Plan in respect of Dankari Granite
Black Stone Quarry over an area of 16.8 hec. in
Village Dankari, Post Mahisara, Tahasil Dharmasala
under Jajpur District in favour of Sri Sribash Jena.

Sir,

In exercise of powers conferred under Government in Steel
and Mines Department Notification No. 5311/SM dt. 11.06.2015.
The Mining Plan in respect of Dankari Granite Black Stone Quarry
over an area of 16.8 hec. in Village Dankari, Post Mahisara,
Tahasil Dharmasala under Jajpur District in favour of Sri Sribash
Jena is hereby approved. This approval is subject of the following
conditions:

1. The mining plan is approved without any prejudice to any
other law applicable to the mine from time to time whether

- made by the Central Govt. or State Govt. or any other authority.
2. The mining plan is approved without prejudice to any order, or direction from court of competent jurisdiction.
 3. The approval of aforesaid mining plan does not in any way imply approval of Govt. in terms of any other law in force.
 4. The approval of mining plan is subject to the clearances under the provisions of Forest (Conservation) Act, 1980 and Rules made thereunder and other statutory orders & guidelines issued by Ministry of Environment and Forests, Govt. of India which may be applicable to the lease area from time to time.
 5. The approval is subject to strict compliance by the lessees in respect of the observations made during field visit by the competent authority.
 6. Forest growth if any available in the area shall not be cut or cleared during mining operation without prior approval of Forest Authorities.
 7. Provision of the Mines act, 1952 and Rules & Regulations made there under including submission of notices of opening, appointment of managers and other statutory personnel as required by the Act, shall be complied with and if anything is found to be concealed in the contents of the mining plan this approval shall be deemed to have been withdrawn with immediate effect.
 8. The boundary pillars shall be maintained in good order throughout the tenure of the mining lease.

9. The future exploration programme approved in the mining plan shall be strictly adhered to by the applicant and mineral content in the area should be established during the plan period.

Special Conditions

1. Since the area could not be verified through any visit to the site, this approval is being accorded relying on the information furnished by the Recognised Qualified Person in the mining plan. Therefore, in case any information/document is found to be concealed or wrongly furnished or false or fabricated, this approval shall be deemed to have been withdrawn.
2. The authenticity of the area details, as furnished in the mining plan, will be verified by the Competent Authority before the applicant is allowed to carry out mining operation as per the provisions of this approved mining plan.

Yours faithfully,

Sd/- 18.1.16
JOINT DIRECTOR OF MINES, ODISHA

Encl:- one copy of approved mining plan.

TRUE COPY

OFFICE OF THE TAHASILDAR, DHARMASALA

No. 273 Date 22.1.2016

To

The Chairman, State Environment Impact Assessment Authority,
Odisha Qr. No. 5RF-2/1, Unit-IX, Bhubaneswar-751022

Sub.: - Re-submission of proposal for Dankari Black Stone
Quarry over an area Ac. 41.50 (16.8 ha.) at Village
Dankari, Tahasil Dharmasala Dist. Jajpur of Sribash
Jena vide Sairat Case No. 91/12-13.

Sir,

With reference to the letter on the subject cited above, I am to re-submit herewith the proposal in Form-I as per Appendix-I under EIA Notification, 2006 along with Annexure-I (Check list for Minor Mineral Mining Project), Mining Plan duly approved by the Authorised Officer and scrutiny fees of Rs.1,00,000/- vide Manager's Cheque bearing No. 044270 dated 08.03.2013 which has already been deposited on dated 19.3.2013 for necessary environment clearance in respect Dankari Black Stone Quarry over an area Ac. 41.50 dec. (16.8 ha.) at Vilalge Dankari, Tahasil Dharmasala Dist. Jajpur of Sri Sribash Jena vide Sairat Case No. 91/12-13 after due countersigned by the Tahasildar, Dharmasala.

This is for favour of your kind information and necessary action.

Enclosures: As above

Yours faithfully,

Sd/- 22.1.16
Tahasildar, Dharmasala.

TRUE COPY

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Mukul Kumar <mukulkr1722@gmail.com>

Service of Reply - OA No. 604/2018

1 message

Mukul Kumar <mukulkr1722@gmail.com>

Wed, Mar 19, 2025 at 10:56 AM

To: ishaarora.legal@gmail.com, "Isha.Arora@gmail.com" <Isha.Arora@gmail.com>, Adv Ori Som Raj Choudhary <LEXREX.som@gmail.com>, "lexrex.associate@gmail.com" <lexrex.associate@gmail.com>, "Adv. Manoranjan Paikaray" <mpaikray@gmail.com>, secy-moef@nic.in, dir.m-png@gov.in, "seiaaodisha@gmail.com" <seiaaodisha@gmail.com>, kalyanilab@yahoo.co.in

PFA copy of Reply on behalf of Respondent No. 11 in the matter of OA No. 604/2018 pending before Hon'ble NGT by way of advance service.

Thank You

MUKUL KUMAR

Counsel for Respondent No. 11

Chamber No. 414, Block D

Supreme Court of India,

Additional Building Complex,

New Delhi-110001

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**Reply_SJena_NGT.pdf**

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