

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

SPECIAL APPEAL NO. 225 OF 2021

26TH JULY, 2021

BETWEEN:

M/s Jai Bhawani Stone CrusherAppellant.

And

State of Uttarakhand & othersRespondents.

Counsel for the Petitioner : Mr. Rakesh Thapliyal, learned Senior Counsel assisted by Mr. Xitij Kaushik.

Counsel for the respondents : Mr. K.N. Joshi, learned Deputy Advocate General for the State.

Mr. Sandeep Kothari, learned counsel for respondent no.2.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

Since the sufficient cause has been shown by the appellant for the delay of 150 days in preferring the present Special Appeal, the delay is hereby condoned by this Court. Delay Condonation Application is disposed of.

2. The appellant has challenged the legality of the order dated 07.01.2021, whereby the learned Single Judge while expressing his opinion with regard to relief Nos.1 to 4, has directed the appellant-petitioner to submit a

representation before the respondent No.1. The respondent No.1, in turn, has been directed to decide the representation within ten weeks from the date of receipt of the representation.

3. Mr. Rakesh Thapliyal, learned Senior Counsel appearing for the appellant, submits that the appellant has also made the following prayers before the learned Single Judge:-

"I. Issue a writ order or direction in the nature of certiorari quashing the Office Letter dated 29.10.2020 (Annexure 15) issued by respondent no. 2 to the extent whereby the Royalty is being demanded on the quantity of mineral as mentioned in the work order dated 16.01.2020 (Annexure No. 1) which includes the quantity which was not actually extracted by the petitioner and also includes the period of lockdown in which the mining activity was not done.

II. Issue a writ order or direction in the nature of certiorari quashing the office letter dated 13.10.2020 (Annexure 14) issued by the Government to the extent that the quantity of minerals to be extracted has not been reduced through the total mining area has been reduced by the respondents after taking into consideration the second demarcation report.

III. Issue a writ order or direction in the nature of mandamus directing to the respondents to raise the demand of the royalty by treating the Mining area to be 29.265 Hect in place of 51.020 Hect and on the actual quantity of Mineral extracted by the petitioner keeping in

view of section 15(3) of Mines & Minerals Act 1957 and also Rule 21 of UP Miner Mineral (Concession) Rules 1963.

IV. Issue a writ order or direction in the nature of mandamus directing the respondent no. 2 i.e. the Managing Director of GMVN to grant the additional time for extracting/picking the mineral pursuant to the work order dated 16.01.2020 (Annexure No. 1) and the Memorandum of Association dated 25.01.2020 (Annexure No. 2) for the period during which due to the lockdown all mining activity were banned in the State (i.e.: w.ef 22.03.2020 to 20.05.2020)."

4. One of the main grievances of the appellant was that the appellant was being asked to pay royalty on the quantity of mineral which the appellant had never lifted and transported from the mines.

5. The learned Single Judge has expressed his opinion with regard to the said relief. According to the learned Single Judge, since there was no stipulation in the Memorandum of Understanding (for short "the MoU") that the appellant-petitioner would be liable to pay royalty only on the actual quantity of River Bed Material (for short "RBM") extracted, therefore, the learned Single Judge was of the opinion that the demand made by the respondents by order dated 29.10.2020 was justified.

6. However, according to the learned Senior Counsel, such a conclusion is patently against Rule 21 of the U.P.

Minor Mineral (Concession) Rules, 1963 (for short "the Rules, 1963"), as adopted by the State of Uttarakhand called "the Uttarakhand Minor Minerals (Concession) Rules, 2001". For, the said act clearly stipulates that royalty is payable in respect of "*any mineral removed by him*". Therefore, the finding of the learned Single Judge is against the tenor of Rule 21 of the Rules, 1963.

7. He further informs this Court that in accordance with the impugned order, the appellant-petitioner had submitted a representation with regard to relief No.5. The same has been dismissed by the Competent Authority. However, the appellant-petitioner should be permitted to file his representation with regard to relief Nos.1 to 4 mentioned hereinabove.

8. Mr. Sandeep Kothari, the learned counsel for respondent No.2, concedes that, *indeed*, the representation filed by the appellant-petitioner has been dismissed. Moreover, according to him, the recovery order has also been passed by the Competent Authority.

9. Rule 21 of the Rules, 1963 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.*

(1-a) Notwithstanding anything to the contrary contained in Rule 3, royalty should be payable by concerned brick kiln owner or use

of ordinary clay on 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 kiln owners in respect of district categorized, on the basis of pay on at such rates as may be notified from time to time by it.

(2) 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 per cent of the Pit's mouth value.

(3) 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 reassess not more than once in a year the pit's mouth value if it considers that an enhancement is necessary.

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

10. A bare perusal of the provision clearly reveals that royalty would be payable only on the quantity "removed" by the miner. Therefore, even if the MoU is silent on the point with regard to the payment of royalty, naturally, the payment of royalty would have to be in consonance with Rule 21 of the Rules, 1963. Therefore, the opinion expressed by the learned Single Judge is legally unsustainable.

11. Thus, it will be in the interest of justice to permit the appellant-petitioner to file a representation vis-à-vis relief Nos.1 to 4 before the respondent No.1. The respondent No.1

is directed to decide the appellant's representation after giving an opportunity of personal hearing to the appellant. He is further directed to decide the representation within a period of three weeks from the date of submission of the representation.

12. Till the decision on the representation is taken, the respondent No.1 shall not take any coercive steps against the appellant-petitioner.

13. With these directions, the appeal is allowed.

(RAGHVENDRA SINGH CHAUHAN, C.J.)

(ALOK KUMAR VERMA, J.)

Dated: 26th July, 2021

NISHANT