

**Neutral Citation No. - 2024:AHC:122965-DB**

**A.F.R.**

**RESERVED**

**Court No. - 3**

**Case :- WRIT - C No. - 28087 of 2023**

**Petitioner :- Raj Pratap Yadav**

**Respondent :- State Of U.P. And 4 Others**

**Counsel for Petitioner :- Nisheeth Yadav, Sr. Advocate**

**Counsel for Respondent :- C.S.C.**

**Hon'ble Anjani Kumar Mishra, J.**

**Hon'ble Jayant Banerji, J.**

*(Per Hon'ble Jayant Banerji, J)*

1. Under challenge in the present petition are: a notice dated 30.6.2023 issued by the District Magistrate to the petitioner directing him to deposit all the dues relating to the surrender of the lease, failing which, the lease granted to the petitioner would be cancelled; the order dated 4.8.2023 passed by the District Magistrate, Deoria, whereby while cancelling the mining lease granted to the petitioner, the earnest money deposited by the petitioner has been directed to be forfeited; and the consequential order dated 7.8.2023 whereby an amount of Rs. 39,54,600/- payable towards the 6th and 7th instalments in respect of mining lease has been directed to be recovered from the petitioner.

2. The case of the petitioner is that the State-respondent decided to allot sand mining rights through e-tendering/e-auction pertaining to a sand mining site near Ghaghra river over plot no. 396/1, area 11.7 hectares situated in Tehsil Salempur, District Deoria, for mining 1,17,000 cubic meters per year of sand. The petitioner deposited earnest money of Rs. 19,01,250/-. The petitioner was the highest bidder, his bid being Rs. 169/- per cubic meter, and a letter of intent was issued to him by the District Magistrate on 24.9.2021. Accordingly, for the first year, the annual value of the mining site was Rs. 1,97,73,000/-, twenty five percent of which was to be deposited under the head of security amount along with twenty

percent of the annual value which would be the first instalment amounting to Rs. 39,54,600/- as advance payment and as such the total amount to be deposited was Rs. 88,97,850/-. By adjusting the amount of earnest money, the amount to be actually paid was Rs. 69,96,600/- which was deposited by the petitioner on 30.9.2021.

3. The lease deed dated 16.12.2022 was executed in favour of the petitioner which granted mining rights for excavating sand over the mining site for a period of 5 years starting from 16.12.2022, fixing nine instalments for each of the five years of lease, with no instalments payable for the three monsoon months of July, August and September in each year.

4. It is stated that the road to the excavating site was too dilapidated and it was impossible to transport the minerals from the mining site which resulted in losses and therefore, the petitioner decided to surrender the mining lease and thus stopped excavating work from 1.5.2023. On receipt of a letter of 9.5.2023 from the District Magistrate regarding default of partial deposit of the 5th deposit and not depositing the 6th instalment, certain deposits were made by the petitioner on different dates and he made complete payment of the 5th instalment. It is stated that other than the 5th instalment, no further instalments under the mining lease terms were required to be paid by the petitioner in view of the fact that the petitioner submitted an application dated 18.5.2023 before the District Magistrate to surrender the mining lease.

5. A letter dated 22.5.2023 was issued by the Mining Officer requiring to submit a 'no objection' for transferring the Environmental Clearance Certificate obtained by the petitioner, and a no dues certificate. It is stated that pursuant to a letter of 26.5.2023 written by the petitioner in respect of surrender of the mining lease, a note sheet was prepared by the respondents in which it was reflected that there was sufficient amount available as security money that was previously deposited by the petitioner and as such, given the requirement of the provisions of surrender of mining lease, twenty five percent of the annual value

pertaining to the mining site can be adjusted from the security amount and the mining site should be declared vacant.

6. It is stated that noting on the note-sheet were approved by all the concerned officers including the District Magistrate. Thereafter, the impugned notice dated 30.6.2023 was issued by the District Magistrate, Deoria demanding the royalty for the month of May, 2023 and for June, 2023 failing which, the lease would be terminated. The petitioner filed a detailed representation, whereafter the impugned orders dated 4.8.2023 and 7.8.2023 were passed. It is stated that provisions of Rule 59 of the Rules, 2021 would be inapplicable in view of the facts of the case and therefore, the termination of the mining lease is illegal. The learned counsel has referred to a judgment dated 11.1.2021 of a coordinate Bench of this Court in the matter of **Vipul Tyagi Vs. State of U.P. and others** passed in Writ-C No. 17258 of 2020 to contend that given the provisions of Section 30 of the Rules, 2021, and the letter of the Mines Officer stating that from 1.5.2023 the mining work was stopped by the petitioner, and, given the provision of sub-section (3) of Section 15 of the Mines and Mineral (Development and Regulation) Act, 1957, the instalments for the months of May and June, 2023 could not be demanded from the petitioner and neither could the lease be terminated, but, the surrender of the mining lease should have been accepted with effect from 18.5.2023.

7. Learned Standing Counsel, on the other hand, has filed short counter affidavits dated 30.10.2023 and 12.2.2024 on behalf of the respondent nos. 4 and 5 on behalf of the respondent nos. 2, 3, 4, and 5, respectively. It has been stated that as per the conditions of the lease deed the instalments were to be deposited by the lease-holder on the first date of every month and as such, in view of the default of the petitioner, notice dated 9.5.2023 was issued, but without depositing the amount of instalments, he moved an application dated 18.5.2023 for surrender of the lease. It is stated that there was an irregular deposit of the 5th instalment and non-payment of the 6th instalment.

8. Learned Standing Counsel has referred to the various conditions of the lease deed stating that in view of the default, the lease deed was liable to be and was correctly cancelled. It has further been stated that the terms of the lease deed themselves reflect that the access road to the mining site was required to be constructed and maintained by the lease-holder himself and no liability can be fastened by the lease-holder/petitioner on the State-respondents for non-maintenance of the access road. Learned Standing Counsel has placed a letter of the District Magistrate dated 8.2.2024, in which, the dues pertaining to the outstanding royalty, D.M.F. and T.C.S. as on 18.5.2023 and other dues have been stated. The letter is reproduced below:

“प्रेषक,

जिलाधिकारी,  
देवरिया।

सेवा में,

मुख्य स्थायी अधिवक्ता , मा० उच्च न्यायालय  
इलाहाबाद ।

संख्या- 48 / खनन / वाद-2024

दिनांक- 08 फरवरी, 2024

विषय मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक - 31.01.2024 के सम्बन्ध में।

महोदया,

कृपया उपर्युक्त विषयक के सम्बन्ध में अवगत कराना है कि मा० उच्च न्यायालय इलाहाबाद में योजित रिट संख्या - 28087/2023 राजप्रताप यादव बनाम उ०प्र० सरकार व अन्य में पारित आदेश के क्रम में बकाया रायल्टी , डी०एम०एफ व टी०सी०एस० का विवरण दिनांक - 18.05.2023 तक निम्नलिखित है:-

क्र० सं०	बकाया रायल्टी	डी०एम०एफ०	टी०सी०एस०
1	2	3	4
1	2477540.00	1186380.00	237276.00

इसके अतिरिक्त अवगत करना है कि पट्टेधारक के द्वारा उ०प्र० उपखनिज परिहार नियमावली 1963 के अनुसार पट्टा अभ्यर्पण आवेदन पत्र के साथ वार्षिक

किस्त का 25% अग्रिम रूप से रू०-4943250 रू० जमा नहीं किया गया था जिसे सिक्क्यूरिटी धनराशि से समायोजित करने के उपरान्त उपरोक्त बकाया है,

इसके अतिरिक्त देय तिथि से विलम्ब भुगतान करने पर 1.5% प्रति माह के दर से व्याज भी पट्टेधारक पर लागू होता है।

ह० अप०

08.02.24

जिलाधिकारी

देवरिया।"

9. Learned Standing Counsel has relied upon the judgment of the Supreme Court in the case of **Silppi Constructions Contractors v. Union of India and another**<sup>1</sup>, and in the case of **Bharat Coking Coal Limited and others Vs. AMR Dev Prabha and others**<sup>2</sup> to contend that in the matter of Government contracts the court may not exercise its discretionary powers unless there is any infirmity in the decision making process.

10. As stated above, a letter of intent dated 24.9.2021 was issued and, thereafter, a lease-deed was executed in favour of the petitioner on 16.12.2022 and was registered on 19.12.2022.

11. On 9.5.2023, a notice regarding violation of the terms of the lease was issued to the petitioner in which it was stated that payments of the fifth and sixth instalments of the first year were not made which are punishable under Rule 59. It was, therefore, directed that within a period of fifteen days, the entire outstanding amount be deposited, failing which further legal action would be taken. It has been stated by the petitioner that the fifth instalment due was paid by him.

12. On 15.6.2023, it appears that in view of a reference raised by the petitioner on the IGRS portal, the Mines Officer wrote a letter to the District Magistrate regarding the complaint made by the petitioner of

1 (2020) 16 SCC 489

2 (2020) 16 SCC 759

illegal mining. The Mines Officer informed that since 1.5.2023, the mining work in the leased area has been stopped for which the instalment has not been deposited by the petitioner and the procedure for cancellation of the lease is underway.

13. Thereafter, on 18.5.2023, the petitioner sent a letter to the District Magistrate informing that he has not been able to deposit the instalment for the month of May as the road (approach road to the mining area) is in a very bad shape because of which very few vehicles are able to pass. The instalment for the month of May was not paid, thus, the lease is being surrendered. It was mentioned therein that if the amount of security deposit is forfeited, the petitioner would have no objection.

14. By a letter dated 22.5.2023, the Mines Officer wrote a letter to the petitioner in respect of the application for surrender of lease asking him to submit a 'No Objection' with regard to the transfer of environment clearance certificate and to submit 'No Dues Certificate' with regard to mining.

15. The application dated 18.5.2023 filed by the petitioner before the District Magistrate seeking surrender of the lease states that in case the security amount is forfeited, he would have no objection. The Mines Officer by its letter of 22.5.2023 to the petitioner has mentioned that the aforesaid two documents pursuant to the application for surrender dated 18.5.2023 are awaited. By means of a letter dated 26.5.2023, the petitioner purportedly complied with the aforesaid letter dated 22.5.2023 sent by the Mines Officer. In this letter of 26.05.2023 the petitioner submitted the treasury challan dated 25.5.2023 which was the balance amount of instalment due for the month of April 2023 (that is, the fifth instalment), and, an affidavit containing no-objection with regard to the Environment Clearance Certificate.

16. The respondents' office noting/report of 29/31.5.2023 reflects that the lease holder (petitioner) had deposited the instalment for the month of April, 2023. It was further mentioned that the petitioner would be issued a separate notice and recovery certificate with regard to payments pertaining to DMF and TCS. Accordingly, the report was put up that 25 percent of the annual instalment be adjusted against the security deposit and, while prohibiting the lease holder from carrying out mining activity, the lease area be declared vacant. The District Magistrate noted on the aforesaid report as follows:-

**“O.K.**

**अग्रेतर कार्यवाही भी सम्पन्न कराएं**

(Further proceeding also be taken)

**02.06.2023”**

17. However, after nearly a month, the impugned notice dated 30.6.2023 was issued by the District Magistrate stating that for purposes of 'No Dues Certificate' the 'royalty' for the month of May, 2023 has not been deposited by the petitioner and as such the certificate for 'No Dues' cannot be issued and also the dues for the ensuing month (June, 2023) is also due. It was mentioned that the dues be deposited without any delay failing which, the lease deed would be terminated. The petitioner replied to the said notice by his letter dated 7.7.2023 stating that the royalty up to 18.5.2023 demanded by the letter dated 30.6.2023 is wrong and, accordingly, sought refund of the security amount after adjusting the due royalty.

18. By means of the impugned order dated 4.3.2023, exercising powers under Rule 59, the mining lease granted to the petitioner was terminated by the District Magistrate.

19. Some questions that would arise for consideration in the aforesaid petition are as follows:-

- (i) Once the surrender application was moved on 18.5.2023 without depositing the instalments due till then and once the admitted case is that mining has been stopped in the leased area since 01.5.2023 then, are the respondents bound to accept the surrender application with effect from 18.5.2023 and, as a corollary, can the lease-deed be terminated?
- (ii) Whether, under the terms and conditions of the lease deed and / or the applicable law, the earnest money deposited by the petitioner is liable to be forfeited?
- (iii) Whether the amounts payable under the lease towards the sixth and seventh instalments (i.e. for the months of May and June, 2023, respectively) are liable to be recovered from the petitioner.

20. The Uttar Pradesh Minor Minerals (Concession) Rules, 2021<sup>3</sup> was published in U.P. Gazette by means of a notification on 29.10.2021. The preamble reads that “*in exercise of the powers conferred by sub-section (1) of section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (Act no. 67 of 1957), read with section 21 of the General Clauses Act, 1897 and in supersession of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963, the Governor is pleased to make the following rules with a view to regulating the concession of minor minerals and other purposes connected therewith*”. Therefore, even though the lease deed of 16.12.2022 refers to the Uttar Pradesh Minor Minerals (Concession) Rules, 1963<sup>4</sup>, on the date of execution of the lease-deed the Rules, 2021 were applicable in the case of the petitioner. The procedure adopted by the State Government was by way of e-tender-cum-e-auction and as such is covered under Chapter IV of the Rules, 2021, which Chapter contains Rules 23 to 31. Under sub-rule (3) of Rule 23, the

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3 Rules, 2021

4 Rules, 1963



provisions of Chapter II, III, VI and IX except Rule 10, 17 and 95 are not applicable to the area leased to the petitioner.

21. Consequently, under Chapter IV, the relationship between the petitioner and the State-respondents is governed by the terms of the lease-deed. The lease was granted in Form MM-6 for a period of five years which provides, *inter alia*, that for the subsequent years, the amount payable will be increased at the rate of 10% on the preceding year's payable amount. The lease was for mining ordinary sand to the extent of 1,17,000 cubic meters per annum in respect of which for the first year an amount of Rs.1,97,73,000 was payable in the instalments fixed as per Schedule V of the Rules.

22. The provision of surrender of mining lease was inserted by Rule 29-A in the Rules, 1963 by means of the Uttar Pradesh Minor Minerals (Concession) (Forty Seventh Amendment) Rules, 2019 which was notified on 13.08.2019. It read as under:-

**“29-A. Surrender of Mining Lease-** Lease holder, on the intended day of surrender, shall submit over and above security deposit, an amount equivalent to 25% of the annual installment of that year and apply for surrender along with the following documents-

(a) No objection for transfer of Environment Clearance Certificate obtained for the concerned lease area in favour of the State Government or subsequent proponent.

(b) Certificate of money deposited for difference between quantity mentioned in Environment Clearance and mined out quantity or in case of no difference, a Certificate in this regard for the concerned lease issued by Mines Officer/Mines Inspector.

In accordance with the above, lease-holder will be prohibited from carrying out mining activities from the date of application for surrender of lease and the area will be deemed to be vacant.”

23. Now, Rule 30 of the Rules, 2021 provides for surrender of mining lease and it reads as follows:-

**“30. Surrender of Mining Lease-** Lease holder, on the intended day of surrender, shall submit an amount equivalent to twenty-five percent of the annual instalment of that year which may be adjusted against the security deposit and apply for surrender along with the following documents-

(a) no objection for transfer of Environment Clearance Certificate obtained for the concerned lease area in favour of the State Government or subsequent proponent.

(b)<sup>5</sup> certificate of money deposited for difference between quantity mentioned in Environment Clearance Certificate and mined out quantity or in case of no difference, a Certificate in this regard for the concerned lease issued by Senior Mines Officer/Mines Officer/Mines Inspector.

In accordance with the above, lease-holder will be prohibited from carrying out mining activities from the date of application for surrender of lease and the area will be deemed to be vacant.”

24. Rule 59, under which the lease of the petitioner has been terminated, reads as follows:-

**“59. Consequences of non-payment of royalty rent or other dues-** (1) The State Government or any officer authorised by it in this behalf may terminate the mining lease after serving a notice on the lessee to pay within thirty days of the receipt of the notice any amount due or dead rent under the lease including royalty due to the State Government if it was not paid within fifteen days next after the date fixed for such payment. This right shall be in addition to and without prejudice to the right of the State Government to realise such dues from the lessee as arrears of land revenue.

(2) Without prejudice to the provisions of these rules, simple interest at the rate of 18 percent per annum may be charged on any rent, royalty, demarcation fee and any other dues under these rules, due to the State Government after the expiry of the period of notice under sub-rule (1);

Provided that the District Magistrate, after adjusting the security money against the total amount due, shall issue recovery certificate for recovery of the outstanding amount.”

25. Under the lease-deed, the instalments payable for the first year were as follows:-

भाग-2  
इस पट्टे द्वारा संरक्षित स्वामित्व

<sup>5</sup> The original gazette notification dated October 29, 2021 as appearing on India Code website does not mark this paragraph as (b). It has been so marked for sake of convenience.

1. स्वामित्व की धनराशि : पट्टेदार इस पट्टे की अवधि में राज्य सरकार को पट्टे पर दिये गये क्षेत्र में उसके द्वारा हटाये गये सभी बालू/मोरम के सम्बन्ध में उ०प्र० उपखनिज (परिहार) नियमावली-1963 के नियम-27(3) के अनुसार निविदा/नीलामी की धनराशि पंचम अनुसूची में दी गयी व्यवस्था के अनुसार स्वामित्व का भुगतान करेगा।  
देय धनराशियों के जमा करने की पंचम अनुसूची

(1) प्रथम वर्ष की निर्धारित किश्ते :-

क्र०सं०	पट्टा वर्ष	किश्त / देयता तिथि	देय धनराशि (रु०में)	पट्टा धनराशि का प्रतिशत
1.	प्रथम वर्ष	प्रथम किश्त, दिसंबर, 2022 (अग्रिम रूप से जमा)	39,54,600.00	20 प्रतिशत (अग्रिम जमा)
2.	"	द्वितीय किश्त, 01 जनवरी, 2023	19,77,300.00	10 प्रतिशत
3.	"	तृतीय किश्त, 01 फरवरी, 2023	19,77,300.00	10 प्रतिशत
4.	"	चतुर्थ किश्त, 01 मार्च, 2023	19,77,300.00	10 प्रतिशत
5.	"	पंचम किश्त, 01 अप्रैल, 2023	19,77,300.00	10 प्रतिशत
6.	"	छठा किश्त, 01 मई, 2023	19,77,300.00	10 प्रतिशत
7.	"	सप्तम किश्त, 01 जून, 2023	19,77,300.00	10 प्रतिशत
8.	"	अष्टम किश्त, 01 अक्टूबर 2023	19,77,300.00	10 प्रतिशत
9.	"	नौवीं किश्त, 01 नवम्बर, 2023	19,77,300.00	10 प्रतिशत
प्रथम वर्ष की पट्टा धनराशि:-			रु० 1,97,73,000.00	10 प्रतिशत

26. In Part III of the lease, which provides for general conditions of the lease, there is a provision for forfeiture of security deposit, which is as follows:-

भाग-3

सामान्य उपबन्ध

"1. नियमों, प्रसंविदाओं और शर्तों को भंग करने पर पट्टा समाप्त किया जा सकता है : यदि पट्टेदार उत्तर प्रदेश उप खनिज (परिहार) नियमावली 1963 के किसी नियम या इस पट्टे की किसी प्रसंविदा तथा किसी शर्त को भंग करें तो राज्य सरकार पट्टा समाप्त कर सकती है और प्रतिभूति जमा को पूर्णतः या अंशतः जब्त कर सकती है किन्तु प्रतिबन्ध यह है कि पट्टा समाप्त किये जाने के पूर्व पट्टेदार को उन्हें भंग करने का स्पष्टीकरण देने के लिए यथोचित अवसर दिया जायेगा।"

27. The additional terms that are provided in the lease-deed are as follows:-

"अतिरिक्त शर्तें"

1. पट्टा विलेख के निष्पादन के उपरान्त खनन संक्रियायें तत्काल प्रारम्भ करेगा और तत्पश्चात् जान बूझकर कोई स्थगन किये बिना ऐसी खनन संक्रियाओं का संचालन उचित और दक्षतापूर्ण रीति के कुशल कारीगर की भांति करेगा।
2. पट्टेदार नियमावली-1963, नियम-35 के अनुसार पट्टेदार अपने स्वयं के व्यय पर ऐसे सीमाचिन्ह को और खम्भे को परिनिर्मित करेगा और सदैव अनुरक्षित करेगा और अच्छी स्थिति में रखेगा तथा वाहनों के प्रवेश व निकासी पर निगरानी के लिये स्वयं के व्यय पर 360 डिग्री कोण पर दृश्यता रिकार्डिंग के योग्य चार सी०सी०टी०वी० कैमरा लगाने सहित चेक पोस्ट/ गेट का निर्माण करेगा। पट्टेदार उक्त चेक पोस्ट / गेट पर आर०एफ०आई०डी० स्कैनर भी रखेगा, जिससे सम्बन्धित खननपट्टा क्षेत्र से उपखनिजों के परिवहन हेतु प्रयुक्त प्रत्येक यान के सापेक्ष निर्गत किये गये प्रपत्र ई०-एम०एम०-11 पर अंकित बार कोड का डाटा पढ़ने और सुरक्षित रखने की सुविधा होगी और उसका समुचित रूप से रख-रखाव करेगा एवं सदैव उसे चालू रूप में अनुरक्षित रखेगा। पट्टेदार उक्त सी०सी०टी०वी० कैमरे और आर०एफ०आई०डी० स्कैनरों द्वारा की गयी समस्त रिकार्डिंग को कम से कम 30 दिनों तक सुरक्षित रखेगा और नियम-66 के उपबन्धों के अधीन प्राधिकृत अधिकारी के द्वारा रिकार्ड मांगे जाने पर उक्त रिकार्डिंग को उपलब्ध करायेगा। यदि पट्टाधारक नियम-35 के उपबन्धों का उल्लंघन करता है तो प्रत्येक चूक के लिये प्रतिदिन रु० 25,000.00 की दर से शास्ति उदगृहित की जायेगी और ऐसी उदगृहित शास्ति को जमा करने पर चूक की दशा में उक्त धनराशि की कटौती खनन पट्टा के सापेक्ष जमा की गयी प्रतिभूति की धनराशि से की जायेगी।
3. प्रत्येक वर्ष मानसून सत्र में (माह जुलाई, अगस्त व सितंबर) सा०बालू का खनन/ परिवहन कार्य प्रतिबन्धित रहेगा।
4. पट्टेदार/ प्रतिनिधि प्रत्येक वाहन को ई-एम०एम०-11 सही विवरण सहित दो प्रतियों में जारी करेगा तथा तिथि सहित हस्ताक्षर करेगा। प्रत्येक वाहनों को निर्गत ई-एम०एम०-11 पर जनित बार कोड को चेक गेट पर पढ़ने तथा दर्ज डाटा सेव करने के लिये आर०एफ०आई०डी० स्कैनर लगायेगा तथा सदैव उसका अनुरक्षण करेगा और उन्हे सही एवं चालू दशा में रखेगा। उक्त का अनुपालन न करने की दशा में नियमावली-1963 के नियम-59 के अन्तर्गत शास्ति का भागीदार होगा।
5. पट्टेदार 03 मीटर की गहराई अथवा जल स्तर में से जो कम हो, से अधिक गहराई में खनन संक्रियायें नहीं करेगा।
6. जिलाधिकारी द्वारा चिन्हित सुरक्षा क्षेत्र में खनन नहीं किया जायेगा।
7. स्वीकृत क्षेत्र के अन्दर जहाँ परिवहन प्रपत्र निर्गत किया जायेगा, वहाँ पर खनिजों का विक्रय मूल्य प्रदर्शित करेगा।
8. पट्टाधारक को पट्टा समाप्ति के उपरान्त पर्यावरणीय स्वीकृति राज्य सरकार व अनुवर्ती प्रस्तावक के पक्ष में अन्तरित किये जाने में कोई आपत्ति नहीं होगी।
9. पट्टेदार नियमावली-1963, नियम-34 के अधीन उपबन्धित उपबन्धों के अनुसार जारी अनुमोदित खनन योजना और पर्यावरण अनापत्ति प्रमाण-पत्र में उल्लिखित निबन्धन एवं शर्तों का उल्लंघन करते हुये पाये जाने पर वह प्रत्येक चूक के प्रति अवसर के अनुसार रु० 50,000.00 की दर से ऐसी शास्ति के लिये दायी होगी।
10. खनन / परिवहन में जनधन की हानि की समस्त जिम्मेदारी पट्टेदार की होगी।
11. पट्टेदार द्वारा मा० उच्च न्यायालय, मा० राष्ट्रीय हरित प्राधिकरण अथवा मा० सर्वोच्च न्यायालय द्वारा पारित आदेशों का पालन किया जायेगा।

12. नियमों एवं शर्तों के उल्लंघन के परिणामस्वरूप यदि कोई वाद अथवा अपराधिक प्रक्रिया योजित होती है, तो इसकी सम्पूर्ण जिम्मेदारी पट्टेदार की होगी एवं यदि इस सम्बन्ध में कोई व्यय होता है तो उसका वहन पट्टेदार द्वारा किया जायेगा।

13. राज्य सरकार अथवा केन्द्र सरकार द्वारा यदि नियमों / अधिनियमों में कोई संशोधन होता है अथवा कोई शर्त अथवा विधि प्रख्यापित की जाती है तो वह पट्टेदार को मान्य होगा।

14. पट्टेदार द्वारा राज्य अथवा केन्द्र सरकार द्वारा समय-समय पर निर्धारित कर एवं शुल्क यथा आयकर विभाग का टी०सी०एस०, जिला खनिज फाउण्डेशन (डी०एम०एफ०) नियमानुसार जमा किया जायेगा।

15. पट्टेदार को खनन क्षेत्र में पहुंच मार्ग का निर्माण स्वयं करना होगा तथा यदि तृतीय पक्ष द्वारा कोई विवाद उत्पन्न किया जाता है, तो उसके लिये वह स्वयं जिम्मेवार होंगे।

16. पट्टेदार को उत्तर प्रदेश उपखनिज (परिहार) नियमावली 1963 यथा संशोधित एवं सुसंगत शासनादेशों एवं माननीय न्यायालयों के आदेशों को अक्षरशः पालन करना होगा।

17. पट्टेदार स्वीकृत एवं चिन्हांकित खनन क्षेत्र से बाहर किसी भी दशा में खनन कार्य नहीं करेगा।

18. पट्टेदार नियमावली 1963 के नियम-73 के प्रावधानों के अन्तर्गत पूर्ववर्ती त्रैमास के संबंध में प्रत्येक वर्ष जुलाई, अक्टूबर, जनवरी और अप्रैल के द्वितीय सप्ताह में प्रपत्र एम०एम०-12 में जिलाधिकारी और भूतत्व एवं खनिकर्म निदेशालय के क्षेत्रीय कार्यालय को त्रैमासिक विवरणी प्रस्तुत करेगा तथा विनिर्दिष्ट समय के भीतर विवरण प्रस्तुत करने में विफल होने पर रु० 2000.00 की शास्ति का भागी होगा तथा पट्टेदार की ऐसी चूक, खनन पट्टा विलेख की शर्तों का उल्लंघन माना जायेगा।

19. खनन कार्य करने के दौरान यदि कोई अन्य खनिज / उपखनिज प्राप्त होता है तो उसकी सूचना पट्टेदार तत्काल जिला कार्यालय तथा भूतत्व एवं खनिकर्म विभाग (उ०प्र०) के क्षेत्रीय कार्यालय एवं निदेशालय को देगा।

20. मा० सर्वोच्च न्यायालय में प्रस्तुत रिट याचिका (सी) सं०-114/2014 (कॉमन काज बनाम यूनिशन आफ इण्डिया) में पारित निम्नवत आदेश दिनांक 08.01.2020 का अनुपालन पट्टाधार को करना अनिवार्य होगा:-

The mining lease holders shall, after ceasing mining operation, undertake regrassing the mining area and any other area which may have been disturbed due to their mining activities and restore the land to a condition which is fit for growth of fooder, flora funna etc.

20. पट्टेदार को पट्टाकृत क्षेत्र में खनिज के समुचित विकास हेतु वैज्ञानिक ढंग से खनन कार्य करते हुए पर्यावरण की सुरक्षा हेतु खनिज / उपखनिज का खनन व निकासी करने के उपरांत क्षेत्र का समतलीकरण कर वहाँ वृक्षारोपण करना होगा।

21. स्वीकृत क्षेत्र में स्थायी सीमा स्तम्भ लगाने के बाद ही खनन कार्य करने की अनुमति दी जायेगी।

22. खनन पट्टा स्वीकृति के पश्चात भविष्य में वन विभाग या किसी अन्य विभाग द्वारा शर्तों के विपरीत कार्य करने के कारण आपत्ति किये जाने पर उक्त नियमावली 1963 के नियम 60 के अधीन युक्तियुक्त अवसर दिये जाने के पश्चात खनन पट्टा निरस्त किया जायेगा।

23. पट्टेदार द्वारा खनन क्षेत्र तक पहुँच मार्ग स्वयं के व्यय पर बनाया जायेगा। यदि खनिजों के परिवहन हेतु किसी काश्तकार की भूमि से होकर रास्ते का निर्माण किया जाता है तो सम्बन्धित काश्तकार की लिखित सहमति सम्बन्धी अभिलेख जिला क्वैरी कार्यालय, देवरिया में प्रस्तुत करना अनिवार्य होगा। रास्ते के निर्माण में होने वाले व्यय के लिए राज्य सरकार का कोई उत्तरदायित्व नहीं होगा।

24. खनन स्थल से निकाले गये खनिज पदार्थ का अभिवहन वन विभाग की लिखित सहमति के बिना वन मार्ग से नहीं किया जायेगा।

25. स्वीकृत खनन पट्टा क्षेत्र की परिधि के बाहर कोई अवैध खनन पाये जाने पर उक्त नियमावली 1963 के नियम 60 के अधीन युक्तियुक्त अवसर दिये जाने के पश्चात खनन पट्टा निरस्त किया जायेगा।

26. नियमावली-1963 के नियम-41(ज) के अधीन उपबन्धित उपबन्धों के अनुसार जलधारा में सक्शन मशीन / लिफ्टर के माध्यम से खनन कार्य निषिद्ध होगा। पट्टेदार उक्त नियम के उपबन्धों का उल्लंघन करता हुआ पाया जाता है तो प्रत्येक अवसर में पांच लाख रुपये की दर से शास्ति के लिये दायी होगा। शास्ति की उपरोक्त उल्लिखित धनराशि को जमा करने में विफल होने पर उक्त धनराशि को पट्टे के सापेक्ष जमा की गयी प्रतिभूमि की धनराशि से कटौती की जायेगी।

27. नियमावली-1963 के नियम-44 में उपबन्धित की गयी किसी शर्त को भंग करने पर पचास हजार रुपये की शास्ति / उद्ग्रहण के लिये दायी होगा। शास्ति की उक्त धनराशि जमा करने में विफल होने पर सम्बन्धित पट्टे के सापेक्ष जमा की गयी प्रतिभूमि की धनराशि से कटौती कर ली जायेगी।

28. स्वीकृत खनन पट्टा क्षेत्र के भीतर किसी प्रतिबन्धित क्षेत्र (यदि कोई हो) में खनन कार्य नहीं किया जायेगा। ऐसे प्रतिबन्धित क्षेत्र में खनन पाये जाने पर नियमानुसार खनन पट्टा समाप्त किया जा सकता है।

29. रीवर बेड माइनिंग की स्थिति में खनन की गहराई 03 (तीन) मीटर अथवा वाटर लेवल में से जो न्यूनतम हो, तक ही किया जायेगा।

30. पर्यावरण स्वच्छता प्रमाण-पत्र में उल्लिखित शर्तों तथा उ०प्र० उपखनिज (परिहार) नियमावली, 1963 के नियम-34(4) के अनुसार निदेशालय द्वारा अनुमोदित खनन योजना में उल्लिखित शर्तों का पालन पट्टेदार को किया जाना आवश्यक होगा।

31. पट्टाधारक विहित लोडिंग सन्नियमों की पुष्टि करने विफल हो जाने पर ऐसे प्रत्येक चूक की दशा में रूपया पच्चीस हजार रुपये की शास्ति अधिरोपित की जायेगी। शास्ति की उक्त धनराशि जमा करने में विफल होने पर सम्बन्धित पट्टे के सापेक्ष जमा की गयी प्रतिभूमि की धनराशि से कटौती कर ली जायेगी।

32. ई-निविदा सह ई-नीलामी विज्ञप्ति दिनांक 02.08.2021 के बिन्दु सं०-22 के शर्त-(1) से आश्वस्त होकर पट्टाधारक द्वारा खनन पट्टा प्राप्त किया गया है। यह ई-निविदा सह ई-नीलामी 05 वर्ष की अवधि व निर्धारित मात्रा के लिये है। खनन पट्टा विलेख निष्पादन के उपरान्त उपखनिज की मात्रा निर्धारण करने सम्बन्धी प्रार्थना-पत्र / दावा मान्य नहीं होगा।"

28. Evidently, the instalments were fixed in the lease deed as per Schedule V of the Rules. The application for surrender of mining lease is required to be considered under Rule 30 of the Rules, 2021. Therefore, lease holder has to ensure that on the day of the intended surrender, an amount equivalent to 25 percent of the annual instalment of that year is submitted by him which may be adjusted against the security deposit. Two documents are required to be furnished along with the surrender application. One is a document declaring no objection for transfer of Environment Clearance Certificate<sup>6</sup> obtained for the concerned lease area

in favour of the State Government or subsequent proponent. Secondly, the application for surrender is to be accompanied by a certificate of money deposited for difference between quantity mentioned in the ECC and mined out quantity or in case of no difference, a certificate in this regard for the concerned lease deed issued by the competent officer/Inspector. In the last paragraph of Rule 30, the consequences of such an application being filed are mentioned. It reads that in accordance with the above, the lease holder will be prohibited from carrying out mining activities from the date of application for surrender of lease and the area will be deemed to be vacant.

29. A reading of Rule 30 reflects that it presumes that compliance of the terms of the lease have been made by the lease holder till the intended day of surrender. That is to say, *inter alia*, a condition precedent to the moving of a valid application for surrender would be that the due instalments and other dues payable under the terms of the lease have been deposited. Any violation of the terms of the lease would attract action of termination of the lease. The requirement in Rule 30 of deposit of 25 percent of the annual instalment of that year (in which the intended day of surrender falls), which may be adjusted against the security deposit, has to be read as being in the nature of compulsory exaction due to surrender of the mining lease prior to the expiry of the lease. Therefore, in a case of surrender, the security deposit cannot be adjusted against any outstanding installments or other dues except against the adjustment of the 25% deposit of the annual installment specified in Rule 30. The loss of revenue to the State Government due to such surrender would be a plausible reason for inserting this requirement which is in public interest. However, in the event of termination of the mining lease under the provisions of Rule 59, the security deposit can be adjusted against the total amount due.

As far as the requirement of no objection for transfer of Environment Clearance Certificate obtained for the concerned lease area

in favour of the State Government or subsequent proponent is concerned, it is an important consideration in the interest of State Government's revenue inasmuch as under the proviso to sub-Rule (5) of Rule 35 of the Rules, 2021, the environment clearance granted in favour of such lessee may be transferred to a legal person in favour of whom such lease is settled within the lease validity period.

30. Evidently, the application for surrender was filed by the petitioner on 18.5.2023, but without depositing the entire amount of instalment for the month of April 2023 and without depositing the instalment for the month of May 2023 (that is, the 5<sup>th</sup> and 6<sup>th</sup> instalments payable on 01.04.2023 and 01.05.2023 respectively), and further, without the two requisite documents that were required to be filed alongwith the application. Compliance of the provisions of Section 30 is stated to have been made by the petitioner in the letter dated 26.5.2023. The deposit of the balance amount for the month of April 2023 was noted in the report put up before the District Magistrate by the concerned officers on 29/31.5.2023, on which application the District Magistrate made the afore-quoted noting dated 2.6.2023.

31. The notice of the District Magistrate dated 30.6.2023 to the petitioner demanding 'royalty' for the month of May, 2023 for purpose of issue of 'no dues certificate' is required to be read also in context of Clause (b) of Section 30. That is to say, it is referable also to the provision of the Rule itself which is the requirement of certificate of money deposit for difference, if any, between the quantity mentioned in the ECC and the mined out quantity. It necessitates submission of certificate of deposit of that money payable to the extent of the quantity of the mineral mined out. The certificate of deposit envisaged in Rule 30 has nothing to do with the requirement of deposit of the due instalments under the terms of the lease. Therefore, the notice dated 30.06.2023 of the District Magistrate is to be read as an indication to the petitioner to comply with the terms of the lease by depositing the due instalments (referred to in the notice as



‘royalty’) which would be a condition precedent to the moving of the application for surrender of the mining lease. The phrase ‘intended day of surrender’ appearing in Rule 30 of the Rules, 2021 would be the day by which all due instalments are paid and on that day no instalments or other dues are outstanding, under the terms of the lease, for and till the month in which such day falls.

32. At this stage it is important to discuss Section 15(3) of the Act, 1957 which has been relied upon in the aforesaid judgment of **Vipul Tyagi** in which judgment it is observed, inter alia, that once the lease holder admittedly did not carry out any mining operations, no royalty was liable to be recovered from him. For convenience, Section 15 is quoted in its entirety:-

**“15. Power of State Governments to make rules in respect of minor minerals.—**(1) The State Government may, by notification in the Official Gazette, make Rules for, regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

(1-A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;

(b) the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent;

(c) the matters which may be considered where applications in respect of the same land are received within the same day;

**(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;**

**(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;**

(f) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;

**(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;**

(h) the manner in which rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;

(i) the manner in which rehabilitation of flora and other vegetation such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;

(j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concession may be transferred;

(k) the construction, maintenance and use of roads power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passage for water for mining purposes on any land comprised in a quarry or mining lease or other mineral concession;

(l) the form of registers to be maintained under this Act;

(m) the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;

(n) the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefore, and the powers of the revisional authority; and

(o) any other matter which is to be, or may be, prescribed.

(2) Until rules are made under sub-section (1), any rules made by a state Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of these Act shall continue in force.

**(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:**

**Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years.**

(4) Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely:—

(a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining under sub-section (2) of section 9B;

(b) the composition and functions of the District Mineral Foundation under sub-section (3) of section 9B; and

(c) the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under section 15A.”

*(emphasis supplied)*

Section 15 of the Act, 1957 pertains to the power of the State Government to make rules in respect of minor minerals. Sub-section (1) thereof gives general power to the State Governments to make rules for regulating the grant of quarry leases and mining leases or other mineral concessions in respect of minor minerals and for the purposes connected therewith, by issuing notification in the official gazette. Sub-section (1-A) was inserted by Act No. 37 of 1986 with effect from 10.2.1987 which provides for several matters in respect of all or any of which, the rules that can be made by the State Government may provide for without prejudice to the generality of the power delegated under sub-section (1).

33. Constitutionality of Section 15(1) of the Act, 1957 came up for consideration before the Supreme Court in the case of **D.K. Trivedi and sons and others Vs. State of Gujarat and others**<sup>7</sup>. Further, the scope of sub-Section (3) of Section 15 was also considered therein for purpose of that case. After considering the legislative history of the Act, 1957, that provided for regulation of mining of minerals, the Supreme Court noted that the legislature of the Dominion of India enacted the Mines and Minerals (Regulation and Development) Act, 1948 with the object of regulating mines and oilfields and mineral development; under Section 5 of this Act, the Central Government made the Mineral Concessions Rules, 1949 and Rule 4 thereof provided that the said Rules shall not apply to

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<sup>7</sup> 1986 (Supp) SCC 20

minor minerals, the extraction of which shall be regulated by such rules as the Provincial Government may prescribe. Thereafter, the Act, 1957 was enacted which defined the term 'minor mineral' and also a number of provisions which till then had been dealt with under the rule making power of the Central Government were transferred to the Act, 1957 in order to restrict the scope of subsidiary legislation. The Act, 1957 was subjected to amendments with important amendments being effected pursuant to the enactment of the Mines and Minerals (Regulation and Development) Amendment Act, 1972<sup>8</sup>. Amongst the principle changes so effected, were the imposition of specific obligation on holders of mining leases in respect of payment of royalty for minerals removed by their agents, sub-lessees or employees; providing a statutory basis for a calculation of a dead rent; and the application of minor minerals rules to quarry leases. The Supreme Court noted the distinct provisions of Section 13, 14 and 15 of the Act, 1957 and the amendment effected by insertion of sub-section (3) in Section 15 with retrospective effect by the Amendment Act, 1972. It was noted that in exercise of power conferred by Section 13 of the Act, 1957, the Central Government by notification made the Minor Minerals (Concession) Rules, 1960; that in exercise of power conferred by Section 15(1) of the Act, 1957, various State Governments made rules in respect of minor minerals. The majority of the States provided for two types of the minerals concessions namely, a lease on tenure basis and a permit to extract a specified quantity of a minor minerals. Thereafter, the Supreme Court while examining the rule making power conferred on the State Government by Section 15(1) observed that although under Section 14, Section 13 is one of the sections which does not apply to minor minerals, the language of Section 13(1) is in *pari materia* with the language of Section 15(1). It was observed that each of the provisions {that is, Sections 13(1) and 15(1)} confers the powers to make rules for "regulating". The Court referred to Entry 54 in the Union List to hold that Section 4 to 12 form a group of sections under the heading "General

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8 Amendment Act, 1972

Restrictions On Undertaking Prospecting and Mining Operations” and exclusion of the application of these sections to minor minerals meant that the restrictions would not apply to the minor minerals but it was left to the State Governments to prescribe such restrictions as they thought fit by the rules made under Section 15(1)<sup>9</sup>. It was held that Sections 13, 14 and 15 fall in the group of sections which bears the header “Rules for Regulating Grant of Prospecting Licenses and Mining Leases” and these three sections have to be read together. The Supreme Court held that in drafting, that Section 13 would not apply to quarry leases, minor leases or other mineral concessions in respect of minor minerals, what was done was to take away from the Central Government the power to make rules in respect of minor minerals and to confer that power by Section 15(1) upon the State Governments. The terms royalty and dead rent were enunciated by the Supreme Court as follows:

“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 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

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<sup>9</sup> Sub-section (1-A) was inserted by Act No. 37 of 1986 which was notified by publication on 22<sup>nd</sup> August, 1986 with effect from 10.2.1987, that is, after the aforesaid judgment in **D.K. Trivedi**.

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.”

It was observed that the powers to make rules for regulating the grant of such leases include the power to fix the consideration payable by the lessee to the lessor in the shape of ordinary rent or service rent, dead rent and royalty.

While referring to the provisions of sub-section (3) of Section 15 of the Act, 1957, the Supreme Court observed as follows:

“45. A proper reading of sub-section (3) of Section 15 shows that it does not confer any power upon the State Governments to make rules with respect to royalty. Royalty is payable by the holder of a quarry lease or mining lease or other mineral concession granted under rules made under sub-section (1) of Section 15. What sub-section (3) does is to make such holder liable to pay royalty in respect of minor minerals removed or consumed not only by him but also by his agent, manager, employee, contractor or sub-lessee. It thus casts a vicarious liability upon such holder to pay royalty in respect of the acts of persons other than himself. The very fact that under sub-section (3) the liability of such holder is to pay royalty “at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals” shows that the prescribing of the rate of royalty in respect of minor minerals is to be done under the rule-making power of the State Governments which is to be found in sub-section (1) of Section 15. Yet another purpose of enacting sub-section (3) is to be found in the proviso to that sub-section which prohibits the State Government from enhancing the rate of royalty in respect of any minor mineral for more than once during any period of four years<sup>10</sup>. If the reliance placed by the Gujarat and the Andhra Pradesh High Courts on sub-section (3) of Section 15 in order to ascertain the intention of Parliament was misplaced, their reliance upon Section 9-A was even more misplaced. Section 9-A was inserted in the 1957 Act by the Amendment Act of 1972 but it was not inserted with retrospective effect. It was, therefore, not there when Section 15(1) was placed upon the statute book while enacting the 1957 Act. Section 9-A was enacted with a two-fold purpose. It cast a liability upon the holder of a mining lease whether

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<sup>10</sup> Substituted by Act No.37 of 1986 to read “three” years for the word “four”.

granted before or after the commencement of the 1972 Act, that is, either before or after September 12, 1972, to pay to the State Government dead rent at the rates specified for the time being in the Third Schedule to the 1957 Act “notwithstanding anything contained in the instrument of lease or in any other law for the time being in force”. The purpose of inserting Section 9-A in the 1957 Act, as stated in the Statement of Objects and Reasons to Legislative Bill 83 of 1972, was to make a “provision of a statutory basis for calculation of dead rent”. Section 9-A also provides that the liability of the lessee would be to pay either royalty or dead rent whichever is greater, thus embodying in the Act what was contained in the proviso to clause (c) of Rule 27 of the Minor Mineral Concession Rules, 1960. Section 9-A was inserted also with a view to prohibit the Central Government from enhancing the rate of dead rent more than once during any period of four years. It is pertinent to note that by the Amendment Act of 1972 Section 9 was also amended. While under the original sub-section (1) of Section 9 the liability of the holder of a mining lease was only to pay royalty in respect of any mineral removed by him, after the amendment he is made liable to pay royalty in respect of any mineral “removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee”. By the Amendment Act of 1972 the power of the Central Government to amend by notification the Second Schedule which specifies the rate of royalty was also curtailed by inserting a proviso to Section 9(3) in order to provide that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of four years. The amendments made by the Amendment Act of 1972 have, therefore, no relevance for ascertaining the scope of the rule-making power of the State Governments under Section 15(1).

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48. It was then contended that the very language of sub-section (1) of Section 15 shows that it does not confer any power upon the State Governments to enhance the rate of royalty or dead rent because the rules which are to be made under that sub-section are for regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and, therefore, the rules under that sub-section can be made only with respect to the time when such leases or concessions are granted and not with respect to any point of time subsequent thereto and there being no provision similar to sub-section (3) of Section 15 with respect to dead rent, any rule providing for increase in the rate of dead rent during the subsistence of a lease would be ultra vires Section 15. This submission is devoid of substance. As

pointed out earlier, sub-section (3) of Section 15 does not confer any power to amend the rules made under Section 15(1), for the power to amend the rules is comprehended within the power to make the rules conferred by sub-section (1) of Section 15. The construction sought to be placed upon the word “grant” in Section 15(1) also cannot be accepted. While granting a lease it is open to the grantor to prescribe conditions which are to be observed during the period of the grant and also to provide for the forfeiture of the lease on breach of any of those conditions. If the grant of a lease were not to prescribe such conditions, the lessee could with impunity commit breaches of the conditions of the lease. Ordinary leases of immovable property at times provide for periodic increases of rent and there is no reason why such increases should not be made in a mining or quarry lease or other mineral concession granted under a regulatory statute intended for the benefit of the public and even less reason why such a statute should not confer power to make rules providing for increases in the rate of dead rent during the subsistence of the lease. In any event, the power to make rules under Section 15(1) is also for purposes connected with the grant of mining and quarry leases and other mineral concessions and the expression “and for purposes connected therewith” read with the word “grant” would include the power to enhance the rate of dead rent during the subsistence of the lease.”

The Supreme Court summarized its conclusions in paragraph 76 of the aforesaid judgment. Extract of the conclusions for purpose of this case are as follows:-

“76. To summarize our conclusions:

(1) Sub-section (1) of Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, is constitutional and valid and the rule-making power conferred thereunder upon the State Governments does not amount to excessive delegation of legislative power to the executive.

(2) There are sufficient guidelines provided in the 1957 Act for the exercise of the rule-making power of the State Governments under Section 15(1) of the 1957 Act. These guidelines are to be found in the object for which such power is conferred, namely, “for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith”; the meaning of the word ‘regulating’, the scope of the phrase “for purposes connected therewith”; the illustrative matters set out in sub-section (2)



of Section 13; and the restrictions and other matters contained in Sections 4 to 12 of the 1957 Act.

(3) The power to make rules conferred by Section 15(1) includes the power to make rules charging dead rent and royalty.

(4) The power to make rules under Section 15(1) includes the power to amend the rules so made, including the power to amend the rules so as to enhance the rates of royalty and dead rent.

(5) A State Government is entitled to amend the rules under Section 15(1) enhancing the rates of royalty and dead rent even as regards leases subsisting at the date of such amendment.

(6) Sub-section (3) of Section 15 does not confer upon the State Governments the power to make rules charging royalty or to enhance the rate of royalty so charged from time to time.

(7) The sole repository of the power of the State Governments to make rules and amendments thereto, including amendments enhancing the rates of royalty and dead rent, is sub-section (1) of Section 15.

.....  
 .....”

34. It is pertinent to mention here that sub-section (1-A) of Section 15 of the Act, 1957 which provides for the rules made by the State Governments to provide in particular for all or any of the matters mentioned therein without prejudice to the generality of the power under sub-section (1), specifically refers to certain matters, which, inter alia, are:-

“ .....

(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;

.....

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable.

.....”

Thus, the delegation of rule making power to the State Governments is of a wide spectrum concerning, *inter alia*, the matters specified in the afore-quoted clauses, which is without prejudice to the generality of power under sub-section (1) of Section 15.

35. It has been held in **D.K. Trivedi** that sub-section (3) of Section 15 of the Act, 1957 does not confer any power upon the State Governments to make rules with respect to royalty. Royalty is payable by the holder of a quarry lease or mining lease or other mineral concession granted under rules made under sub-section (1) of Section 15. What sub-section (3) does is to make such holder liable to pay royalty in respect of minor minerals removed or consumed not only by him but also by his agent, manager, employee, contractor or sub-lessee. It thus casts a vicarious liability upon such holder to pay royalty in respect of the acts of persons other than himself. The very fact that under sub-section (3) the liability of such holder is to pay royalty “at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals” shows that the prescribing of the rate of royalty in respect of minor minerals is to be done under the rule-making power of the State Governments which is to be found in sub-section (1) of Section 15.

36. In the year 2012, the State Government amended the provisions of auction/ tender/ auction-cum-tender or e-auction lease, and declaration by the State Government of the area or areas which may be leased out in such manner. This was incorporated in the rules, 1963 by substitution of the existing Rule 23 and other rules by means of a Notification dated 23.12.2012. In the year 2017, the State Government formulated a Mining Policy which sought to increase its share from revenue obtained from minerals over the next five years from 1.85% to 3% while working towards sustainable socio-economic development through mines and minerals, conservation of minerals, and maintaining the balance between

environment and ecology. The aims and objects of the policy, inter alia, included promotion of opportunities of employment in the mining sector; providing encouragement to healthy competition in the mining industry; to encourage investment of private capital in the procedure for mineral development and to develop entrepreneurship; for bringing transparency in the procedure for approval of concessions in minerals, the process for implementation of e-tendering/e-auction/e-bidding, and while simplifying the procedure for administration of mining, making the process transparent and free from corruption.

37. The State Government also issued a Government Order dated 14.8.2017 in respect of mining concessions in sand, moram, bajari etc. available in the river beds by way of e-tendering-cum-e-auction of the areas. This Government Order provides, inter alia, that bids for minerals will be made on the basis of per cubic meter which would not be less than the royalty fixed in Schedule I of the Rules, 1963. The highest bid received would be multiplied by the estimated quantity in cubic meters and the amount due for the first year would be calculated accordingly which amount would be enhanced by 10 percent in every subsequent year. Various other procedures are prescribed in the Government Order. However, in the Rules, 2021, as stated aforesaid, the procedure for grant of auction lease has since been specified in Chapter IV thereof.

It would be pertinent to mention here that under the Rules, 2021, royalty is payable in terms of Rule 21 of Chapter III which reads as under:

**“21. Royalty – (1) The holder of a mining lease granted on or after the commencement of these rules shall pay royalty in respect of any mineral removed by him from the lease area at the rates for the time being specified in the First Schedule to these rules.**

(2) Notwithstanding anything to the contrary contained in Rule 3, royalty should be payable by concerned brick klin owner or user of ordinary clay or ordinary earth at the rate, for the time being, specified in First Schedule to these rules:

Provided that the State Government shall take fees to be known as Regulating Fees from brick klin owners in respect of

districts categorized, on the basis of paya's at such rates as may be notified from time to time by it.

(3) The State Government may, by notification in the Gazette, amend the First Schedule so as to include therein or exclude there from or enhance or reduce the rate of royalty in respect of any mineral with effect from such date as may be specified in the notification:

Provided that the State Government shall not enhance the rate of royalty in respect of any mineral for more than once during any period of three years and shall not fix the royalty at the rate of more than 20 percent of the pit's mouth value.

(4) Where the royalty is to be charged on the pit's mouth value of the mineral, the State Government may assess such value at the time of the grant of the lease and the rate of royalty will be mentioned in the lease deed. It shall be open to the State Government to re-assess not more than once in a year the pit's mouth value if it considers that an enhancement is necessary.

(5) Regulating Fees may be determined by the State Government from time to time on minerals entering the State from other States.”

*(emphasis supplied)*

As regard the auction lease which is the case in the instant petition, the installments are payable under sub-rule (3) of Rule 27 which reads as under:

**“27. Procedure for approval/grant of Lease by e-tender/e-auction/e-tender-cum-e-auction -**

(1) .....

(2) .....

(3) Upon grant of lease, the lease holder of river bed minerals such as sand, morrum, bajri boulder shall make payment of such amount as mentioned in the Fifth Schedule and the lease holder of other minerals shall make payment of such amount as mentioned in the Fourth Schedule.”

As noted above, the application of provisions of Chapter III is excluded by means of sub-rule (3) of Rule 23 of Chapter IV.

38. In the backdrop of the aforesaid discussion, in a case of auction lease that is covered by Chapter IV of the Rules, 2021, to say that while considering an application of surrender of mining lease, 'royalty' would be payable only to the extent of the mineral removed or consumed, would not be appropriate. Doubtless, where there occurs violation of the terms and conditions of the mining lease which is not promptly attended to by the lessee, the authorities are required to take steps without delay for termination of the lease in the interest of all concerned. But where the mining lease deed executed in Form MM-6 or in similar format under the Rules made under the provisions of Section 15 (1) and (1-A) of the Act, 1957 provides for the quantity of minor mineral to be excavated annually in cubic meters, and the highest bid offered by the lessee, and the total amount of instalments payable in the first year and subsequent years, which also form the consideration for the contract, then the instalments would be payable under the terms of the lease. Therefore, the provisions of Section 15 (3) of the Act, 1957 cannot be read or interpreted in a manner to confer a benefit on the lessee for not paying the installments where no mineral has been removed or consumed by him. Thus, to this extent, the judgment of this court in **Vipul Tyagi** when read in the light of the judgment of the Supreme Court in **D.K. Trivedi**, the provisions of the Act 1957, and of the Rules of the State Government framed under the powers delegated by the Act 1957, would not operate as a binding precedent.

39. In the present case, as noted above, the petitioner did not furnish the requisite documents along with his application for surrender dated 18.5.2023 nor did he pay the due instalment for that month. Therefore, the instalments due until that day were payable by the petitioner under the terms and conditions of the lease-deed. As noted above, the petitioner reported compliance of Rule 30 aforesaid by his letter dated 26.5.2023. However, till that date, he had deposited only the fifth instalment for the

month of April 2023 and not the sixth instalment for the month of May, 2023.

40. Payment of the sixth instalment which fell due on 01.05.2023 would have been, under the circumstances, one of the conditions precedent to render the application for surrender of mining lease valid. Had that deposit been made by the petitioner, and no other dues were outstanding, and other conditions of Rule 30 of the Rules, 2021 been met, the respondents would have been under an obligation to accept the surrender of the mining lease. As observed above, the noting of the District Magistrate on 2.6.2023 regarding the office note / report dated 29/31.5.2023, would have to be read in light of requirement of compliance of the provisions of Rule 30 aforesaid. In any view of the matter, the noting of the District Magistrate that “further proceeding also be taken” can only be construed to mean ensuring due compliance. The sixth instalment not having been paid, the seventh instalment too became due and payable on the due date, that is, on 01.06.2023.

41. For the reasons aforesaid, the petitioner cannot claim benefit of the report of the Mining Officer dated 15.6.2023 that the mining work in the leased area has been stopped from 1.5.2023 for not paying the due installments. That report is relevant only insofar as issuance of the certificate under clause (b) of Rule 30 is concerned. Therefore, the notice dated 30.6.2023 sent by the District Magistrate to the petitioner, asking him to deposit the instalment of May and June 2023 is relevant. Under the circumstances, the surrender application dated 18.5.2023 moved by the petitioner was not valid for want of compliance of the provisions of Rule 30 of the Rules, 2021 as well as for non-payment of due installments and other dues, and consequently, the District Magistrate was not bound to accept the application for surrender. In fact, he had no option but, in view of non-compliance by the petitioner of the notice dated 30.6.2023, to terminate his lease by means of the impugned order dated 4.8.2023 in terms of Rule 59. It has been held above that the amount of 25 percent of

the annual instalment of the year which may be adjusted against the security deposit that is required to be submitted on the intended day of surrender, is in the nature of compulsory exaction due to surrender of the mining lease prior to the expiry of the lease. The amount of the security deposit cannot be set-off against the instalments due and payable under the terms of the lease in cases where the surrender application is being positively considered. The first question is answered accordingly.

42. Clause (i) of Part-III of the lease, which has been quoted above, enables the State Government to forfeit the security amount in full or in part where the Rules, contracts or terms and conditions are breached, provided that proper opportunity is accorded to the lease-holder prior to the termination of the lease. The notice aforesaid dated 30.6.2023 is only in compliance of the said provision of the lease-deed that mandates grant of proper opportunity to the lease-holder. It has been observed above that the sixth and seventh instalments were due and payable under the terms of the lease which had not been paid. Under the circumstances, the forfeiture of the security deposit cannot be faulted. The second question is thus answered.

43. In view of the aforesaid, since the application for surrender has been held to be not valid, and since the termination of the lease by the impugned order has been upheld, and since the sixth and seventh instalments due under the terms of the lease have been held to be payable, the sixth and seventh instalments are liable to be recovered from the petitioner. The third question is, accordingly, answered.

44. This petition is therefore, **dismissed**.

**Order Date :- 31.7.2024**

A. V. Singh/SK