ORISSA HIGH COURT : CUTTACK

AFR

W.P.(C) No.9272 of 2018

In the matter of an Application under Articles 226 & 227 of the Constitution of India, 1950.

* * *

Shree Balaji Engicons Private Limited
(A company incorporated under
the Companies Act having
Registered Office
At: Belpahar (R.S.)
Jharsuguda – 768 217, Odisha
Represented through its Managing Director
Sri Anil Kumar Agrawal
Aged about 56 years
Son of Late Radheshyam Agrawal. … Petitioner

-*VERSUS*-

1. State of Odisha
Represented through
The Principal Secretary to Government
Revenue and Disaster Management Department
At: Secretariat, Bhubaneswar
District: Khordha.

2. Secretary
Department of Mines
Government of Odisha
At: Secretariat, Bhubaneswar
District: Khordha.

3. The Collector-*cum*-District Magistrate
Jharsuguda, At/P.O./District: Jharsuguda.

4. The Tahasildar, Lakhanpur
At/P.O.: Lakhanpur
District: Jharsuguda.

5. Odisha Power Generation Corporation Ltd.
Having its Registered Office
At: Zone-A, 7th Floor, Fortune Towers
Chandrasekharpur, Bhubaneswar
District: Khordha. ... Opposite Parties

Advocates appeared in this case:

For the Petitioner	:	M/s. Pawan Upadhyaya and Suvendu Kumar Sethi, Advocates
For the Opposite Party Nos.1 to 4	:	Mr. Saswat Das, Additional Government Advocate
For the Opposite Party No.5	:	Mr. Surya Prasad Mishra, Senior Advocate Assisted by M/s. Soumya Mishra, A. Mohanta, Lalit Kumar Maharana, Advocates

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 11.02.2026 :: Date of Judgment :06.05.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

The petitioner, craving to question the levy and collection by way of deduction from the payments made towards royalty on account of "earth" extracted from land leased out to the Odisha Power Generation Corporation Ltd. (A Government of Odisha undertaking, for brevity hereinafter be called "OPGC") and utilized for construction of Ash Pond at Village: Tilia for its 2X660 MW Thermal Power Plant Project, IB Thermal Power Station, Banharpalli in the District of Jharsuguda (Odisha), being contrary to the provisions of the Odisha Minor Mineral Concession Rules, 2004[1], beseeches exercise of power conferred on this Court under the provisions of Articles 226 and 227 of the Constitution of India for grant of following relief(s):

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[1] The Odisha Minor Mineral Concession Rules, 2004 has been superseded by virtue of the Odisha Minor Mineral Concession Rules, 2016, except as respects things done or omitted to be done before such supersession.

"In the facts and under the circumstances stated above, the Hon'ble Court would graciously be pleased to declare that royalty is not leviable in respect of the extraction of earth from the land of the opposite party No.5-Corporation for construction of Ash Pond of the said opposite party;

And be further pleased to direct the opposite parties to refund the already deducted royalty as per demand notice under Annexure-9 from the running account bills of the petitioner under Annexure-5 series;

Issue any appropriate order/orders deemed fit in the facts and circumstances of the case;

And for which act of kindness, the petitioner shall remain ever pray as in duty bound."

Facts leading to filing of writ petition:

2. The petitioner, having participated in connection with the Request for Proposal for construction of Ash Pond over the leased land in favour of the opposite party No.5-OPGC by submitting its bid on 23.11.2016 was declared successful and accordingly executed an agreement on 21.12.2016 with OPGC.

2.1. After such execution of agreement, by a Letter dated 17.02.2017 intimated that as against the letter of acceptance issued by the OPGC indicating award of work and performance guarantee, the same would be subject to conditions *inter alia* that earth to be used with respect to "item 4.01 of BoQ" pertaining to inside the

pond area is not liable to be levied with royalty as per provisions of Rule 3 of the Odisha Minor Mineral Concession Rules, 2004 ("Rules, 2004", for short) and earth to be used for item 4.01 of BoQ pertaining to outside the pond area is chargeable to royalty and in both the circumstances if royalty is to be levied, the same would have to be borne by the OPGC.

2.2. Notwithstanding such objection being raised by the petitioner, the opposite party No.5-OPGC proceeded to withhold an amount towards royalty for extraction of earth from the subject-land out of the Running Account Bill(s) on the plea that the Tahasildar issued Letter dated 15.03.2018 demanding deposit of royalty on such extraction of "earth". Objecting to such action the petitioner *vide* Letter dated 15.03.2018 (Annexure-7) intimated the General Manager (MGR and Ash Pond), OPGC-II, IB Thermal Power Station that royalty at enhanced rate is not payable and citing that the rate quoted by it was inclusive of royalty as per extant Rules, *i.e.,* the Odisha Minor Mineral Concession Rules, 2004, but not the Odisha Minor Mineral Concession Rules, 2016 ("Rules, 2016" for convenience).

2.3. In connection with Demand Notice in Letter No.853, dated 23.03.2018 issued by the Tahasildar, Lakhanpur addressed to the Executive Director and Head (MGR and

Ash Pond), OPGC, Banharpal directing the latter to deposit the royalty amount on account of "earth used for construction of Ash Pond at *Mouza*: Tilia", an e-mail was received by the petitioner sent by OPGC-II with the following instructions:

"Dear Sir, Please refer out Skire Letter under reference wherein it was requested to submit proof of deposit of royalty amount to Rs.1,05,35,000/- as demanded by Tahasildar, Lakhanpur within 20.03.2018. We have not received any reply from your side till date. As such we once again request you to submit compliance as above within 28.03.2018 positively or else the royalty amount withheld from your RA Bills shall be deposited by OPGC directly with Tahasildar, Lakhanpur. Please treat this as most urgent. Regards, GP Mishra."

2.4. Responding to the Letter dated 16.03.2018 of the petitioner, the OPGC sought to review item No.4.1 of BoQ by reiterating conditions *inter alia* that the contractor is liable to pay all royalties and licence fees whether such royalty is applicable on "inside earth" or "outside earth".

2.5. Clarifying the fact that the petitioner was entrusted with the work of construction of Ash Pond over the land of OPGC for which extraction of earth was necessary. The excavation of earth was done by mechanical means from approved borough from inside the pond and dumped at the *bundh*/embankment inside the enclosed land of

OPGC. Since the earth so excavated was used for domestic purposes, said activity could not have been construed as "quarrying operation" as envisaged in Rule 3 read with Rule 2(t) of the Rules, 2004, (superseded by the Rules, 2016). Under such premise request was made by Letter dated 14.04.2018 addressed to the Tahasildar to grant certificate of exemption from payment of royalty.

2.6. Further request was also made to OPGC by Letters dated 18.04.2018 and 24.05.2018 not to deduct amount of royalty from further bills for payments in future; but to no avail; hence this writ petition.

Counter affidavit of opposite party Nos.3 and 4:

3. Repelling contention of the petitioner, the opposite party Nos.3 and 4 submitted that:

i. The use of extracted earth from the leasehold land of OPGC during construction of Ash Pond does not fall within the connotation of "*bona fide* domestic consumptions" as envisaged under Rule 3 of the Rules, 2004/the Rules, 2016; but the narrative facts of the petitioner that it utilized the earth in forming embankment/dyke/*bundh* around the Ash Pond after extraction of earth therefrom would embrace within the meaning of the term "quarrying operation" envisaged in clause (t) of Rule 2 of the

Rules, 2004 [clause (v) of Rule 2 of the Rules, 2016] and such activity of the petitioner attracts levy of royalty in terms of Rule 3 of the Rules, 2004 or Rule 3 of the Rules, 2016. It is stated that in view of Rule 32, the levy of royalty and raising demand is justified in law.

ii. Expanding further it is stated that the land was alienated for construction of Thermal Power Project which is a commercial project. Using the earth being extracted from the subject-land in connection with the construction of Ash Pond without licence/ "quarry permit" as defined under clause (w) of Rule 2 of the Rules, 2016 attracts demand for payment of royalty under Rule 32(2) which is in consonance with Clarification of the Revenue and Disaster Management, Government of Odisha *vide* Letter No. RDM-LRGEC-CLRIF-0002-2018/4214/R&DM, dated 31.01.2018.

Counter affidavit of the opposite party No.5:

3.1. The OPGC, enjoying limited leasehold rights (surface rights) over the land in question, asserts that no invidious distinction being made with respect to extraction of earth from inside the Ash Pond area *vis-à-vis* outside it. It is the contractual obligation on the part of the contractor (petitioner) to pay the royalty for

extraction of minor mineral under the Rules, 2004 as superseded by virtue of the Rules, 2016 in view of Clause 5.1.1 read with 1.2.6 of the contract. Even though royalty is not specifically mentioned in the BoQ, since Notes below Table-1 of Appendix-B of the Contract entered into between the petitioner and the OPGC speaks about such obligation the petitioner cannot escape from discharging such liability.

3.2. In absence of any exemption certificate or "quarry permit" from competent authority, in view of Clause 5.1.4 of the Contract, the OPGC is entitled to deduct the amount of royalty from the Bills for payment to the petitioner.

Hearing:

4. This writ petition was disposed of on 01.08.2019 giving liberty to the petitioner to approach the Arbitrator. However, the said Order being carried further before the Hon'ble Supreme Court of India in S.L.P.(C) No.20782 of 2019, the following Order was passed on 08.11.2019:

"The Impugned order passed by the High Court on 01.08.2019 is set aside. The matter is remanded to the High Court to determine the issue of leviability of royalty on the parties in this case. The matter is disposed of accordingly. The parties may move the High Court for interim relief.

We are informed that the contract expires in March, 2020. We would request the High Court to dispose of the matter expeditiously preferably within a period of three months."

4.1. After many adjournments sought for by the counsel for the parties, and change of lawyer(s) in the midst of hearing, finally the matter was heard on 11.02.2026.

4.2. Heard Sri Pawan Upadhyaya, learned Advocate assisted by Sri B.K. Mohanty, learned Advocate for the petitioner; Sri Saswat Das, learned Additional Government Advocate for the opposite party Nos.1 to 4 and Sri Surya Prasad Mishra, learned Senior Advocate assisted by Sri Soumya Mishra, learned Advocate representing the opposite party No.5 (OPGC).

4.3. Hearing being concluded on the said date, the matter stood reserved for preparation and pronouncement of Judgment/Order.

Consideration of rival contentions and submissions/ written note of submissions with analysis and discussion on merit thereof:

5. Sri Pawan Upadhyaya, learned Advocate, commenced hearing by stating that the petitioner extracted earth from the land leased to the OPGC for the purpose of construction of Ash Pond in connection with execution of works contract entrusted pursuant to the Request for

Proposal wherein it was declared successful. Since the earth extracted has been used for the purpose of contractee (OPGC) itself and earth so excavated has never been taken out of the area belonging to OPGC nor was it sold to anybody by the petitioner, it is not liable for payment of royalty. It is also emphasized that such activity for self-use cannot be considered as commercial exploitation of the minor mineral.

5.1. In the "Further Counter Affidavit" dated 18.07.2024 it has been clarified by the opposite party Nos.1 to 3 as follows:

"That it is an admitted fact that the land was granted in favour of opposite party No.5 by way of lease/acquisition to set up the Thermal Power Plant, wherein the petitioner was engaged as a Contractor for construction of Ash pond, which would be utilized by the opposite party No.5 and the petitioner had constructed the said Ash Pond by way of removing/extracting earth within the lease area granted by the State Government. Hence, in view of the provisions of Mines and Minerals (Development and Regulation) Act, 1957 and Odisha Minor Mineral Concession Rules, 2004 and 2016, the petitioner is liable for payment of royalty."

5.2. It is also affirmed by the opposite party Nos.1, 3 and 4 in their counter affidavit at paragraph 12 that the OPGC-lessee was granted lease of land for setting up/ construction of Thermal Power Plant and the petitioner

was engaged for construction of Ash Pond at Tilia Village, which is part of such Project. The earth extracted from beneath the surface by utilizing machines can be said to come within the fold of "quarrying operation" as defined under Clause (v) of Rule 2 of the Rules, 2016 [*pari materia* with Clause (t) of Rule 2 of the Rules, 2004], thereby such activity of the petitioner-company attracts liability for payment of royalty as per Rule 3 of the said Rules.

5.3. The genesis of ownership of land began with Order No.2224, dated 02.03.2016 issued by the Collector, Jharsuguda with the following caption:

*"In exercise of the powers conferred in G.O. No.28677/R, dated 27.04.1981 read with Rule 11, item 6 of the Schedule-II of the Odisha Government Land Settlement Rules, 1983, sanction of lease of Government land to the extent of Ac.30.53 decs. As per schedule below in mouza Tilia under Lakhanpur Tahasil is accorded in favour of IDCO, Bhubaneswar for establishment of industries subject to the terms and conditions prescribed in the lease deed issued in Revenue Department Letter No.26678/ R&DM, dated the 9th July, 2013. ***"*

5.4. The Mines and Minerals (Development and Regulation) Act, 1957 defines the term "MINOR MINERALS" in clause (e) of Section 2 as follows:

*"(e) "MINOR MINERALS" means **building** stones, gravel, **ordinary clay, ordinary sand** other than sand*

used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral".

5.5. The Ministry of Mines and Minerals (Department of Mines) by Notification F.No.7/5/99-M.VII [GSR 95(E)], dated 03.02.2000 published in the Extraordinary issue of Gazette of India No.84, dated 08.02.2000 declared that:

"In exercise of powers conferred by clause (e) of Section 3 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government hereby declares the ***'ordinary earth'*** *used for filling or levelling purposes* ***in construction of embankments****, roads, railways, buildings to be a minor mineral in addition to minerals already declared as minor minerals hereinbefore under the said clause."*

5.6. The Odisha Minor Mineral Concession Rules, 2016 in clause (aa) of Rule 2 specified as follows:

"SPECIFIED MINOR MINERALS means[2] ***all minor minerals*** *including decorative stones* ***other than the minor minerals listed at serial No.2 of Schedule-III****."*

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[2] The Hon'ble Supreme Court of India in *Commissioner of Trade Tax Vrs. Kajaria Ceramics Ltd., (2005) Supp.1 SCR 437* interpreted the term "means" used in definition clause as under:
"The language of the definition of the phrase in Explanation 4 to Section 4A is sufficiently clear and unambiguous. This coupled with the use of the word 'means' in the Explanation shows that the definition is exhaustive. As has been observed in Feroze N. Dotiwala Vrs. P. M Wadhwani, (2003) 1 SCC 433, 442:
'Generally, when the definition of a word begins with 'means' it is indicative of the fact that the meaning of the word has been restricted; that is to say, it would not mean anything else but what has been indicated in the definition itself.

5.7. The relevant portions of Schedule-II [Rule 25(5) and Rule 32(2)] and Schedule-III [Rule 2(gg)— Controlling Authority] are reproduced hereunder:

Schedule-II *See Rule 25(5) and Rule 32(2)* *Royalty*		
33.	*Ordinary clay, silt, rehmatti, brick-earth,* ***ordinary earth****, moorum*	*Rupees thirty five per cubic metre*
Schedule-III *See Rule 2(g)*		
Sl. No.	*Type of Minerals*	*Controlling Authority*
1.	*Specified minor minerals and all minor minerals occurring in areas granted under mining lease for major minerals*	*Government in Steel and Mines Department*
2.	*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*	

Therefore, unless there is any vagueness of ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition.'
According to the Constitution Bench in PLD Corporation Ltd. Vrs. Presiding Officer, (1990) 3 SCR 111, 150 when the statute says that a word or phrase shall mean certain things it is a 'hard and fast definition, and no other meaning can be assigned to the expression than is put down. A definition is an explicit statement of the full connotation of a term'."

	shingles and pebbles:	
	(a) when occurring in non-forest land	*Deputy Director of Mines of respective jurisdiction*
	(b) when available in any forest area	*Principal Chief Conservator of Forest, Odisha.*

5.8. The petitioner has affirmed by way of rejoinder affidavit dated 26.03.2019 (Paragraph 5), that:

*"*** The petitioner being the successful tenderer has been assigned with the said work of construction of Ash Pond and accordingly the petitioner during such construction has dug up and* ***extracted earth from the land belonging to opposite party No.5-Corporation*** *and has* ***re-deployed the extracted earth for construction of dyke/embankment thereof****.* ***It is undisputed by the parties that the earth extracted during construction of Ash Pond has been re-deployed there for dyke purpose.*** *As such there is no commercial exploitation of the excavated earth by the petitioner and that the excavated earth was not sent outside or sold to anybody for commercial gain. In view of the above, construction of Ash Pond being the domestic use of the opposite party No.5/Corporation and the extracted earth having been admittedly re-deployed there, it is undeniable that the removal of minor mineral, i.e., earth in the present case is for the 'bona fide domestic consumption' of opposite party No.5/ Corporation.* ***It is vehemently denied that the construction of Ash Pond is a commercial project of the opposite party No.5/Corporation. As such, the removal of minor mineral by the petitioner for the opposite party No.5/Corporation is squarely coming under the proviso to Rule 3(1) of the Odisha Minor***

Mineral Concession Rules, 2016. In absence of any mining or quarrying operation, the impugned demand of royalty under Rule 32(2) of the Odisha Minor Mineral Concession Rules, 2016 is bad in law."

5.9. By setting forth relevant clauses of the Contract, the OPGC in its counter affidavit strongly contended with respect to liability for payment of royalty despite change of law. It is submitted that the Contract being entered into after coming into force the Odisha Minor Mineral Concession Rules, 2016, in view of different clauses of Contract, it is the contractor (petitioner) who is to discharge liability to pay royalty. Under the Heading "Definitions; Interpretation" *vide* Clause 1.0 of the Contract for construction of Ash Pond at Tilia Village entered into between OPGC and the petitioner (Annexure-A/5) it is contained as follows:

"1.1. Defined terms.—

As used in this contract, the following terms shall have the following meanings (such meaning as necessary to be equally applicable to both the singular and plural forms of the terms defined unless the context otherwise requires):

APPLICABLE LAWS means ***any and all acts, statutes, laws, codes, standards, regulations, permits, constitutions, licenses, ordinances, rules, judgments, orders, decrees, directives, consents*** *including but not limited to conditions laid*

down in Consent to Establish issued by Odisha Pollution Control Board vide Order No. 14266/Ind-II-NOC-5037 dated 28.08.2010 and extensions and modifications thereof, clearances including but not limited to the conditions laid down in environmental clearance granted by MoEF vide Letter No.J-13011/5912008-IA.il(T) dated 04.02.2010 and extension and modifications thereof, guidelines or policies (to the extent mandatory), or any similar form of decision or determination by, or any interpretation or administration of any of the foregoing, by any Government Authority concerning, relating to or having jurisdiction over the transportation, importation, customs clearance, immigration, design, engineering, procurement, permitting, fabrication, construction, installation, commissioning, start-up, testing, ownership, operation or maintenance of the equipment or any of its components, the Site, Contractor, any Subcontractor, Owner, the performance of the Work or any other services to be performed under this Contract, including:

(a) those of the Country, or any other country where any of the work is being performed,

(b) Site-specific environmental requirements (including those governing noise emissions), including but not limited to those identified in the Technical Specification,

(c) any applicable anti-corruption, anti-money laundering, anti-terrorism and economic sanction and anti-boycott laws etc.

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CHANGE OF LAW means ***a change in, or the enactment,*** *promulgation, issuance or entry into law of,* ***any Applicable Law*** *by a Government Authority of the Country* ***that occurs subsequent to 23rd November 2016****, including the introduction of any new tax or change in the rate of any existing tax, but excluding:*

(a) ***any changes of law relating to*** *taxation of income or any other tax, duty, levy, impost, fee,* ***royalty*** *or charge* ***for which Contractor is responsible under this Contract*** *or*

(b) any changes of law that are enacted on or before the 23rd November 2016, but will come into force after the 23rd November 2016.

1.2.6.Laws and Permits.—

References to any act, statute, law, code, standard, regulation, permit, constitution, license, ordinance, rule, judgment, order, decree, directive, guideline or policy or policy (including Applicable Laws) shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, supplemented or re-enacted."

5.10. Meaningful reading of the afore-mentioned clauses would lead to indicate that the Rules, 2016 having superseded the Rules, 2004, the "applicable laws" as superseded would be applicable.

5.11. The Odisha Minor Mineral Concession Rules, 2016 came into force with effect from 15.12.2016 by superseding the Odisha Minor Mineral Concession Rules, 2004. The said Rules saved the "things done or omitted to be done before such supersession" under the Rules, 2004. The word "supersede" *vide* Black's Law Dictionary, 5th Edition, as referred to in *Calcutta Municipal Corporation Vrs. Pawan Kumar Saraf, (1999) 2 SCC 400 = (1999) 1 SCR 74*, means "obliterate, set aside, annul, replace, make void or inefficacious or useless, repeal". The purport of "supersession" has been succinctly explained in *Union of India Vrs. Glaxo India Ltd., (2011) 6 SCC 668 = (2011) 4 SCR 50* as follows:

> *"39. The impugned notification uses the expression 'supersession' of the earlier notification. Therefore, the first question that requires to be considered and answered by us is, what is the meaning of the expression 'supersession' and what is its effect. Webster's Third New International Dictionary defines the word 'supersession' to mean 'the state of being superseded', 'removal' and 'replacement'. P. Ramanatha Aiyar's Advanced Law Lexicon defines 'superseded' as 'set aside' and 'replaced by'. The view of this Court in some of the decisions is that the expression 'supersession' has to be understood to amount 'to repeal' and when notification is repealed, the provisions of Section 6 of the General Clauses Act would not apply to notifications.*
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42. *In State of Orissa Vrs. Titaghur Paper Mills Company Ltd., 1985 Supp SCC 280 = AIR 1985 SC 1293, the specific question whether on 'supersession' of a notification, the liability to tax for a period prior to the supersession was wiped out or not, directly arose and was considered. This Court came to the conclusion that the previous liability to tax for a period prior to the supersession was not wiped out. In our view, the results that flow from changes in the law by way of amendment, 'repeal', 'substitution' or 'supersession' on the earlier rights and obligations cannot be decided on any set formulae. It is essentially a matter of construction and depends on the intendment of the law as could be gathered from the provisions in accordance with accepted cannons of construction.*

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45. *In Syed Mustafa Mohamed Ghouse v. State of Mysore, (1963) 1 Cri LJ 372 (Mys), the Sugar (Movement Control) Order, 1959 of 06.11.1959 was passed in supersession of the Sugar (Movement Control) Order, 1959, dated 27.07.1959. It was held that in law 'supersession' has not the same effect as repeal and proceedings of a superseded order can be commenced. In R.S. Anand Behari Lal Vrs. United Provinces Govt., AIR 1955 NUC 2769 (All), it was held that in case of supersession of a notification, the objections and liabilities accrued and incurred under the earlier notification remain unaffected, since the supersession will be effected from the date of second notification and not retrospectively, so as to abrogate the earlier notification from the date of its commencement."*

5.12. The distinction between the word "substitution" and the term "supersession" can well be deduced from the following observation of the Hon'ble Supreme Court of India in the case of *State of Maharashtra Vrs. Central Provinces Manganese Ore Co. Ltd., (1977) 1 SCC 643*:

> *"14. The following passage was also cited from Koteswar Vittal Kamath Vrs. K. Rangappa Balica & Co., (1969) 1 SCC 255 = AIR 1969 SC 504 (at page 509) = (1969) 3 SCR 40 (at p. 47):*
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> *'Learned counsel for the respondent, however, urged that the Prohibition Order of 1119 cannot, in any case, be held to have continued after 8th March, 1950, if the principle laid down by this Court in Firm A.T.B. Mehtab Majid & Co. Vrs. State of Madras, 1963 Supp (2) SCR 435 = AIR 1963 SC 928 is applied. In that case, Rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, was impugned. A new Rule 16 was substituted for the old Rule 16 by publication on September 7, 1955, and this new rule was to be effective from 1st April, 1955. The Court held that the new Rule 16(2) was invalid because the provisions of that rule contravened the provisions of Article 304(a) of the Constitution. Thereupon, it was urged before the Court that, if the impugned rule be held to be invalid, the old Rule 16 gets revived, so that the tax assessed on the basis of that rule will be good. The Court rejected this submission by holding that:*
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> *'Once the old rule has been substituted by the new rule, it ceases to exist and it does not automatically get revived when the new rule is held to be invalid.'*

On that analogy, it was argued that, if we hold that the Prohibition Order of 1950 was invalid, the previous Prohibition Order of 1119 cannot be held to be revived. This argument ignores the distinction between supersession of a rule, and substitution of a rule. In the case of 1963 Supp (2) SCR 435 = AIR 1963 SC 928 (supra), the new Rule 16 was substituted for the old Rule 16. The process of substitution consists of two steps. First, the old rule is made to cease to exist, and, next, the new rule is brought into existence in its place. Even if the new rule be invalid, the first step of the old rule ceasing to exist comes into effect and it was for this reason that the Court held that, on declaration of the new rule as invalid, the old rule could not be held to be revived'.

15. *In the above mentioned passage, this Court merely explained the argument which was accepted in the case of firm A.T.B. Mehtab Majid & Co. Vrs. State of Madras, 1963 Supp (2) SCR 435 = AIR 1963 SC 928). After doing so, it distinguished the facts in Koteshwar Vittal Kamath Vrs. K. Rangappa Baliga, AIR 1969 SC 504, relating to an alleged substitution of one Prohibition Order by a subsequent order which was found to be invalid. It recorded its conclusion as follows (at p. 509):*

'In the case before us, there was no substitution of the Prohibition Order of 1950 for the Prohibition Order of 1119. The Prohibition Order of 1950 was promulgated independently of the Prohibition Order of 1119, and because of the provisions of law it would have had the effect of making the Prohibition Order of 1119 inoperative if it had been a valid

order. If the Prohibition Order of 1950 is found-to be void ab initio, it could never make the Prohibition Order of 1119 inoperative'.

16. The argument before us is that since the word 'substituted' is used in the amending Act of 1949, it necessarily follows that the process embraces two steps. One of repeal and another of the new enactment. But, this argument is basically different from the argument which prevailed in Koteswar's case (supra) where a distinction was drawn between a 'substitution' and 'supersession'. It is true that, as the term substitution was not used there, the old rule was not held to have been repealed. Nevertheless, the real basis of that decision was that what was called supersession was void ab initio so that the law remained what it would have been if no such legislative process had taken place at all. It was held that the void and inoperative legislative process did not affect the validity of the pre-existing rule. And, this is precisely what is contended or by the State before us."

5.13. The word "supersession", as finds place in the Odisha Rules, 2016, framed in exercise of powers conferred by Section 15(1) of the Mines and Minerals (Development and Regulation) Act, 1957, is construed to be used in the sense as the word "repeal" or the words "repeal and replacement". Using the term "supersession" in said notification, by the expression "in supersession of the provisions contained in the Odisha Minor Mineral Concession Rules, 2004" all that was done was to repeal

and replace the previous Rules. Thus understood, the Odisha Minor Mineral Concession Rules, 2016, repealed and replaced the Odisha Minor Mineral Concession Rules, 2004. The succeeding words "except as respect the things done or omitted to be done before such supersession" contained in said Rules, 2016 are significant, which can be construed to mean the earlier action/process undertaken on the basis of the Rules, 2004 as amended from time to time is not wiped out. Therefore, the only conclusion can be arrived at is that the Rules, 2016 would be attracted even as the actions under the Rules, 2004 would not be wiped out.

5.14. It is by now well-settled and does not require any authority to be quoted for the proposition that there is no estoppel against statute. Thus, the change of law would attract in the present set of facts attracts *proprio vigore*. Finding enclosed with the counter affidavit filed on behalf of the opposite party Nos.3 and 4 as Annexure-B/4, from which the following is transpired with respect to clarification being issued by the Government of Odisha in Revenue and Disaster Management Department addressed to the Collector, Jharsuguda *vide* Letter No.RDM-LRGEC-CLRIF-0002-2018/4214/R&DM, dated 31.01.2018:

"In inviting a reference to your Letter No.706, dated 25.01.2018 on the subject cited above, I am directed to say that mineral found on any land, including Government land, leasehold land or even private land belongs to Government minerals like ordinary clay, silt and ordinary earth etc. are the items of or minor minerals as per Schedule-III of the Odisha Minor Mineral Concession Rules, 2016.

As per the lease principles under the Odisha Government Land Settlement Act, the surface right has been leased out, not the minerals. Besides, Rule 3 of the Odisha Minor Mineral Concession Rules, 2016 provides that 'no person shall undertake any prospecting operation or mining operation or quarrying operation for minor minerals in any area except under and in accordance with the terms and conditions of a prospecting licence-cum-mining lease or a quarry permit granted under these Rules.'

Thus, it is amply clear that the company which has been provided land shall have no right to use the minor mineral on it.

Therefore, it in the instant case, the company has to pay royalty and other dues for the minerals they have extracted from the leased out land.

This is for your information and further necessary action."

5.15. Relevant provisions of the Odisha Minor Mineral Concession Rules, 2004 and the Odisha Minor Mineral Concession Rules, 2016 are reproduced hereunder for benefit of understanding:

The Odisha Minor Mineral Concession Rules, 2004[3]	the Odisha Minor Mineral Concession Rules, 2016[4]
2. Definitions.—	*2.* Definitions.—
(1) In these rules, unless the context otherwise requires,—	*(1)* In these rules, unless the context otherwise requires,—
(r) 'Quarry lease' means a lease granted on tenure basis for extraction, collection and/or removal of minor minerals other than decorative stones over a compact area;	*(q)* "Mining lease" means a lease granted under these rules for specified minor minerals over a compact area;
(t) 'Quarrying operations' means any operation undertaken for the purpose of winning any minor mineral including decorative stones and shall include erection of machinery, laying of tramways, construction of roads and other preliminary operations for the purpose of quarrying;	*(u)* "Quarry lease" means a lease granted on tenure basis for extraction, collection and/or removal of minor minerals other than specified minor minerals over a compact area;
(2) Words and expressions	*(v)* "Quarrying operation" means any operation undertaken for the purpose of winning any minor mineral other than specified minor minerals and shall include erection of machinery, laying of

[3] These Rules are framed in exercise of powers conferred by Sub-section (1) of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), by the State Government for regulating the grant of mineral concessions in respect of minerals and for purposes connected therewith, *vide* Notification No. S.R.O. No.421/2004, published in the Orissa Gazette Extraordinary No. 1167, dated 31.8.2004.

[4] These Rules are framed

used herein but not defined in these rules shall have the meanings as respectively assigned to them in the Act, the Mineral Concession Rules, 1960 and Granite Conservation and Development Rules, 1999.	tramways, construction of roads and other preliminary operations for the purpose of quarrying;
3. Restriction on prospecting/mining/ quarrying operation.—	*(aa)* "Specified minor minerals" means all minor minerals including decorative stones other than the minor minerals listed at serial No.2 of Schedule-III;
(1) No person shall undertake any prospecting or mining or quarrying operations for minor minerals in any area except under and in accordance with the terms and conditions of a prospecting licence or a quarry/mining lease or auction of source or a quarry permit, as the case may be, granted under these rules: **Provided that extraction, collection and/or removal of minor minerals by a**	*(2)* Words and expressions used herein but not defined in these rules shall have the meanings as respectively assigned to them in the Act, and rules made thereunder. *3.* Restriction on prospecting or mining or quarrying operation.— *(1)* No person shall undertake any prospecting operation or mining operation or quarrying operation for minor minerals in any area except under and in accordance with the terms and conditions of

person from his own land for normal agricultural operations or other *bona fide* domestic consumptions shall not be construed as quarrying operations. Provided further that nothing in this sub-rule shall affect any quarrying operations undertaken in any area in accordance with the terms and conditions of a quarry lease or quarry permit or auction sale before commencement of these rules which is in force at such commencement. *(2)* **No persons shall transport or store or cause to be transported or stored any minor minerals for the purpose of selling or trading otherwise than in accordance with these rules.** *(3)* In the interest of mineral development,	a prospecting license-*cum*-mining lease or a mining lease or a quarry lease or a quarry permit, as the case may be, granted under these rules: **Provided that extraction, collection and/or removal of minor minerals by a person from his own land for normal agricultural operations or other *bona fide* domestic consumptions shall not be construed as mining or quarrying operation:** Provided further that nothing in this sub-rule shall affect any prospecting or mining or quarrying operation undertaken in any area in accordance with the terms and conditions of a prospecting license or mining lease or quarry lease or quarry permit before commencement of these rules which is in force at such

	preservation of natural environment, prevention of pollution or to avoid danger to public health or communication or to ensure safety to building, monuments or other structures, or for such other purposes, the competent/ controlling authority may, by order in respect of any minor mineral, make premature termination of a prospecting license or mining/ quarry lease after giving the holder of license or lease a reasonable opportunity of being heard. Provided that the Deputy Director, Mines/Mining Officer/ Tahasildar/ Divisional Forest Officer having jurisdiction, may in an emergent situation or in case of irreparable loss, pass necessary orders as deemed proper in the interest		commencement: Provided also that nothing in this rule shall apply to prospecting operations undertaken by any agency or organization of the State or the Central Government.
		(2)	**No person shall transport or store or cause to be transported or stored any minor mineral for the purpose of selling or trading otherwise than in accordance with these rules.**
		(3)	In the interest of mineral development, preservation of natural environment, prevention of pollution or to avoid danger to public health or communication or to ensure safety to buildings, monuments or other structures or to protect national security or for such other purposes, the Competent/Controlling Authority may, by an

of mineral development, preservation of natural environment, prevention of pollution or to avoid danger to public health or communication or to ensure safety to building, monuments or other structures, or for such other purposes.	order in respect of any minor mineral, make premature termination of prospecting license-*cum*-mining lease or mining lease or quarry lease or quarry permit after giving the holder of license or lease or permit a reasonable opportunity of being heard: Provided that the Deputy Director of Mines or Mining Officer or Divisional Forest Officer having jurisdiction, may in an emergent situation or in case of irreparable loss, pass necessary orders as deemed proper in the interest of mineral development, preservation of natural environment, prevention of pollution, protection of national security, or to avoid danger to public health or communication or to ensure safety to buildings, monuments or other structures or

	for such other purposes.

5.16. First of all it is difficult to accede to the contention of the petitioner as pleaded that the activity could not be construed to be commercial nature. Order No.2224, dated 02.03.2016 issued by the Collector, Jharsuguda, clearly stated that the land has been leased out in favour of IDCO under the provisions of the Odisha Government Land Settlement Act, 1962 "for establishment of industries". Both the owner-OPGC as well as the contractor in the Contract for construction of Ash Pond dated 21.12.2016 described themselves to be companies incorporated within the meaning of the Companies Act, 2013. The contract is awarded to the petitioner on being declared as successful in the Request for Proposal.

5.17. In *Jagdish Mandal Vrs. State of Orissa, (2007) 14 SCC 517* it has been laid down that:

> *"21. We may refer to some of the decisions of this Court, which have dealt with the scope of judicial review of award of contracts.*
>
> ***
>
> *21.3. In Raunaq International Ltd. Vrs. I.V.R. Construction Ltd., (1999) 1 SCC 492 this Court dealt with the matter in some detail. This Court held:*

"9. ***The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations.*** *These would be:*

(1) the price at which the other side is willing to do the work;

(2) whether the goods or services offered are of the requisite specifications;

(3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;

(4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;

(5) past experience of the tenderer, and whether he has successfully completed similar work earlier;

(6) time which will be taken to deliver the goods or services; and often;

(7) *the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services.*

Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction. ****"*

21.4. *In Air India Ltd. Vrs. Cochin International Airport Ltd., (2000) 2 SCC 617 this Court summarised the scope of interference as enunciated in several earlier decisions thus:*

'7. **** **The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations.** The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for*

*bona fide reasons, if the tender conditions permit such a relaxation. ***' ***"*

5.18. Taking cue from the above observations of the Hon'ble Supreme Court of India, it can safely be said that the contract for construction of Ash Pond which is for the purpose of commercial activity undertaken by the OPGC and it cannot be denied that the petitioner has executed the contract being declared successful in the bidding process for commercial gain.

5.19. Careful reading of definitions of "quarry lease" and "quarrying operation" as given at Clauses (u) and (v) of Rule 2 makes it clear that *"extraction, collection and/or removal of minor minerals other than specified minor minerals over a compact area"* and *"any operation undertaken for the purpose of winning any minor*[5] *mineral*

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[5] In *Bihar Mines Ltd. Vrs. Union of India, (1967) 1 SCR 707* the meaning of the term "winning" in the context of mining has been construed as follows:
"Counsel for the appellant submitted that a lease for extracting mineral from a mine is not a lease for the purpose of winning a mineral within the purview of Article 31-A(1)(e) of the Constitution, and as the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957) enables the compulsory acquisition of such a lease by prematurely terminating it without payment of compensation, it contravenes Article 31 and is not protected by Article 31-A(1)(e). Relying on Lewis Vrs. Fothergill [Ch A 103] and Lord Rokeby case [7 AC 43 = 13 Ch D 277 = 9 Ch D 685] he submitted that a mineral is won when it is reached and is ready for continuous working. In the collocation of words "work and win", the expression "win" might be construed to mean some activity preparatory to the working and extraction of the mineral. ***But we see no reason for giving this narrow meaning to the expression "winning" in Article 31-A(1)(e) of the Constitution or in Section 3(d) of the Mines and Minerals (Regulation and Development) Act, 1957. In a popular sense, winning a mineral means getting or extracting it from the mine.*** *This is one of its dictionary meanings, see The Shorter Oxford Dictionary. The plain and popular import of the expression furnishes the true rule of the interpretation of Article 31-A(1)(e). A law providing for the premature termination of a lease for getting or extracting a mineral is*

other than specified minor minerals" would be encompassed within the fold of the Rules, 2016, which came into force with effect from 15.12.2016.

5.20. Appendix-D forming part of the aforesaid contract dated 21.12.2016 between OPGC and the petitioner would reveal further fact that:

"The contractor shall be responsible for requesting, obtaining, maintaining and paying for the permits required for the full and complete performance of the contract including without limitation the following which shall be obtained by contractor in the name of owner (OPGC):

Serial No.	*Permits*	*Government Authority*
*	*	*
11.	*Usage of earth, ballast and all such material*	*Government Authority*

5.21. Clause 1.2.6 under the heading "Laws and Permits" of the Contract referred to above makes it abundantly clear that it is the responsibility of the contractor for obtaining such permits. Said clause reads as follows:

"References to any act, statute, law, code, standard, regulation, permit, constitution, licence, ordinance, rule, judgment, order, decree, directive, guideline or policy (including Applicable Laws) shall be construed as a reference to the same as it may have been, or may from

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protected by Article 31-A(1)(e), and cannot be attacked on the ground that it contravenes Article 14, 19 or 31."

time to time be amended, modified, supplemented or re-enacted."

5.22. Noticeably Clause 14.1.5 of the Contract stipulated that all permits and other authorisations, approvals, orders or consents required in connection with the execution, delivery and performance of the Contract by contractor have to be obtained.

5.23. The word "any" used in the expression "any operation undertaken for the purpose of winning any minor mineral" in Clause (v) of Rule 2 has much significance. Meaning of the word "any" can be understood as follows *vide, Saroj Kumar Sahoo Vrs. National Faceless Assessment Centre, 2026 SCC OnLine Ori 679*:

> *"8.19. The interpretation of word "any" came up for consideration before the Supreme Court of India in Lucknow Development Authority Vrs. M. K. Gupta, (1994) 1 SCC 243 and it is held:*
>
> *'The word 'any' dictionarily means 'one or some or all'…. The use of the word 'any' in the context it has been used in clause (o) indicates that it has been used wider sense extending from one to all.'*
>
> *8.20. In Shri Balaganesan Metals Vrs. M.N. Shanmugham Chetty, (1987) 2 SCC 707, after making a reference to the meaning ascribed to the word in Black's Law Dictionary, 15th Edition, it was held that the word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some'*

or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute.

8.21. In Arjun Panditrao Khotkar Vrs. Kailash Kushanrao Gorantyal, (2020) 7 SCR 180 it has been made clear that:

> *'23. Under Sub-section (4) [Section 65B(4) of the Evidence Act, 1872], a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of "relevant activities"- whichever is appropriate. What is also of importance is that it shall be sufficient for such matter to be stated to the "best of the knowledge and belief of the person stating it". Here, "doing any of the following things…" must be read as doing all of the following things, it being well settled that the expression "any" can mean "all" given the context (see, for example, this Court's judgments in Bansilal Agarwalla Vrs. State of Bihar, (1962) 1 SCR 331[6] and Om Parkash Vrs. Union of India,*

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6 *"3. The first contention is based on an assumption that the word "any one" in Section 76 means only "one of the directors, and only one of the shareholders". This question as regards the interpretation of the word "any one" in Section 76 was raised in Criminal Appeals Nos. 98 to 106 of 1959 (Chief Inspector of Mines, etc.) and it has been decided there that the*

(2010) 4 SCC 172[7]. This being the case, the conditions mentioned in sub-section (4) must also be interpreted as being cumulative.'

8.22. Having such understanding of the term "any", when the word "any" is followed by "person" in Explanation to Section 158B, it can be construed to mean "every person"/"everyone"."

5.24. Understood thus the meaning of "any", the fact as adumbrated by the petitioner at paragraph 5 in the rejoinder affidavit dated 26.03.2019 can be unequivocally conceived. It is admitted that the petitioner has "extracted" earth during construction of Ash Pond. Such activity, being comprehended within the definition of "quarrying operation" as given at Clause (v) of Rule 2 of the Rules, 2016, requires "Quarry Permit" envisaged under Clause (w) thereof. Clause (w) of Rule 2 of the Rules, 2016 defining the term "quarry permit"[8]

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word "any one" should be interpreted there as "everyone". Thus under Section 76 every one of the shareholders of a private company owning the mine, and every one of the directors of a public company owning the mine is liable to prosecution. No question of violation of Article 14 therefore arises. "

[7] *"70. Perusal of the opinion of the Full Bench in B.R. Gupta-I [Balak Ram Gupta Vrs. Union of India, AIR 1987 Del 239] would clearly indicate with regard to interpretation of the word "any" in Explanation 1 to the first proviso to Section 6 of the Act which expands the scope of stay order granted in one case of landowners to be automatically extended to all those landowners, whose lands are covered under the notifications issued under Section 4 of the Act, irrespective of the fact whether there was any separate order of stay or not as regards their lands. The logic assigned by the Full Bench, the relevant portions whereof have been reproduced hereinabove, appear to be reasonable, apt, legal and proper."*

[8] Clause (w) of Rule 2 of the Odisha Minor Mineral Concession Rules, 2016 reads thus:

requires a permit to be obtained from Authority concerned for "extraction", "collection" and/or "removal" of minor mineral.

5.25. In *Bhagwan Dass Vrs. State of U.P., (1976) 3 SCC 784*[9] the meaning of "extraction" has been ascribed, to be understood in the following sense:

> *"13. Only one more argument made on behalf of the appellant requires to be noticed. It was urged that the sand and gravel are deposited on the surface of the land and not under the surface of the soil and therefore they cannot be called minerals and equally so, any operation by which they are collected or gathered cannot properly be called a mining operation.* ***It is in the first place wrong to assume that mines and minerals must always be subsoil and that there can be no minerals on the surface of the earth. Such an assumption is contrary to informed experience.*** *In any case, the definition of mining operations and minor minerals in Section 3(d) and (e) of the Act of 1957 and Rule 2(5) and (7) of the Rules of 1963 shows that* ***minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of "winning" any minor mineral. "Winning" does not imply a hazardous or perilous activity. The word***

"QUARRY PERMIT means a permit granted for extraction, collection and/or removal of any specified quantity of minor mineral other than specified minor minerals under Chapter-V."

[9] Referred to in nine-Judge Bench of the Hon'ble Supreme Court of India in the matter of *Mineral Area Development Authority Vrs. Steel Authority of India, (2024) 7 SCR 1549.*

simply means "extracting a mineral" and is used generally to indicate any activity by which a mineral is secured. *"Extracting", in turn, means, drawing out or obtaining. A tooth is 'extracted' as much as is fruit juice and as much as a mineral. Only, that the effort varies from tooth to tooth, from fruit to fruit and from mineral to mineral."*

5.26. While considering Section 9[10] of the Mines and Minerals (Development and Regulation) Act, 1957 read with Rule 64B and Rule 64C of the Mineral Concession Rules, 1960, in the case of *State of Rajasthan Vrs. Hindustan Zinc, (2014) 15 SCC 343* (cited at the Bar) it has been held that lease holder is supposed to pay royalty only on

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10 Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 reads as follows:

"9. Royalties in respect of mining leases.—

(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, ***pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area*** *after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.*

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of ***any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area*** *at the rate for the time being specified in the Second Schedule in respect of that mineral.*

(2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972 (56 of 1972) shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.

(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years."

the contents of metal in ore produced and not on the metal contained in the tailings, rejects or slimes which were not taken out of the leased area but were dumped into dumping ground of the leased area. Nonetheless, in the instant case the fact-scenario is completely different *qua* quarry lease. Here the consideration of this Court is whether the nature of work undertaken by the petitioner attracts liability for payment of "royalty" as envisaged under Rule 32 and in the teeth of definitions of various terms contained in Rule 2 and restrictions imposed for quarrying operation with specific reference to the expression "*bona fide* domestic consumptions" as contemplated under Rule 3 of the Odisha Minor Mineral Concession Rules, 2016 and whether the petitioner can escape liability to pay royalty on extraction of earth in absence of "permit" from authority concerned as required under the terms of Contract entered into with the OPGC. The cited case law is distinguishable and has no application to the present set of facts and the language employed in the Odisha Minor Mineral Concession Rules, 2016. Nothing is available on record to imply that the petitioner has been accorded with such "permit" by the competent authority for extraction/ winning of minor mineral, *i.e.,* ordinary earth.

5.27. From the above analysis of facts, it is crystal clear that without obtaining permission for extraction/winning of

minor mineral, the petitioner went on undertaking quarry operation and upon extracting the earth beneath the surface of leasehold area it "redeployed the extracted earth for construction of dyke/embankment".

6. This Court now would examine the liability to pay royalty by the petitioner.

6.1. At paragraph 5 of the rejoinder affidavit the petitioner candidly admitted that *"it is undisputed by the parties that the earth extracted during construction of Ash Pond has been re-deployed there for dyke purpose"*. As has already been taken note of that by way Notification dated 03.02.2000, the Ministry of Mines and Minerals declared 'ordinary earth' used for filling or levelling purposes in construction of embankment as "minor mineral".

6.2. Sri Surya Prasad Mishra, learned Senior Advocate appearing for OPGC cited *Promoters and Builders Association of Pune Vrs. State of Maharashtra, (2015) 12 SCC 736,* wherein it has been held as follows:

> *"10. What is a mineral is not defined either under the MRTP Act (Maharashtra Regional and Town Planning Act, 1966) or the Code (Maharashtra Land Revenue Code, 1966). The said expression is however defined by Section 2(1)(j) of the Mines Act, 1952 and Section 3(a) read with Section 3(e) of the 1957 Act. As mining activities and operations are regulated by the provisions of the 1957 Act it is the*

definition contained in the said Act which will be more relevant for the present. Section 3(a) and Section 3(e) is in the following terms:

'3. Definitions.—

In this Act, unless the context otherwise requires—

(a) 'minerals' includes all minerals except mineral oils;

*(b)-(d) ****

(e) 'minor minerals' means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;'

11. Ordinary earth has been brought within the fold of a minor mineral by Notification of 03.02.2000 issued under Section 3(e) of the 1957 Act. The said notification is in the following terms:

**** (Notification)*

It is, therefore, clear that "ordinary earth" used for filling or levelling purposes in construction of embankments, roads, railways, buildings is deemed to be a minor mineral.

12. It is not in dispute that in the present appeals excavation of ordinary earth had been undertaken by the appellants either for laying foundation of buildings or for the purpose of widening of the channel to bring adequate quantity of sea water for the purpose of cooling the nuclear plant. The construction of buildings is in terms of a sanctioned development plan under the MRTP Act whereas the excavation/ widening of the channel to bring sea water is in furtherance of the object of the grant of the land in favour of Nuclear Power Corporation. The appellant builders contend that there is no commercial exploitation of the dug up earth inasmuch as the same is redeployed in the construction activity itself. In the case of Nuclear Power Corporation it is the specific case of the Corporation that extract of earth is a consequence of the use of the land for the purposes of the grant thereof and that there is no commercial exploitation of the excavated earth inasmuch as 'the soil being excavated for 'Intake Channel' was not sent outside or sold to anybody for commercial gain'.

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14. Though Section 2(1)(j) of the Mines Act, 1952 which defines "mine" and the expression "mining operations" appearing in Section 3(d) of the 1957 Act may

contemplate a somewhat elaborate process of extraction of a mineral, in view of the Notification dated 03.02.2000, insofar as ordinary earth is concerned, a simple process of excavation may also amount to a mining operation in any given situation. ***However, as seen, the operation of the said notification has an inbuilt restriction. It is ordinary earth used only for the purposes enumerated therein, namely, filling or levelling purposes in construction of embankments, roads, railways and buildings which alone is a minor mineral.*** *Excavation of ordinary earth for uses not contemplated in the aforesaid notification, therefore, would not amount to a mining activity so as to attract the wrath of the provisions of either the Code or the 1957 Act.*

15. *As use can only follow extraction or excavation it is the purpose of the excavation that has to be seen.* ***The liability under Section 48(7) for excavation of ordinary earth would, therefore, truly depend on a determination of the use/purpose for which the excavated earth had been put to.*** *An excavation undertaken to lay the foundation of a building would not, ordinarily, carry the intention to use the excavated earth for the purpose of filling up or levelling.* ***A blanket***

determination of liability merely because ordinary earth was dug up, therefore, would not be justified; what would be required is a more precise determination of the end use of the excavated earth; a finding on the correctness of the stand of the builders that the extracted earth was not used commercially but was redeployed in the building operations. *If the determination was to return a finding in favour of the claim made by the builders, obviously, the Notification dated 3-2-2000 would have no application; the excavated earth would not be a specie of minor mineral under Section 3(e) of the 1957 Act read with the Notification dated 03.02.2000.*

16. *Insofar as the appeal filed by Nuclear Power Corporation is concerned, the purpose of excavation, ex facie, being relatable to the purpose of the grant of the land to the Corporation by the State Government, the extraction of ordinary earth was clearly not for the purposes spelt out by the said Notification dated 03.02.2000. The process undertaken by the Corporation is to further the objects of the grant in the course of which the excavation of earth is but coincidental. In this regard we must notice with approval the following views expressed by the Bombay High Court in Rashtriya*

Chemicals and Fertilizers Ltd. Vrs. State of Maharashtra, 1992 SCC OnLine Bom 248 = AIR 1993 Bom 144 while dealing with a somewhat similar question:

'14. If it were a mere question of the Mines and Minerals Act, 1957 covering the removal of earth, there cannot be possibly any doubt whatever, now, in view of the very wide definition of the term contained in the enactment itself, and as interpreted by the authoritative pronouncements of the Supreme Court. As noted earlier, the question involved in the present case is not to be determined with reference to the Central enactment but with reference to the clauses in the grant and the provisions in the Code. When it is noted that the Company was given the land for the purpose of erecting massive structures as needed in setting up a chemical factory of the designs and dimensions of the company, the context would certainly rule out a reservation for the State Government of the earth that is found in the land. That will very much defeat the purpose of the grant itself. Every use of the sod, or piercing of the land with a pick-axe, would, in that eventuality, require sanction of the

authorities. The interpretation so placed, would frustrate the intention of the grant and lead to patently absurd results. To equate the earth removed in the process of digging a foundation, or otherwise, as a mineral product, in that context, would be a murder of an alien but lovely language. The reading of the entire grant, would certainly rule out a proposition equating every pebble or particle of soil in the granted land as partaking the character of a mineral product. In the light of the above conclusion, I am clearly of the view that the orders of the authorities, are vitiated by errors of law apparent on the face of the record. They are liable to be quashed. I do so.'

17. For the aforesaid reasons all the appeals are allowed, however, with the direction that in the cases of the appellant builders the respondent State will be at liberty to proceed further in accordance with the observations contained in this order if it is so advised."

The petitioner cannot gain support from aforesaid case in *Promoters and Builders Association of Pune (supra)* inasmuch as the said case proceeded to consider whether "earth" is "minor mineral" in terms of

Notification dated 03.02.2000 on the facts of said case. It was held on the fact that penalty with reference to Maharashtra Land Revenue Code, 1966 cannot be fastened with respect to excavation of earth and its redeployment for laying foundation of building without commercial usage. The Bombay High Court in the said case was considering whether "excavation activity even for the purposes of laying foundation of the building would still attract rigours of Section 48(7) of the Maharashtra Land Revenue Code, 1966". *Per contra*, in the instant case, this Court is called upon to consider the language set forth in the Odisha Minor Mineral Concession Rules, 2016 read with Notification dated 03.02.2000 and the activity of the petitioner in construction of Ash Pond in connection with the Power Plant which is for commercial use of OPGC. The Hon'ble Supreme Court of India in the context of statutory framework in Odisha Minor Mineral Concession Rules, 1990, in the case of *State of Odisha Vrs. Union of India, (2001) 1 SCC 429* decided that earth excavated from leasehold area and utilized thereat would attract levy of royalty.

6.3. As discussed in the foregoing paragraphs, such categorization can also be discernible from the definition clause read with items/entries in Schedules appended to the Odisha Minor Mineral Concession Rules, 2016. This

apart, in *Som Datt Builders Limited Vrs. Union of India, (2010) 1 SCC 311* taking into consideration the Central Government Notification No.GSR 95(E), dated 03.02.2000, the Hon'ble Supreme Court of India held as follows:

*"6. *** That a substance has to be a mineral before it can be notified as a "minor mineral" pursuant to the power under Section 3(e) of the Act of 1957 is not in dispute. Whether "ordinary earth" is a mineral is the primary question for consideration. The question is a little intricate one because the definition of "minerals" in the 1957 Act is not of much help in finding answer to the question.*

7. The word "mineral" has come up for judicial interpretation from time to time. In Glasgow Corpn. Vrs. Farie, (1888) 13 AC 657 = (1886-90) All ER Rep 115 (HL) the issue before the House of Lords was whether clay is included in "other minerals" under the Waterworks Clauses Act, 1847. Lord Halsbury, L.C. said: (AC pp. 669-70)

'There is no doubt that more accurate scientific investigation of the substances of the earth and different modes of extracting them have contributed to render the sense of the word 'minerals' less certain than when it originally was used in relation to mining operations. I should think that there could be no doubt that the word 'minerals' in old times meant the substances got by mining, and I think mining in old times meant subterranean excavation. I doubt whether in the present state of the authorities it is accurate to say that in every deed or

in every statute the word 'minerals' has acquired a meaning of its own independently of any question as to the manner in which the minerals themselves are gotten.'

Lord Watson in his opinion stated that "mines" and "minerals" are not definite terms: they are susceptible of limitation or expansion, according to the intention with which they are used.

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9. *In Scott Vrs. Midland Railway Co., (1901) 1 KB 317 (DC) Darling, J. observed that the word "minerals" is one which at different times has been used with very different meanings. In some statutes it has a very restricted meaning, in others a very wide one. In order to determine in each case whether the word is used in a wide or narrow sense we must, as Lord Herschell said in Glasgow Corpn. Vrs. Farie, (1888) 13 AC 657 = (1886-90) All ER Rep 115 (HL), look at the object which the legislature had in view.*

10. *In Great Western Railway Co. Vrs. Carpalla United China Clay Co. Ltd., 1910 AC 83 (HL) the House of Lords had an issue before it whether china clay was a mineral within the provisions of the Railways Clauses Consolidation Act, 1845. Lord Macnaghten said: (AC p. 84)*

'… '… the word "minerals" undoubtedly may have a wider meaning than the word "mines". In its widest signification it probably means every inorganic substance forming part of the crust of the earth other than the layer of soil which sustains vegetable life.'

[Ed.: As observed in Glasgow Corpn. v. Farie, (1888) 13 AC 657, at p. 689.]'

12. *In Banarsi Dass Chadha and Bros. Vrs. Lt. Governor, Delhi Admn., (1978) 4 SCC 11, a three-Judge Bench of this Court was seized with the question whether "brick earth" is a "minor mineral" within the meaning of that expression as defined in Section 3(e) of the 1957 Act. Chinnappa Reddy, J. speaking for the Bench observed: (SCC p. 13, para 4)*

> *'4. … The expression 'minor mineral' as defined in Section 3(e) includes 'ordinary clay' and 'ordinary sand'. If the expression 'minor mineral' as defined in Section 3(e) of the Act includes 'ordinary clay' and 'ordinary sand', there is no reason why earth used for the purpose of making bricks should not be comprehended within the meaning of the word 'any other mineral' which may be declared as a 'minor mineral' by the Government. The word 'mineral' is not a term of art. It is a word of common parlance, capable of a multiplicity of meanings depending upon the context. For example the word is occasionally used in a very wide sense to denote any substance that is neither animal nor vegetable. Sometimes it is used in a narrow sense to mean no more than precious metals like gold and silver. Again, the word 'minerals' is often used to indicate substances obtained from underneath the surface of the earth by digging or quarrying. But this is not always so as pointed out by*

Chandrachud, J. (as he then was) in Bhagwan Dass Vrs. State of U.P., (1976) 3 SCC 784 …'

13. *This Court referred to a decision of the Supreme Court of United States in Northern Pacific Railway Co. Vrs. John A. Soderberg, 47 L Ed 575 = 188 US 526 (1902) and quoted the observations made therein (Soderberg case, 47 L Ed 575 = 188 US 526 (1902), L Ed p. 581) as follows: (Banarsi Dass Chadha case [(1978) 4 SCC 11] , SCC pp. 13-14, para 5)*

> *'5. … 'The word "mineral" is used in so many senses, dependent upon the context, that the ordinary definitions of the dictionary throw but little light upon its signification in a given case. Thus, the scientific division of all matter into the animal, vegetable, or mineral kingdom would be absurd as applied to a grant of lands, since all lands belong to the mineral kingdom, and therefore could not be excepted from the grant without being destructive of it. Upon the other hand, a definition which would confine it to the precious metals— gold and silver— would so limit its application as to destroy at once half the value of the exception. Equally subversive of the grant would be the definition of minerals found in the Century Dictionary; as "any constituent of the earth's crust;" and that of Bainbridge on Mines: "All the substances that now form, or which once formed, a part of the solid body of the earth." Nor do we approximate much more closely to the meaning of the word by treating minerals as substances which are "mined", as*

distinguished from those which are "quarried", since many valuable deposits of gold, copper, iron, and coal lie upon or near the surface of the earth, and some of the most valuable building stone, such, for instance, as the Caen stone in France, is excavated from mines running far beneath the surface. This distinction between underground mines and open workings was expressly repudiated in Midland Railway Co. Vrs. Haunchwood Brick & Tile Co., (1882) 20 Ch D 552 and in Hext Vrs. Gill, (1872) 7 Ch App 699 = (1861-73) All ER Rep 388.' '

14. *This Court further held in para 6 of the Report thus: (Banarsi Dass Chadha case, (1978) 4 SCC 11, SCC p. 14)*

    '6. The Supreme Court of United States also referred to several English cases where stone for road making or paving was held to be 'mineral', as also granite, sandstone, flintstone, gravel, marble, fire-clay, brick-clay, and the like. It is clear that the word 'mineral' has no fixed but a contextual connotation.'

15. *It was then concluded that the word "mineral" has no definite meaning but has a variety of meanings, depending on the context of its use. This is what this Court observed: (Banarsi Dass Chadha case [(1978) 4 SCC 11] , SCC pp. 14-15, para 7)*

    '7. … In the context of the Mines and Minerals (Regulation and Development) Act, we have no doubt that the word 'mineral' is of sufficient

amplitude to include 'brick-earth'. As already observed by us, if the expression 'minor mineral' as defined in the Act includes 'ordinary clay' and 'ordinary sand', there is no earthly reason why 'brick-earth' should not be held to be 'any other mineral' which may be declared as a 'minor mineral'. We do not think it necessary to pursue the matter further except to say that this was the view taken in Laddu Mal Vrs. State of Bihar, AIR 1965 Pat 491, Amar Singh Modi Lal Vrs. State of Haryana, AIR 1972 P&H 356 and Sharma & Co. Vrs. State of U.P., AIR 1975 All 386. We do not agree with the view of the Calcutta High Court in State of W.B. Vrs. Jagadamba Prasad Singh [AIR 1969 Cal 281, that because nobody speaks of 'ordinary earth' as a mineral it is not a minor mineral as defined in the Mines and Minerals (Regulation and Development) Act.'

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22. *It is appropriate to reproduce the meaning of the word "mineral" noted in Black's Law Dictionary (8th Edition) since it is a later edition. It reads thus:*

'mineral, n. 1. Any natural inorganic matter that has a definite chemical composition and specific physical properties that give it value <most minerals are crystalline solids>. (Cases: Mines and Minerals 48 CJS Mines and Minerals§§ 4, 140-142.) 2. A subsurface material that is explored for, mined, and exploited for its useful properties and commercial value. 3. Any natural material that is defined as a mineral by statute or case law.'

23. A survey of various decisions referred to hereinabove would show that there is wide divergence of meanings attributable to the word "mineral" and that in judicial interpretation of the expression "mineral" variety of tests and principles have been propounded; their application, however, has not been uniform. Insofar as dictionary meaning of the word "mineral" is concerned, it has never been held to be determinative and conclusive. ***The word "mineral" has not been circumscribed by a precise scientific definition; it is not a definite term. The proposition that the minerals must always be subsoil and that there can be no minerals on the surface of the earth has also not found favour in judicial interpretation of the word "mineral". The term "mineral" has been judicially construed many a time in widest possible amplitude and sometimes accorded a narrow meaning. Pithily said, its precise meaning in a given case has to be fixed with reference to the particular context****.*

24. We find ourselves in agreement with the view expressed in Banarsi Dass Chadha, (1978) 4 SCC 11 that ***the word "mineral" is not a word of art and that it is capable of multiplicity of meanings depending upon the context and that the word "mineral" has no fixed but a contextual connotation.*** *The test applied by this Court in V.P. Pithupitchai, (2003) 9 SCC 534 in holding seashell not a mineral because in its original form it is not a mineral, in our view, is not determinative and conclusive in all situations when*

a question arises as to whether a particular substance is a mineral or not. ***It is worth noticing that any natural material that is defined as a "mineral" by a statute or case law may also be covered by the expression "mineral"*** *as noted in Black's Law Dictionary (8th Edn.).* ***The common parlance test that because nobody speaks of "ordinary earth" as a "mineral" has not been accepted by this Court in Banarsi Dass Chadha, (1978) 4 SCC 11****. As a matter of fact, this Court in this regard specifically disagreed with the view of the Calcutta High Court in Jagadamba Prasad Singh, AIR 1969 Cal 281."*

6.4. It is apparent from "Ash Pond Statement" depicting recovery of royalty *vide* Annexure-D/5 that on the basis of calculation of quantum of earth extracted for use in construction of Ash Pond by the Chief of Project Infrastructure, OPGC, the amount towards royalty has been recovered, and said amount was deposited with the Tahasildar, Lakhanpur. Letter No. RDM-LRGEC-CLRFIC-0002-2018-4241-R&DM, dated 31.01.2018 issued by the Joint Secretary to Government of Odisha in Revenue and Disaster Management Department (Annexure-B/5 enclosed with the counter affidavit filed by OPGC) reflects that in terms of Rule 3 of the Odisha Minor Mineral Concession Rules, 2016, "ordinary earth" being "minor mineral", it is subject to levy of royalty. It is further transpired from said letter that "the company

which has been provided land shall have no right to use the minor mineral on it".

6.5. Noteworthy here to bear in mind that in *Mineral Area Development Authority Vrs. Steel Authority of India, (2024) 7 SCR 1549* it has been authoritatively enunciated as follows:

> *"Royalty is not a tax. Royalty is a contractual consideration paid by the mining lessee to the lessor for enjoyment of mineral rights. The liability to pay royalty arises out of the contractual conditions of the mining lease. The payments made to the Government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears;"*

6.6. Restriction has been put on undertaking mining or quarrying operation. The language employed in Rule 3 of the Rules, 2016 are couched in the negative. The said Rule commences with the words "no person shall undertake", thereby restricts "mining operation or quarrying operation for minor mineral" subject to terms and conditions enshrined in the mining lease or quarry lease or quarry permit.

6.7. In *Mannalal Khetan Vrs. Kedar Nath Khetan, (1977) 2 SCC 424* the interpretation of negative word(s) in a provision has been explained as follows:

> *"16. The provision contained in Section 108 of the Act states that a company shall not register a transfer of*

shares … unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee … has been delivered to the company along with the certificate relating to the shares or debentures … or if no such certificate is in existence along with the letter of allotment of the shares. There are two provisos to Section 108 of the Act. We are not concerned with the first proviso in these appeals. The second proviso states that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in, or debentures of, the company has been transmitted by operation of law. ***The words "shall not register" are mandatory in character. The mandatory character is strengthened by the negative form of the language. The prohibition against transfer without complying with the provisions of the Act is emphasised by the negative language. Negative language is worded to emphasise the insistence of compliance with the provisions of the Act.*** *(See State of Bihar Vrs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga, (1952) 1 SCC 528 = AIR 1952 SC 252 = 1952 SCR 889, 988-989; K. Pentiah Vrs. Muddala Veeramallappa, AIR 1961 SC 1107 = (1961) 2 SCR 295, 308 and unreported decision dated April 28, 1976 in Criminal Appeal No. 279 of 1975 and Additional District Magistrate, Jabalpur Vrs. Shivakant Shukla, (1976) 2 SCC 521.)* ***Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statutory provision imperative.***

17. *In Raza Buland Sugar Co. Ltd. Vrs. Municipal Board, Rampur, AIR 1965 SC 895 = (1965) 1 SCR 970 this Court referred to various tests for finding out when a provision is mandatory or directory. The purpose for which the provision has been made, its nature, the intention of the legislature in making the provision, the general inconvenience or injustice which may result to the person from reading the provision one way or the other, the relation of the particular provision to other provisions dealing with the same subject and the language of the provision are all to be considered.* ***Prohibition and negative words can rarely be directory. It has been aptly stated that there is one way to obey the command and that is completely to refrain from doing the forbidden act. Therefore, negative, prohibitory and exclusive words are indicative of the legislative intent when the statute is mandatory.*** *(See Maxwell on Interpretation of Statutes, 11th Edn., p. 362 seq.; Crawford: Statutory Construction, Interpretation of Laws, p. 523 and Seth Bikhrai Jaipuria Vrs. Union of India, AIR 1962 SC 113 = (1962) 2 SCR 880, 893-894.)*

19. *Where a contract, express or implied, is expressly or by implication forbidden by statute, no court will lend its assistance to give it effect. (See Mellis Vrs. Shirley L.B., (1885) 16 QBD 446 = 55 LJQB 143 = 2 TLR 360) A contract is void if prohibited by a statute under a penalty, even without express declaration that the contract is void, because such a penalty implies a prohibition. The penalty may be imposed with intent merely to deter persons from entering*

into the contract or for the purposes of revenue or that the contract shall not be entered into so as to be valid at law. ***A distinction is sometimes made between contracts entered into with the object of committing an illegal act and contracts expressly or impliedly prohibited by statute. The distinction is that in the former class one has only to look and see what acts the statute prohibits; it does not matter whether or not it prohibits a contract: if a contract is made to do a prohibited act, that contract will be unenforceable.*** *In the latter class, one has to consider not what act the statute prohibits, but what contracts it prohibits. One is not concerned at all with the intent of the parties, if the parties enter into a prohibited contract, that contract is unenforceable. (See St. John Shipping Corporation Vrs. Joseph Rank, (1957) 1 QB 267.) (See also Halsbury's Laws of England, 3rd Edn., Vol. 8, p. 141.)*

20. *It is well established that a contract which involves in its fulfilment the doing of an act prohibited by statute is void. The legal maxim A pactis privatorum publico juri non derogatur means that private agreements cannot alter the general law. Where a contract, express or implied, is expressly or by implication forbidden by statute, no court can lend its assistance to give it effect. (See Mellis Vrs. Shirley L.B.) What is done in contravention of the provisions of an Act of the legislature cannot be made the subject of an action.*

21. *If anything is against law though it is not prohibited in the statute but only a penalty is annexed the agreement is void. In every case where a statute*

inflicts a penalty for doing an act, though the act be not prohibited, yet the thing is unlawful, because it is not intended that a statute would inflict a penalty for a lawful act."

6.8. Rule 3 of the Rules, 2016 is, therefore, mandatory in nature and it restricts undertaking mining operation or quarrying operation for minor minerals in any area subject to permit. Clause 14.1.5 of the Contract between OPGC and the petitioner speaks of "Regulatory Approvals", which requires the petitioner to obtain "all permits and other authorizations, approvals, orders or consents required in connection with the execution, delivery and performance of this Contract". As has already been spelt out that in view of Appendix-D to the Contract the petitioner was required to obtain permit from competent Government Authority with respect to "usage of earth". In Note:3 appended to Table-1: Price Schedule (Schedule of Quantity) it is clarified as follows:

*"**Unless specifically mentioned otherwise in the Contract**, the Contract Rate for the Contract Items **includes** the complete cost towards labour, materials, equipment, erection and dismantling of necessary scaffolding, transport, storage, repairs, rectifications, maintenance until handing over, contingencies, special requirements as given in Contract and Technical Specification, overheads, profits, all taxes, cess, duties, levies, **royalties**, revenue expenses, etc. and all incidental items not specifically mentioned but reasonably*

implied and necessary to complete for the item according to the Contract. It is further agreed that all materials required for the execution of the items of work shall be arranged by Contractor within the Contract Rates unless specified otherwise. Appropriate cost for adhering to Owner's EHSS Standards has been included in the Contract Rates."

6.9. From the pleadings as it seems the petitioner has been claiming exemption from deduction of amount towards royalty on extraction of earth and redeployment of the same in construction of embankment in course of execution of work of Ash Pond. It is stipulated in Clause 5.1.4 of the Contract dated 21.12.2016 (Annexure-A/5 enclosed with counter affidavit of OGPC) that "Where Contractor claims to be exempted from any statutory deductions, it shall inform Owner and provide all necessary documentation to support its case, including a certificate of exemption issued by the relevant authorities". No document as required under said clause is forthcoming from the petitioner. Hence, this Court does not find support to sustain assertion of the petitioner (paragraph 6 of the rejoinder affidavit) that:

*"*** The petitioner is only asserting that in terms of the proviso to Rule 3(1) of the Odisha Minor Mineral Concession Rules, 2016 has the right to extract or remove minor mineral from its land inter alia for bona fide domestic consumption and for the said purpose, it is not*

required to obtain any permission from the authorities under the Odisha Minor Mineral Concession Rules, 2016."

6.10. It emanates from the pleadings that the petitioner has been urging that after extraction of earth from the leasehold area it constructed the embankment for the purpose of Ash Pond and, it, therefore, claims to be exempted from liability as aforesaid activity can be construed to fall within the connotation of expression "*bona fide* domestic consumptions" contained in the first proviso to sub-rule (1) of Rule 3 of the Rules, 2016.

6.11. The nuance of "*bona fide*" can be understood in the following manner which has been explained by this Court in *Tularam Patel Vrs. Siba Sankar Kalo, 35 (1969) CLT 889 (Ori)*:

> *"9. Thus, a plea of bona fide claim of right has always a reference to existence of an honest belief in the mind of the accused that he has a legal right the property he takes. A claim of right is said to be bona fide when there is either a legal right or appearance of a legal right or colour of a legal right. Colour of legal right has been explained to mean a fair pretence of a right or a bona fide claim of right however weak.*
>
> *10. Mere existence of right, appearance or colour of a legal right in the facts and circumstances of a particular case would not exonerate the accused. He must claim such a right and the claim must be bona fide, that is to say, he must honestly believe that he has such a right. So every Court, before giving full*

effect to the plea of bona fide claim of right, which is always a good defence for prosecution for theft, must find out if such belief existed and the claim was bona fide. Bona fide character of the claim of right and belief of the accused in the same are interconnected matters. Bona fide character tends to establish the requisite belief in the accused. For reaching such a conclusion, the other factors which pointedly but collaterally arise for consideration are:

(a) reasonableness of the claim;

(b) existence of a dispute between the accused and the complainant and

(c) Denial of participation in the act whose criminality is in question.

Plea of denial is certainly indicative of existence of a dishonest intention, but, if alongside such plea the accused has alternatively tried to establish his bona fide claim of right or to show existence of a bona fide dispute then the plea may be ignored as a false one."

6.12. The petitioner while signing the Contract was conscious of the covenants thereof and it was necessary for him to obtain permits for extraction/excavation of minor mineral from the leasehold area.

6.13. The shelter is taken under the umbrella of the expression "domestic consumptions" employed in the first proviso to sub-rule (1) of Rule 3. To have clarity in understanding the term "domestic" contradistinguished

from the term "commercial", attention can be invited to *New Delhi Municipal Council Vrs. Sohan Lal Sachdev, (2000) 2 SCC 494*[11], wherein it has been reflected as follows:

> *"12. The two terms "domestic" and "commercial" are not defined in the Act or the Rules. Therefore, the expressions are to be given the common parlance meaning and must be understood in their natural, ordinary and popular sense. In interpreting the phrases the context in which they are used is also to be kept in mind. In Stroud's Judicial Dictionary (5th Edn.) the term "commercial" is defined as "traffic, trade or merchandise in buying and selling of goods". In the said dictionary the phrase "domestic purpose" is stated to mean use for personal residential purposes.* ***In essence the question is, what the character of the purpose of user of the premises by the owner or landlord is and not the character of the place of user.*** *For example, running a boarding house is a business, but persons in a boarding house may use water for*

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[11] In *M.P. Electricity Board Vrs. Shiv Narayan, (2005) 7 SCC 283* the decision in *New Delhi Municipal Council Vrs. Sohan Lal Sachdev, (2000) 2 SCC 494* being referred to larger Bench, it was held on 27.10.2005 as follows:

"We have heard Mr. M.L. Jaiswal, learned senior counsel for the Appellant. We have perused the Circulars and seen the Tariff entries under which the levy has been made. We find that the Tariff entry classificates into two categories viz.

(a) 'domestic purposes' and

(b) 'commercial and non-domestic purposes'.

This classification has been done statutorily in exercise of powers under Section 49 of the Electricity Supply Act, 1948. The classification clubs 'commercial and non-domestic purposes' into one category. Thus the question whether an Advocate can be said to be carrying on a commercial activity does not arise for consideration. As the user is admittedly not 'domestic' it would fall in the category of 'commercial and non-domestic'. In such cases even for 'non-domestic" use the commercial rates are to be charged. Exclusively running an office is clearly a 'non-domestic' use. Thus, in our view the Judgment of this Court in Sohan Lal Sachdev is correct and requires no reconsideration."

"domestic" purposes. As noted earlier the classification made for the purpose of charging electricity duty by NDMC sets out the categories "domestic" user as contradistinguished from "commercial" user or to put it differently "non-domestic user". The intent and purpose of the classification, as we see it, is to make a distinction between purely "private residential purpose" as against "commercial purpose". In the case of a "guest house", the building is used for providing accommodation to "guests" who may be travellers, passengers, or such persons who may use the premises temporarily for the purpose of their stay on payment of the charges. The use for which the building is put by the keeper of the guest house, in the context cannot be said to be for purely residential purpose. Then the question is, can the use of the premises be said to be for "commercial purpose"? Keeping in mind the context in which the phrases are used and the purpose for which the classification is made, it is our considered view that the question must be answered in the affirmative. ***It is the user of the premises by the owner (not necessarily absolute owner) which is relevant for determination of the question and not the purpose for which the guest or occupant of the guest house uses electric energy. In the broad classification as is made in the Rules, different types of user which can reasonably be grouped together for the purpose of understanding the two phrases "domestic" and "commercial" is to be made.*** *To a certain degree there might be overlapping, but that has to be accepted in the context of things. The High Court was not right in*

setting aside the order of the learned Senior Civil Judge merely on the ground that the use of electricity for running the "guest house" does not come under the category of "commercial use". The High Court has not discussed any reason for holding that user in such a case comes under the category of "domestic" use."

6.14. In *Union of India Vrs. V.M. Salgaoncar and Bros. (P) Ltd., (1998) 2 SCR 293* the term "consumption" has been construed in the following manner:

"The word 'consumption' may involve in the narrow sense using the article to such an extent as to reach the stage of its non-existence. But the word 'consumption' in fiscal law need not be confined to such a narrow meaning. ***It has a wider meaning in which any sort of utilization of the commodity would as well amount to consumption of the article, albeit that article retaining its identity even after its use****. Constitution Bench of this Court has considered the ambit of the word 'consumption' in Article 286 of the Constitution in M/s. Anwarkhan Mahboob Co. Vrs. State of Bombay (now Maharasthra) and others, (1961) 1 SCR 709. Their Lordships observed thus:*

'Consumption consists in the act of taking such advantage of the commodities and services produced as constitutes the 'utilization' thereof. For each commodity, there is ordinarily what is generally considered to be the final act of consumption. For some commodities, there may be even more than one kind of final consumption ... In the absence of any words to limit the connotation of the word 'consumption' to the final act of consumption, it will

be proper to think that the Constitution-makers used the word to connote any kind of user which is ordinarily spoken of as consumption of the particular commodity.'

In another decision a two Judge Bench of this Court considered the scope of the words 'Consumption' vis-a-vis 'use'. (Vide Kathiawar Industries Ltd. Vrs. Jaffrabad Municipality, AIR 1979 SC 1721. There it was held that the precise meaning to be given to those words would depend upon the context in which they are used. It is in a primary sense that the word 'consumption' is understood as using the article in such a manner as to destroy its identity. It has a wider meaning which does not involve the complete using up of the commodity."

6.15. The Hon'ble Supreme Court of India had an occasion to deal with a case under the Odisha Minor Mineral Concession Rules, 1990 being *State of Odisha Vrs. Union of India, (2001) 1 SCC 429.* In an identical fact-situation that is obtained in the present case with similitude in statutory language, the Hon'ble Supreme Court of India in the said reported case proceeded to record the fact that:

"The facts are not disputed namely for laying the railway line, the Government of Orissa acquired the land and handed over the same to the Railway Administration. ***When the Railway Administration utilised certain minor minerals like*** *the rock-cut spoils and* ***earth from the very land, which had been acquired for laying the railway line, the Revenue Authorities of the State of Orissa initiated proceedings for realisation of royalty and cess under the provisions of the***

Orissa Minor Minerals Concession Rules. *The Railway Administration and the Union of India assailed the same by filing a writ petition in the Orissa High Court. According to the Railway Administration, royalty or cess could be levied against the lessee of any mineral and the Railway Administration not being the lessee of the land or the minor minerals therein, no royalty is payable for utilisation of the aforesaid minor minerals for laying down the railway line. The State Government on the other hand took the stand that the handing over of the land for laying of the railway track to the Railway Administration does not amount to conferring ownership right over the minerals existing on the land and in accordance with the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act") as well as the Orissa Minor Minerals Concession Rules, 1990 (hereinafter referred to as "the Rules"), the Railway Administration would be liable to pay royalty for use of any minerals from the land in question and accordingly, the Revenue Authorities had rightly issued notice.* ***The High Court, in the impugned judgment came to hold that the earth and rock-cut spoils excavated by the Railway Administration are minerals.*** *This finding of the High Court has not been assailed by the Railway Administration.* ***But so far as the right to levy royalty on the use of minerals from the land in question is concerned, the High Court came to the conclusion that the State would not be justified in levying the royalty in respect of the minerals on the land which had been acquired and possession of which has been delivered to the Railway Administration.***"

Framing the question *"whether the Railway Administration would be liable to pay the royalty in respect of minor minerals used by it in laying down the railway line"*, the Hon'ble Court came to observe as follows:

"4. The State is the owner of all the mines and minerals within its territory and the minerals vest with the State. It has been so held in the case of Amritlal Nathubhai Shah Vrs. Union Govt. of India, (1976) 4 SCC 108 by this Court. Entry 54 of List I of the Seventh Schedule confers power on the Union Legislature to have regulation of mines and minerals development under the control of the Union, as declared by Parliament by law to be expedient in the public interest. The Mines and Minerals (Regulation & Development) Act, 1957 has been enacted by the Union Legislature in exercise of such powers conferred upon it under Entry 54 of List I and in Section 2 thereof, there is a declaration that the Union should take under its control the regulation of mines and the development of minerals to the extent provided under the Act. Entry 23 of List II of the Seventh Schedule deals with regulation of mines and mineral development but the same is subject to the provisions of List I with respect to regulation and development under the control of the Union. Entry 50 of List II is the power of the State Legislature to have taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. This power of the State Government to have taxes on mineral rights gets denuded to the extent the MMRD Act [Mines and Minerals

(Development and Regulation) Act, 1957] has taken over and if any provision has been made for levy of any tax on any mineral in the Central Act, the State cannot make any law in the same field, again by exercise of power under Entry 50 of List II. But if there is no provision in the Central Act, providing for levy of tax on any minerals, then the State will have full power to make law to make levy in question. ***Section 15 of the MMRD Act itself authorises the State Government to make rules for regulating the grant of quarry leases in respect of minor minerals and for the purposes connected therewith.*** *"Minor minerals" is defined in Section 3(e) of the MMRD Act to mean building stones, gravel, ordinary clay, ordinary sand other than used for prescribed purposes and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.* ***In exercise of powers conferred under Section 15 of the MMRD Act, the Government of Orissa has made a set of rules called the Orissa Minor Minerals Concession Rules, 1990.*** *Rule 3 of the aforesaid Rules is relevant for our purpose, which is quoted hereinbelow in extenso:*

'3. No person shall undertake any quarrying operations for the purpose of extraction, collection and/or removal of minor minerals except under and in accordance with the terms and conditions of quarry lease, permit and/or auction sale provided under these Rules:

Provided that extraction, collection and/or removal of minor minerals by a person

***from his own land for normal agricultural operations or other bona fide domestic consumption shall not be construed as quarrying operations**.'*

The aforesaid Rule makes it explicit that no person can undertake any quarrying operations for the purpose of extraction, collection and/or removal of minor minerals except under and in accordance with the terms and conditions of a quarry lease permit and/or auction-sale provided under the Rules. The expression "person" has been defined in Rule 2(l) as thus:

'2. (l) 'person' shall include an individual, a firm, a company, an association or body of individuals, an institution or department of the State or Central Government and a labour cooperative society.'

In view of the aforesaid definition of "person" in Rule 2(l) and in view of the embargo contained in Rule 3, even the Central Government will not be entitled to undertake any quarrying operations, unless such permit is granted and it must be in accordance with the terms and conditions of the permit. The contention of the Railway Administration, that there being no lease in favour of the Railway Administration, it is not bound to pay any royalty, will not hold good, in view of the proviso to Rule 3, which on the face of it prohibits a person from extracting or collecting minor minerals from his own land, except for agricultural operations or other bona fide domestic consumption. ***But for the exclusion,***

contained in proviso to Rule 3 in relation to minor minerals extracted from the owner's own land for normal agricultural operation or bona fide domestic consumption, it would be a case of quarrying operation within the definition of the expression in Rule 2(o)*, which is quoted below in extenso:*

> *'2. (o) 'quarrying operations' means any operation undertaken for the purpose of winning any minor mineral and shall include erection of machinery, laying of tramways, construction of roads and other preliminary operations for the purpose of quarrying.'*

5. *This being the position and* ***the use of minor minerals on the railway track, after being extracted from the land, not coming within the expression "bona fide domestic consumption", the said operation would be a quarrying operation under Rule 2(o), and consequently, the embargo contained in Rule 3 would apply.*** *A combined reading of Rules 2(l), 2(o) and Rule 3 makes it crystal-clear that the Railway Administration, cannot undertake the quarrying operation unless a permit is granted in its favour and, consequently, if the Railway Administration utilises the minor minerals from the land, for the railway track, it would be bound to pay the royalty chargeable under the Orissa Minor Minerals Concession Rules.* ***The liability for payment of royalty accrues under Rule 13 (sic 3) and no doubt, speaks of a lease deed. If the Railway Administration, though not a lessee and at the***

same time is not authorised under Rule 3 to undertake any quarrying operation for the purpose of extraction of minor minerals, then for such unauthorised action, the Railway Administration would be liable for penalties, as contained in Rule 24. This being the position and in view of the prohibition contained in sub-rule (2) of Rule 10 and taking into account the fact that such minor minerals would be absolutely necessary for laying down the railway track and maintenance of the same, we would hold that the Railway Administration would be bound to pay royalty for the minerals extracted and used by it, in laying down the railway track. *The impugned judgment of the Orissa High Court is accordingly set aside and this appeal is allowed."*

6.16. Upon reviewing Rule 3 of the Odisha Minor Mineral Concession Rules, 2016 (which is identical to Rule 3 of the Odisha Minor Mineral Concession Rules, 2004), this Court finds the provisions to be in *pari materia* with Rule 3 of the Odisha Minor Mineral Concession Rules, 1990, which was considered by the Hon'ble Supreme Court of India in *State of Odisha Vrs. Union of India, (2001) 1 SCC 429*. Since the petitioner has emphasized that its case would fall within the ambit of the first proviso to the Rules, 2016, the ruling of the Hon'ble Supreme Court of India in *State of Odisha Vrs. Union of India, (2001) 1 SCC 429* would squarely be applicable.

6.17. To buttress his argument that "royalty" is not payable on extraction of earth and redeployment thereof for construction of embankment within the lease area in connection with Ash Pond, Sri Pawan Upadhyaya, learned Advocate placed reliance on *Tata Steel Ltd. Vrs. Union of India, (2015) 6 SCC 193* wherein it has been held that royalty is payable on all minerals including coal at the stage mentioned in Rules 64B and Rule 64C of the Mineral Concession Rules, 1960, *i.e.,* on removal of the mineral from the boundaries of the leased area. In the said case it is held at paragraph 56 that Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 has to be read and understood in conjunction with the Second Schedule to the said Act. There is a good reason for it, which is that the scheme of levy of royalty cannot be straitjacket in view of the variety of minerals to which the said Act applies and for the extraction of which royalty has to be paid. This case in the humble opinion of this Court would not assist the stance taken by the petitioner.

6.18. Sri Pawan Upadhyaya, learned Advocate cited decisions of various High Courts to bolster his argument that royalty can only be levied when the mineral extracted is removed outside the lease area. Without demonstrating the wordings employed in the statutory provisions under consideration in those cases before those High Courts

and drawing similarity with the present nature of work entrusted to the petitioner, it is perilous to apply the ratio, if any, laid down therein on peculiar facts emanating from the terms and conditions stipulated in the agreement(s) under consideration therein.

6.19. This Court is not oblivious of dicta laid down by the Hon'ble Supreme Court of India in the case of *Union of India Vrs. Arulmozhi Iniarasu, (2011) 7 SCC 397*[12].

6.20. On cursory reading of the decisions cited by the learned counsel for the petitioner such as, *IKEA India Private Limited and another Vrs. State of Maharashtra and others, 2024 SCC OnLine Bom 1029, AIGP Developers Private Limited Vrs. State of Maharashtra and others, 2024 SCC OnLine Bom 762, BGR Energy System Ltd. Vrs. Tahasildar, Saoner, 2017 SCC OnLine Bom 6760, Ircon International Vrs. State of Maharashtra and others, 2019) SCC OnLine Bom 544, Paranjape Schemes (Construction) Ltd. Vrs. State of Maharashtra through its Principal Secretary to thereafter Ministry of Revenue and others,*

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12 In *Union of India Vrs. Arulmozhi Iniarasu, (2011) 7 SCC 397* it is observed as follows:
"Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of Statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases."

2021 SCC OnLine Bom 5059 and *Royale Urbanspace, Shahpur and others Vrs. State of Maharashtra and another, 2022 SCC OnLine Bom 445*, it may be stated that the decisions were rendered in different contexts. It is manifest that under different statutory setting of words with factual distinction those decisions have been rendered. Nevertheless, the relevant provisions of the Odisha Minor Mineral Concession Rules, 2016 [even identically worded in the Odisha Minor Mineral Concession Rules, 2004] under consideration herein are *pari materia* with the Odisha Minor Mineral Concession Rules, 1990. Since the Hon'ble Supreme Court of India in *State of Odisha Vrs. Union of India, (2001) 1 SCC 429* taking into consideration such provisions, interpreted on analysis of factual matrix, which is akin to the instant case and it was held that royalty is payable in view of restriction stipulated in Rule 3, any discussion on the judgments of other High Courts cited at the Bar would not be necessary.

6.21. In *Government of Kerala Vrs. Mother Superior Adoration Convent, (2021) 3 SCR 26* it has been laid down as follows:

> *"23. It may be noticed that the 5-Judge Bench judgment [Commissioner of Customs Vrs. Dilip Kumar & Co., (2018) 9 SCC 1] did not refer to the line of authority which made a distinction between exemption*

provisions generally and exemption provisions which have a beneficial purpose. We cannot agree with Shri Gupta's contention that sub-silentio the line of judgments qua beneficial exemptions has been done away with by this 5-Judge Bench. It is well settled that ***a decision is only an authority for what it decides and not what may logically follow from it*** *(see, Quinn Vrs. Leathem, (1901) AC 495 as followed in State of Orissa Vrs. Sudhansu Sekhar Misra (1968) 2 SCR 154 at 162,163).*

24. *This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed.* ***We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object.*** *And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with the conclusions reached by the impugned judgments of the Division Bench and the Full Bench.*

25. *The matter can also be seen from a slightly different angle.* ***Where a High Court construes a local statute, ordinarily deference must be given to the High Court judgments in interpreting such a statute, particularly when they have stood***

the test of time *(see State of Gujarat Vrs. Zinabhai Ranchhodji Darji, (1972) 1 SCC 233 at paragraph 10, Bishamber Dass Kohli Vrs. Satya Bhalla (1993) 1 SCC 566 at paragraph 11, Duroflex Coir Industries Ltd. Vrs. CST 1993 Supp (1) SCC 568 at paragraph 2, State of Karnataka Vrs. G. Seenappa 1993 Supp (1) SCC 648 at paragraph 3 and Bonam Satyavathi Vrs. Addala Raghavulu 1994 Supp (2) SCC 556 at paragraph 4). This is all the more applicable in the case of tax statutes where persons arrange their affairs on the basis of the legal position as it exists."*

6.22. Taking cue from above interpretation, as the Hon'ble Supreme Court of India in *State of Odisha Vrs. Union of India, (2001) 1 SCC 429* considered Rule 3 of the Odisha Minor Mineral Concession Rules, 1990 (akin provision being found in Rule 3 of the Odisha Minor Mineral Concession Rules, 2016), this Court applies the view expressed therein to the present facts of the case.

6.23. In the case of *Government of Kerala Vrs. Mother Superior Adoration Convent, (2021) 3 SCR 26* the Hon'ble Supreme Court of India considered the dominant object in the following manner:

"11. Before coming to the case law that has been cited before us, it is important to first analyse Section 3(1)(b) with which we are directly concerned. First and foremost, the subject matter is "buildings" which as defined, would include a house or other structure. Secondly, the exemption is based upon user and not ownership. Third, what is important is

the expression "principally", showing thereby that the legislature decided to grant this exemption qua buildings which are "principally" and not exclusively used for the purposes mentioned therein. ***Dominant object therefore is the test to be applied to see whether such building is or is not exempt.*** *Fourthly, religious, charitable or educational purposes are earmarked by the legislature as qualifying for the exemption as they do not pertain to business or commercial activity.* ***Fifthly, what is important is that even factories or workshops which produce goods and provide services are also exempt, despite profit motive, as the legislature obviously wishes to boost production in factories and services in workshops.*** *What is important to note is that the expression "used principally for" is wider than the expression "as" which precedes the words "factories or workshops".*

12. *A reading of the provision would show that the object for exempting buildings which are used principally for religious, charitable or educational purposes would be for core religious, charitable or educational activity as well as purposes directly connected with religious activity. One example will suffice to show the difference between a purpose that is directly connected with religious or educational activity and a purpose which is only indirectly connected with such activity. Take a case where, unlike the facts in Civil Appeal No. 202 of 2012, nuns are not residing in a building next to a convent so that they may walk over to the convent for religious instruction. Take a case where the*

neighbouring building to the convent is let out on rent to any member of the public, and the rent is then utilised only for core religious activity. ***Can it be said that the letting out at market rent would be connected with religious activity because the rental that is received is ploughed back only into religious activity? Letting out a building for a commercial purpose would lose any rational connection with religious activity.*** *The indirect connection with religious activity being the profits which are ploughed back into religious activity would obviously not suffice to exempt such a building. But if on the other hand, nuns are living in a neighbouring building to a convent only so that they may receive religious instruction there, or if students are living in a hostel close to the school or college in which they are imparted instruction, it is obvious that the purpose of such residence is not to earn profit but residence that is integrally connected with religious or educational activity.*

13. *A reading of the other provisions of the Act strengthens the aforesaid conclusion. "Residential building" is defined separately from "building" in Section 2(1). A "residential building" means a building or any other structure or part thereof built exclusively for residential purpose. It is important to note that "residential building" is not the subject matter of exemption under Section 3 of the Act. Quite the contrary is to be found in Section 5A of the Act, which starts with a non-obstante clause, and which states that a luxury tax is to be charged on all residential buildings having a plinth area of 278.7 square meters and which have been completed on or*

after 1.4.1999. If we were to accept the contention of the State, buildings in which nuns are housed and students are accommodated in hostels which have been completed after 01.04.1999 and which have a plinth area of 278.7 square meters would be liable to pay luxury tax as these buildings would now no longer be buildings used principally for religious or educational purposes, but would be residential buildings used exclusively for residential purposes. This would turn the object sought to be achieved in exempting such buildings on its head. For this reason also, we cannot countenance a plea by the State that buildings which are used for purposes integrally connected with religious or educational activity are yet outside the scope of the exemption contained in Section 3(1)(b) of the Act. We may now examine the case law."

6.24. The present case is the converse one, as Rule 3 is not in the context of exemption; rather puts condition/ restriction for extraction of minor mineral, subject to "quarrying permit". If analogy of above case is taken, in the instant case, it has already been observed that the OPGC has been granted lease of land for establishment of Power Plant for carrying on commercial activity and the construction of Ash Pond is required for the purpose and in connection with such commercial nature of activity. The petitioner, having participated in the tender floated by the OPGC and being declared successful, entered into agreement with the OPGC for construction of Ash Pond with full knowledge of the terms and

conditions, relevant portions of which have already been extracted hitherto. Accepting the covenants of Contract, the petitioner conceded to bear royalty amongst other statutory liabilities under different statutes. It was within its knowledge that such Ash Pond is not meant to be used or utilized for the purpose of "domestic consumptions".

6.25. Examining the nature of work, *i.e.,* construction of Ash Pond for the purpose of Power Plant, and work being entrusted to a company (petitioner) which carries on commercial activity and works for commercial gain, this Court from the recitals of the Contract could discern that such construction would not definitely not for "domestic consumptions". Rule 3 of the Rules, 2016 explicitly restricts quarrying operation without quarrying permit being granted by the competent authority. In the present matter, the ultimate use of the property remained unchanged. Ash Pond is constructed for commercial use inasmuch as the same is intrinsically connected to the Power Plant of OPGC, which carries on commercial activity, being provided with the land on lease for establishment of industry.

6.26. It is worth repeating that the petitioner had a clear and unambiguous condition put upon under the Contract to ensure obtaining necessary permits. The petitioner in

terms of the Contract could have taken care to apply for "quarry permit" attune with Rule 3 read with Rule 2(w) of the Rules, 2016.

6.27. The nature of work entrusted to the petitioner would, thus, be not fall within the connotation of "*bona fide* domestic consumptions".

7. The above discussion now takes this Court to the ultimate discussion whether "royalty" is a liability of the petitioner under Rule 32 of the Odisha Minor Mineral Concession Rules, 2016.

7.1. Rule 32 of the Rules, 2016 stands as follows:

> *"32. Liability for payment of royalty, dead rent, surface rent, additional charge, amount of contribution payable to the District Mineral Foundation, amount of contribution payable to the Environment Management Fund.—*
>
> *(1) All the lessees for minor minerals other than specified minor minerals shall be liable to pay royalty or dead rent, surface rent, additional charge, amount of contribution payable to the District Mineral Foundation, amount of contribution payable to the Environment Management Fund and fees for compensatory afforestation.*
>
> *(2) The lessee shall pay to the State Government every year dead rent and surface rent at the rates specified in Schedule-I for all the areas included in*

the lease deed and royalty at the rates specified in Schedule-II:

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

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

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

(4) The quantity of extraction beyond the minimum guaranteed quantity, may be removed from the lease area only after payment of royalty, additional charge, amount of contribution payable to the District Mineral Foundation and an amount of contribution payable to the Environment Management Fund on pro-rata basis.

(5) *The royalty, additional charge, amount of contribution to the District Mineral Foundation and amount of contribution payable to the Environment Management Fund for the period up to commencement of the next year shall be paid on a pro-rata basis before the execution of lease deed.*

(6) *For the purpose of determination of minimum guaranteed quantity in the cases where the lease has been executed on or after the 1st April, the minimum guaranteed quantity for the first financial year shall be equal to the minimum guaranteed quantity divided by twelve and multiplied by the number of months remaining in the first year of the lease, treating part of any month as full month.*

(7) *The lessee shall pay, in addition to the surface rent, dead rent or royalty, additional charge, amount of contribution payable to the District Mineral Foundation and to the Environment Management Fund, fees for compensatory afforestation at rates as may be specified by the Government from time to time."*

7.2. In *State of H.P. Vrs. Gujarat Ambuja Cement Ltd., (2005) Supp.1 SCR 684* the Hon'ble Supreme Court of India observed with regard to the meaning and nature of the term "royalty" as follows:

"In H. R. S. Murthy Vrs. Collector of Chittoor, AIR 1965 SC 177, this Court said that 'royalty' normally connotes the payment made for the materials or minerals won from the land.

In Halsbury's Laws of England, 4th Edition in the volume which deals with "Mines, Minerals and Quarries, namely, volume 31, it is stated in paragraph 224 as follows:

'224. Rents and royalties.— An agreement for a lease usually contains stipulations as to the dead rents and other rent and royalties to be reserved by, and the covenants and provisions to be inserted in, the lease ...'

The topics same of dead rent and royalties are dealt with in Halsbury's Laws of England in the same volume under the sub-heading 'Consideration', the main heading being 'Property demised; Consideration'. Paragraph 235 deals with 'dead rent' and paragraph 236 with 'royalties'. The relevant passages are as follows:

235. Dead rent.— It is usual in mining lease to reserve both a fixed annual rent (otherwise known as a 'dead rent', 'minimum rent' or 'certain rent') and royalties varying with the amount of minerals worked. The object of the fixed rent is to ensure that the lessee will work the mine; but it is sometimes ineffective for that purpose. Another function of the fixed relit is to ensure a definite minimum income to the lessor in respect of the demise. If a fixed rent is reserved, it is payable until the expiration of the term even though the mine is not worked, or is exhausted during the currency of the term, or is not worth working, or is difficult or unprofitable to work owing to faults or accidents, or even if the demised seam proves to be non-existent.

236. Royalties.— A royalty, in the sense in which the word is used in connection with mining leases, is a

payment to the lessor proportionate to the amount of the demised mineral worked within a specific period.

In paragraph 238 of the same volume ofHalsbury's Laws of England it is stated:

'238. Covenant to pay rent and royalties.— Nearly every mining lease contains a covenant by the lessee for payment of the specified rent and royalties. Rent is an integral part of the concept of a lease. It is the consideration moving from the lessee to the lessor for demise of the property to him. Section 105 of the Transfer of Property Act, 1882, contains the definitions of the terms 'lease', 'lessor', 'lessee', 'premium' and 'rent' and is as follows:

'105. Lease defined.— A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration ofa price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.'

The decision of this Court in D.K. Trivedi & Sons Vrs. State of Gujarat, (1986) Supp SCC 20 is a complete answer to the plea raised by learned counsel for the

appellate-State. It was, inter alia, held in that case as follows: (The relevant paras are quoted)

'39. In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called surface rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called 'royalty'. It may, however, be that the mine is not worked properly so as not to yield enough return income, whether the mine is worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called 'dead rent'. 'Dead rent' is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed. Since dead rent and royalty are both a return to the lessor in respect of the area leased, looked at from one point of view dead rent can be described as the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased and not on the quantity of minerals extracted or removed. In fact, clause (ix) of

Rule 3 of the Rajasthan Minor Mineral Concession Rules, 1977, defines 'dead rent' as meaning 'the minimum guaranteed amount of royalty per year payable as per rules or agreement under a mining lease'. Stipulations providing for the lessee's liability to pay surface rent, dead rent and royalty to the lessor are the usual covenants to be found in a mining lease.

54. *As pointed out earlier, since dead rent is the minimum guaranteed amount of royalty and partakes of the nature of royalty, what, therefore, applies to royalty must necessarily apply or should be made applicable dead rent also. The proviso to Section 9(3) prohibits the Central Government from enhancing the rate of royalty in respect of any mineral other than a minor mineral more than once during any period of four years. The proviso to Section 9-A(2) also prohibits the Central Government from enhancing the dead rent in respect of any area more than once during any period of four years. Halsbury's Laws of England, 4th Edn., volume 31, paragraph 236, points out that 'usually the royalties are made to merge in the fixed rent by means of a provision that the lessee, without any additional payment, may work, in each period for which a payment of fixed rent is made, so much of the minerals as would, at the royalties reserved, produce a sum equal to the fixed rent'. The same purpose is achieved by the proviso to Section 9-A(1) and in the Mineral Concession Rules, 1960, by the proviso to clause (c) of Rule 27 under which the lessee is liable to pay the dead rent or royalty in respect of each mineral, whichever be higher in*

amount, but not both. In all State rules which provide for payment of both dead rent and royalty, there is a provision that only dead rent or royalty, whichever is higher in amount, is to be paid, but not both. Rules made under the 1948 Act, as for example, Rule 41 of the Mineral Concession Rules, 1949, and Rule 18 of the Bombay Mineral Extraction Rules, 1955, also. contained a similar provision. Thus,. the practice followed throughout in exercising the power to make rules regulating the grant of mining leases has been to provide that either dead rent or royalty, whichever is higher in amount, should be paid by the lessee, but not both."

7.3. It may be relevant to take note of the following observation made in *Mineral Area Development Authority Vrs. Steel Authority of India, (2024) 7 SCR 1549*:

"128.This Court has held that royalty is not a tax, in several decisions. In State of H.P. Vrs. Gujarat Ambuja Cement Ltd., (2005) Supp.1 SCR 684 = (2005) 6 SCC 499 a three judge Bench of this Court held royalty not to be a tax. The subsequent decision in Indsil Hydro Power & Manganese Ltd. Vrs. State of Kerala, (2019) 10 SCR 647 = (2021) 10 SCC 165 brought out the distinction between tax and royalty in the following terms:

'56. Thus, the expression "royalty" has consistently been construed to be compensation paid for rights and privileges enjoyed by the grantee and normally has its genesis in the agreement entered into between the grantor and the grantee. As against tax which is imposed

under a statutory power without reference to any special benefit to the conferred on the payer of the tax, the royalty would be in terms of the agreement between the parties and normally has direct relationship with the benefit or privilege conferred upon the grantee.'

129. The principles applicable to royalty apply to dead rent because:

(i) dead rent is imposed in the exercise of the proprietary right (and not a sovereign right) by the lessor to ensure that the lessee works the mine, and does not keep it idle, and in a situation where the lessee keeps the mine idle, it ensures a constant flow of income to the proprietor;

(ii) the liability to pay dead rent flows from the terms of the mining lease; [Rules 27 and 45, Mineral Concession Rules 1960]

(iii) dead rent is an alternate to royalty; if the rates of royalty are higher than dead rent, the lessee is required to pay the former and not the latter; and

(iv) the Central Government prescribes the dead rent not in the exercise of its sovereign right, but as a regulatory measure to ensure uniformity of rates."

7.4. Under the above premise, the petitioner cannot escape from the rigours of the liability clause as enshrined in

Rule 32 of the Odisha Minor Mineral Concession Rules, 2016.

7.5. A significant factor which needs to be highlighted that, "Grant of Quarry Leases" are dealt with under Chapter-IV, whereas, the provisions dealing with "Grant of Mining Lease[13] for Specified Minor Minerals" are given under Chapter-III. Rule 25 under Chapter-III with Marginal Heading: "Liability for payment of royalty, dead rent, amount for District Mineral Foundation, additional charge, *etc.*" provides in sub-rule (5) thereof that *"Royalty shall be leviable on minor minerals removed from the leased area at the rates specified in Schedule-II"*. On the contrary, Rule 32 under Chapter-IV dealing with *"Liability for payment of royalty, dead rent, surface rent, additional charge, amount of contribution payable to the District Mineral Foundation, amount of contribution payable to the Environment Management Fund"* does not provide for such a condition; rather it saddles liability on *"all the lessees for minor minerals other than specified minor minerals"* to pay royalty or dead rent, *etc.* and second proviso to sub-rule (2) of Rule 32 makes it manifestly clear that *"where the lessee becomes liable for payment of royalty for any minor mineral removed or*

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[13] "MINING LEASE" is defined under Clause (q) of Rule 2 of the Odisha Minor Mineral Concession Rules, 2016 as:
"MINING LEASE means a lease granted under these Rules for specified minor minerals over a compact area."

consumed by him or his agent, manager or employees or the contractor from the leased area, he shall be liable to pay either such royalty or the dead rent whichever is higher". As discussed earlier, having excavated the minor mineral (earth) from the lease area and consumed by utilising the same in course of execution of construction work of Ash Pond in terms of Contract dated 21.12.2016 (Annexure-A/5 enclosed with counter affidavit of the OPGC) the contractor (petitioner) is liable to pay "royalty" as envisaged in Rule 32 read with Rule 3 of the Odisha Minor Mineral Concession Rules, 2016.

7.6. Having accepted the terms of the Contract, the denial to pay royalty and/or claiming refund of amount of royalty, which is deducted from payments made to it by the OPGC is untenable and interference of this Court is unwarranted. *Ergo*, the writ petition warrants dismissal.

Conclusion:

8. The undisputed fact is that the petitioner extracted earth and utilized the same for construction of embankment/*bundh* in connection with Ash Pond in the lease area of the OPGC.

8.1. With the discussions above, it is summarized that:

i. "Earth" is minor mineral.

ii. Having not obtained "Quarry Permit" defined under Clause (w) of Rule 2 the excavation/extraction of mineral by the petitioner fell within the purview of restrictions contained in Rule 3.

iii. No material is placed on record to demonstrate that "permit" as required under statute has been obtained from competent authority empowered under the Odisha Minor Mineral Concession Rules, 2016. "Quarry Permit" defined under Clause (w) of Rule 2 does encompass not only "removal", but also "extraction" and "collection" of minor minerals with specified quantity.

iv. Rule 3 restricts undertaking "quarrying operation" by "person"[14] unless terms and conditions in the quarry lease is fulfilled.

v. Discussions in the foregoing paragraphs on fact and in law and in view of enunciation of position by the Hon'ble Supreme Court of India in *State of Odisha Vrs. Union of India, (2001) 1 SCC 429* in consideration of *pari materia* provisions and finding similitude of fact-situation, there can be no other conclusion than to hold that the extraction of

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14 Clause (42) of Section 3 of the General Clauses Act, 1897 defines "person" as follows:

"(42) "person" shall include any company or association or body of individuals, whether incorporated or not;"

"earth" from the leased land for construction of Ash Pond in connection with establishment of Power Plant of OPGC would not fall within the ambit of expression "*bona fide* domestic consumptions".

vi. Liability to pay royalty by the petitioner stems from Rule 32 read with restrictions contained in Rule 3 of the Odisha Minor Mineral Concession Rules, 2016, having its activity embraced within the ken of definitions of the terms "quarry lease", "quarrying operation" in Clause (u) and Clause (v) of Rule 2 respectively.

vii. The petitioner is obligated to discharge its liability in terms of covenants of Contract entered into with the OPGC.

8.2. The petitioner had extracted "ordinary earth" (construed as "minor mineral") without any permission or permit as required under Chapter-IV read with Rule 2(w) of the Rules, 2016 and it has not paid royalty. The OPGC stated to have deducted the amount towards royalty from the Bills/Running Account Bills of the petitioner and deposited with the State Exchequer. The petitioner is liable to discharge the demand raised by the Tahasildar, Lakahanpur *vide* Demand Notice dated 23.03.2018 (Annexure-9), subject to verification by the

authority concerned taking into account such deposits stated to have been made by the OPGC.

9. In the result, the writ petition, sans merit, is liable to be dismissed and this Court does so. Pending Interlocutory Application(s), if any, shall stand dismissed. In the circumstances, there shall be no order as to costs.

I agree

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

High Court of Orissa, Cuttack
The 6th May, 2026/Aswini/Bichi/Laxmikant

Signature Not Verified
Digitally Signed
Signed by: ASWINI KUMAR SETHY
Designation: PERSONAL ASSISTANT (SECY I/C)
Reason: Authentication
Location: ORISSA HIGH COURT, CUTTACK
Date: 06-May-2026 18:34:44