

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 882 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH****and****HONOURABLE MR. JUSTICE R.M.CHHAYA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

**GAMBHIRSINH RATHOD**

Versus

**STATE OF GUJARAT**

Appearance:

MR AS VAKIL(962) for the Petitioner(s) No. 1

for the Respondent(s) No. 2,3,4

MS SHRUTI PATHAK, AGP (99) for the Respondent(s) No. 1

**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH**

and

**HONOURABLE MR. JUSTICE R.M.CHHAYA****Date : 04/05/2021****ORAL JUDGMENT****(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH)**

1           This petition under Article 226 of the Constitution of India has been filed praying for the following reliefs:

*“[A] declare illegal and invalid Rule 15(1) of the Gujarat Mineral Concession Rules, 2017 as being ultra vires section 15(1)(1-A) of the Mines and Minerals (Development and Regulation) Act, 1957 and being violative of Article 14 of the Constitution of India;*

*[B] declare illegal and set aside the Government Resolution dated 18.10.2017;*

*[C] declare, in the alternative to prayer (a) and (B) above that the proviso to Rule 15(1) of the Gujarat Minerals Concession Rules, 2017 and the Government Resolution dated 18.10.2017 (Annexure-1) is not applicable to the petitioner for the purpose of mining blacktrap;*

*[D] to quash and set aside the two impugned demand letters dated 21.07.2020 and 07.11.2020 (Annexure 2 and 3 respectively);*

*[E] to stay, pending the hearing and final disposal of the present Special Civil Application, the operation, implementation and*

*execution of the two impugned demand letters dated 21.07.2020 and 07.11.2020 and thereby direct that the petitioner's ATR / e-royalty account of blacktrap be opened;*

*[F] to provide for the costs of the present Special Civil Application;*

*[G] to pass such other and further orders as this Hon'ble Court deemed fit and proper in the facts and circumstances of the present case;"*

### **RELEVANT ACT & RULES**

2           The Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as MMDR Act) was enacted to provide for the development and regulation of mines and minerals under the control of the Union. Section 15 of the MMDR Act confers power on the State Government to make rules for regulating grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and for the other purposes connected therewith.

2.1          The State of Gujarat for the first time promulgated Gujarat Minor Minerals Rules, 1966 [for

short, 1966 Rules]. Under 1966 Rules there was a provision in Rule 22(xvii) that the lessee shall report the discovery of any material not specified in the list in the leased area and that the lessee would not win or dispose off such mineral without obtaining lease.

2.2 In 2010, the Government of Gujarat framed another set of Rules viz. Gujarat Mining Minerals Concession Rules, 2010 [for short, 2010 Rules]. Under Rule 74 of the 2010 Rules, the 1966 Rules were repealed to the extent provided therein. Rule 41 of the said 2010 Rules provided that lessee upon discovery of any mineral not specified in the list shall report to the competent authority and shall apply for lease under the 2010 Rules for grant of mining lease of the newly discovered mineral within a period of 3 months from the discovery.

2.3 Again in the year 2017, The State of Gujarat in exercise of powers under Section 15 of the MMDR Act framed the Gujarat Minor Mineral Concession Rules, 2017 [for short, 2017 Rules]. Rule 92 of the

2017 Rules provides for repeal and saving of the 2010 Rules. Further, Rule 56(5) of the 2017 Rules provide for payment of royalty for each such mineral in case more than one minor mineral is permitted to be mined in the same leasehold area. Rule 15(1) of the 2017 Rules provided for new discovery and levy of auction premium of newly discovered mineral in respect of quarry lease executed after 2017 Rule. However, the proviso to Rule 15(1) provided that where the quarry lease for a minor mineral was granted prior to commencement of 2017 Rules, the Government shall have power to specify the rate of payment of the new mineral discovered. Pursuant to the proviso to Rule 15(1), the Government issued a resolution dated 18.10.2017 laying down the rate of payment for the newly discovered mineral. According to the Government Resolution the lessee would have to pay in addition to the royalty and dead rent as per Schedule-I and Schedule-II of the 2017 Rules, an additional amount being 80% of the royalty.

#### **FACTS RELATING TO LEASE FOR MINING SAND**

2.4 The Collector, Geology and Mining

Department, Surendranagar issued a mining order dated 30.09.2009 in favour for the petitioner sanctioning lease for mining sand over a plot measuring 4.900 Hectares situate in Village Sandhiyala, Taluka Chuda, District Surendranagar for a period of 3 years. Pursuant to the aforesaid order mining lease deed was executed in favour of the petitioner on 03.11.2010. Before completion of 3 years, the petitioner applied for renewal of mining lease vide application dated 10.02.2013. The mining lease was renewed for a period of 3 years on 03.11.2013 which would be valid upto 02.11.2016. Again before completion of period of the second term of 3 years, the petitioner applied on 03.08.2015 for further renewal of the mining lease. During the pendency of this renewal application, the petitioner discovered a new mineral BLACKTRAP and accordingly made an application on 19.09.2015 for including BLACKTRAP in the existing lease deed. Filing of this application is admitted to the respondents.

2.5 Another mining order dated 10.03.2016 came to be issued renewing the mining lease dated

03.11.2013 for a period of 3 years upto 02.11.2019. However, this mining order made no reference to the application of the petitioner dated 19.09.2015 to include BLACKTRAP. The said application apparently remained pending with the authority. On 14.07.2016 renewal lease deed was executed in favour of the petitioner for a period of 3 years with respect to mining of sand. Subsequently the lease has been renewed upto 2022.

#### **FACTS RELATING TO MINING OF BLACKTRAP**

2.6 There is environmental clearance in favour of the petitioner for mining BLACKTRAP dated 02.07.2018 issued by the District Level Environment Impact Assessment Authority, Surendranagar. The Commissioner, Geology & Mining passed an order dated 09.07.2018 on the pending application of the petitioner dated 19.09.2015 (for inclusion of the new discovery of BLACKTRAP) and granted permission to include BLACKTRAP. Pursuant to the aforesaid order of the Commissioner dated 09.07.2018, the quarry lease deed was executed in favour of the petitioner for mining BLACKTRAP on 02.08.2018. Consequential order

was also passed by the Collector on 03.08.2018. From August, 2018 the petitioner started mining BLACKTRAP and paid the royalty @Rs.45 per MT which was duly accepted by the respondents. According to the petitioner from the period from August, 2018 upto June, 2020 the petitioner mined 5,76,000 MT and paid approximately an aggregate royalty amount of Rs.2.60 crores at the above rate.

2.7 The Geologist, Geology Assessment and Mining Department, Surendranagar issued a demand letter dated 21.07.2020 raising a demand of alleged differential amount of R.2,07,11,613/- @Rs.36 per MT being 80% of the rate of the royalty under the proviso to Rule 15(1) of the 2017 Rules applying the Government Resolution dated 18.10.2017. Subsequently, a second demand notice was issued by respondent No.4 – Geologist on 07.11.2020. This differential demand is on the newly discovered minor mineral viz. BLACKTRAP which was being mined by the petitioner pursuant to the quarry lease dated 02.08.2018 after the Commissioner has accorded sanction vide order dated 09.07.2018. Aggrieved by the aforesaid demand,



the present petition has been filed.

2.8 There is challenge to the validity of Rule 15(1) of the 2017 Rules being violative of Article 14 of the Constitution of India as also Section 15(1) (1A) of the MMDR Act as being ultra vires. Further prayer is to quash and set aside the Government Resolution dated 18.10.2017. In the alternative it has been prayed that the Government Resolution dated 18.10.2017 does not apply to the petitioner and as such the two impugned demand notices dated 21.07.2020 and 07.11.2020 be quashed.

2.9 Counter affidavit was called for which has been filed by the State duly sworn by the respondent No.4 – Geologist. The facts leading to the grant of mining lease both of sand and BLACKTRAP to the petitioner right from 2009 are not disputed. Further that the mining lease has been renewed from time to time with respect to sand and later for BLACKTRAP is also not disputed.

3 We have heard Mr. Apurva Vakil, learned

counsel for the petitioner and Ms. Shruti Pathak, learned Assistant Government Pleader for the State respondents. Mr. Vakil submits that he does not propose to file any rejoinder affidavit in response to the affidavit in reply filed by the State respondents. Further learned counsels for the parties have stated that they are ready to argue the matter on merits and with their consent we have heard the matter on merits finally.

4 At the outset, we may refer to the relevant provisions of the 2017 Rules. Under Rule 2(1)(v), the definition of Rules is given which means that in these rules unless the context otherwise required Rules would mean the Gujarat Minor Mineral Concession Rules, 2017. The same is reproduced hereunder:

**“Rule 2. Definitions**

[a] to [u] xxx xxx

[v] `rules' means the Gujarat Minor Mineral Concession Rules, 2017”.

4.1 Further as the main issue relates to

interpretation and applicability of Rule 15(1) and its proviso of 2017 Rules, the same is reproduced hereunder:

**“15. New Discovery-**

*[1] Where a quarry lease has been granted for a minor mineral under the rules made under section 15 and subsequent to registration of the quarry lease, a new minor mineral(s) is discovered, then the quarry lease holder may request the Government in writing to include the new mineral(s) in the quarry lease. In such case, the Government may grant a quarry lease subject to compliance by the quarry lease holder of the provisions of applicable laws with respect to mining for the new mineral, including submission of a mining plan and payment of the auction premium to the Government:*

*Provided that where the quarry lease for a minor mineral was granted prior to commencement of these rules, the Government shall have power to specify the rate of payment for the new minerals”.*

4.2 As per the admitted facts during the currency of the lease deed granted on 03.11.2013, the new discovery of the mineral BLACKTRAP was made

sometimes in August / September, 2015. Accordingly, the petitioner had moved an application on 19.09.2015 informing the authority about the recent discovery and requesting to include BLACKTRAP in the lease deed of the sand which was already existing. At the relevant time i.e. 2015 when the new discovery was made, the 2010 Rules were in existence. Rule 21 of the 2010 Rules relates to the rate of royalty as the same may be specified in column 2 of the Schedule-I at the rates specified against each minor mineral in column 3 thereof. Further under column 2 of the Schedule-II, the holder of a quarry lease shall pay yearly dead rent at the rates specified against each minor mineral in column 3 thereof. In both the schedules BLACKTRAP is included as a minor mineral. There is no mention of charging of any premium or any power to the State to decide the rate in respect of newly discovered mineral.

4.3 Further, under Rule 41 of the 2010 Rules, there is an obligation on the part of the lessee to report discovery of any other mineral to the competent authority. It provided that within 3 months

the lessee shall report discovery of any new mineral not specified in the lease and would not win or dispose off such mineral without obtaining a lease and for which he was required to apply under the Rules requesting for grant of mining of such mineral, otherwise the Government would grant such lease to any other person. Rules 21 and 41 of the 2010 Rules read as under:

**"Rule 21**

*Rate of Royalty – [1] The holder of a quarry lease or any other mineral concession granted under these rules shall, except quarry Parwana, pay royalty in respect of minor minerals, specified in column 2 of the SCHEDULE-I, removed or consumed by him or by his agent, manager, employee, contractor or sub lessee from the leased area at the rates respectively specified against them in column 3 of the said Schedule.*

*[2] The holder of a quarry lease granted under these rules shall pay yearly dead rent in respect of minor minerals specified in column 2 of SCHEDULE-II, at the rates respectively specified against each minor mineral in column 3 thereof.*

*[3] No dead rent shall be payable under sub-*

*rule (2), where the royalty paid during a year under sub-rule (1) in respect of a minor mineral is greater than the dead rent payable.*

*[4] Where the royalty paid during a year under sub-rule (1) in respect of a minor mineral is less than the dead rent payable under sub-rule (2), only the difference between the two amounts shall be payable as dead rent.*

*[5] The lease holders who have obtained lease in private land shall pay seventy five percent of the dead rent as specified in the SCHEDULE-II.*

*[6] If in the same lease hold area, more than one minor mineral is permitted to be mined, the lessee shall be liable to pay royalty or as the case may be, dead rent for every such minor mineral separately.*

**Rule 41**

*Lessee to report discovery of other mineral to Competent Authority – The lessee shall report the discovery of any mineral not specified in the lease in the leased area without delay to the Competent Authority and shall not win or dispose off such mineral without obtaining a lease. He shall apply for a lease under the rule regulating the grant of mining lease for that mineral within a period of three months from the*

*date of discovery, failing which it shall be open to the Government to grant a lease over such a mineral to any other person”.*

4.4 The application given by the petitioner on 19.09.2015 remained pending. According to the State sample of the new mineral discovered by the petitioner was sent for lab test, which took some time, but later on it was confirmed that it was BLACKTRAP. However, the authorities did not decide the application of the petitioner for grant of lease with respect to the discovered mineral i.e. BLACKTRAP for almost 3 years.

5 According to the learned counsel for the petitioner, his application ought to have been considered and decided immediately upon completion of the formalities regarding the lab report etc. under 2010 Rules. However, the matter was delayed at the instance of the respondents which caused loss not only to the petitioner, but also huge loss of revenue to the State.

6 In the meantime, the Rules, 2017 came into

force w.e.f. 24.05.2017. Rule 92 Chapter XVIII of the 2017 Rules deal with repeal and savings. Further rule 15(1) and its proviso deal with new discovery. Rule 15(1) is already reproduced in the order. Rule 92 reads as under:

**“92. Repeal and saving-**

*[1] On the commencement of these rules, the Gujarat Minor Mineral Concession Rules, 2010 shall cease to be in force with respect to all minor minerals covered under the Gujarat Minor Mineral Concession Rules, 2017 except as regards things, done or omitted to be done before such commencement.*

*[2] On the commencement of these rules, with respect to the minerals to which these rules apply, any reference to the Gujarat Minor Mineral Concession Rules, 2010 in the rules made under the Act or any other document shall be construed as referenced to the Gujarat Minor Mineral Concession Rules, 2017, to the extent it is not repugnant to the context thereof.”*

7           The moot question to be considered in this petition is whether Rule 15(1) and its proviso of 2017 Rules would be applicable for a new discovery



made prior to the enforcement of the said 2017 Rules. In the present case, the new discovery admittedly was made some time in August / September, 2015 and communicated to the competent authority with an application for grant of lease on 19.09.2015, whereas the 2017 Rules came into force on 24.05.2017 or thereafter. Rule 15 of 2017 Rules relates to **NEW DISCOVERY**. Sub-Rule (1) of Rule 15 refers to quarry lease granted for mining minor mineral under the Rules made under Section 15 of the MMRD Act and subsequent to registering of quarry lease a new minor mineral is discovered then the quarry lease holder may request the Government to include the said new mineral subject to other conditions being fulfilled. The word Rules in sub-rule (1) would relate to 2017 Rules only as per the definition given in Rule 2(1) (v) of the 2017 Rules. The proviso refers to quarry lease for mining minor mineral having been granted prior to commencement of these rules i.e. 2017 Rules and in such a case the Government would have power to specify the rate of payment for new mineral.

8           According to Ms. Shruti Pathak, learned

Assistant Government Pleader in the present case inasmuch as quarry lease was granted prior to the commencement of 2017 Rules, and therefore, notification issued on 18.10.2017 would apply to the petitioner and as such in addition to the royalty he would be liable to pay 80% of the royalty as premium and as such the impugned demands dated 21.07.2020 and 07.11.2020 are just and valid. This submission is made applying the proviso to Rule 15(1) of the 2017 Rules.

9 On the other hand, the submission of Mr. Vakil, learned counsel for the petitioner is that a new discovery under Rule 15 would only and only relate to a new discovery made after the enforcement of the said 2017 Rules. Rule 15(1) or its proviso of 2017 Rules cannot in any manner relate to the new discovery made and admittedly communicated to the competent authority prior to the commencement of the 2017 Rules. There is neither any reference nor any intention to the contrary. It is for this reason that Rule 92 clearly protects not only things done, but also omitted to be done under 2010 Rules before such

commencement of the 2017 Rules. Therefore, under 2010 Rules, upon discovery of the new mineral, the petitioner would be liable to pay royalty and which the petitioner has been regularly paying right from 2018, ever since the quarry lease for BLACKTRAP was granted on 02.08.2018. Once Rule 15 of the 2017 Rules has no application to the discovery, in the present case, as it was made prior to 2017 Rules coming into force, the demand of the differential amount of 80% premium would be totally without authority of law, illegal and unsustainable.

10 In order to test the submission of Ms. Shruti Pathak, learned Assistant Government Pleader, let us take an example where the lease was granted prior to the enforcement of 2017 Rules with respect to a new mineral discovered prior to 2017 and under the then existing provisions, the lease for new mineral was also granted. The lease for the new mineral would invite royalty at the same rate at which it was provided in the then existing provisions at the relevant point of time. Renewal of such existing lease for a new mineral discovered earlier,

after the enforcement of 2017 Rules whether it can be said that Rule 15(1) of the 2017 Rules would be attracted. It could not be attracted, again for the same reason that the discovery of the new mineral was prior to the enforcement of 2017 Rules. Only because of the omission to decide the application for grant of lease of the new mineral made on 19.09.2015, which remained pending for a period of almost 3 years, it can't be justified or legally sustained that Rule 15(1) and its proviso of the 2017 Rules would be applicable and invite additional amount of premium @ 80% of the royalty.

10.1           Once it is admitted that there is no new discovery of any mineral after enforcement of 2017 Rules any Government Resolution passed determining the rate of payment under Rule 15(1) and its proviso of the 2017 Rules, can never have any application to such new mineral. The Government Resolution dated 18.10.2017 can apply only and only to a new mineral discovered after the enforcement of the 2017 Rules. In the present case, it is not so, and therefore, the Government Resolution dated

18.10.2017 can have no application.

10.2 Rule 15(1) of the 2017 Rules clearly mentions that where a quarry lease has been granted for a minor mineral under the Rules made under Section 15 and subsequent to registration of the quarry lease a new mineral is discovered. Therefore, twin conditions are to be fulfilled for application of Rule 15(1), firstly the quarry lease should have been granted under the Rules i.e. 2017 Rules and secondly the new mineral is to be discovered subsequent to the registration of the quarry lease under the 2017 Rules. In the present case, both these conditions are not existing as the quarry lease was granted in November, 2013 and during the currency of that quarry lease, the new mineral has been discovered in August / September, 2015 and before enforcement of 2017 Rules.

10.3 Now coming to the proviso to Rule 15(1) of the 2017 Rules, which is supplement of the main provision and requires that where the quarry lease for a minor mineral was granted prior to commencement

of the 2017 Rules, the Government will have power to specify the rate for new mineral. That would be a case where a quarry lease was granted prior to enforcement of the 2017 Rules, and after the enforcement of the 2017 Rules during the currency of the quarry lease granted earlier, a new mineral had been discovered. To cover up such situation, the proviso was carved out and only in such cases, the Government would have the power to specify the rate of payment for the new mineral. Such fixation of rate by the Government would only cover a new mineral discovered after enforcement of the 2017 Rules in respect of a quarry lease granted prior to the commencement of the 2017 Rules. In the present case, the proviso also will have no application as although the quarry lease was granted prior to the enforcement of the 2017 Rules but the discovery of the new mineral had also been made prior to it and not subsequent to the enforcement of the 2017 Rules.

10.4 The Government Resolution dated 18.10.2017 will have no application in the present case and any reference made thereto would be an error

on the part of the respondents. The lease deed dated 02.08.2018 stipulates that the lessee would be liable to pay the royalty and other payments required to be made under the Act and Rules. So if the Act and Rules applicable to the petitioner have no application of Rule 15(1) or its proviso of the 2017 Rules, the Government Resolution dated 18.10.2017 cannot be applied and accordingly the demand notices would be bad in law.

11 Ms. Pathak, learned Assistant Government Pleader further urged that the Rules in existence on the date of execution of the lease or grant of the lease would be applicable, and therefore, Rule 15(1) and its proviso of the 2017 Rules would clearly apply to the petitioner, and therefore, the demand raised by the two demand notices are just and valid. In support of her submission, she has relied upon the judgment of the Supreme Court in the case of **Sulekhan Singh and Company vs. State of Uttar Pradesh and Others** reported in **(2016)4 SCC 663**.

12 We have perused the above judgment. It was

a case relating to consideration of renewal application of a mining lease. It was in the said context that the Supreme Court had held as follows in para 22 of the report:

*"22. The plea of the appellants that they had acquired a vested right prior to the G.O. dated 31.05.2012 cannot be accepted. The order dated 31.05.2012 was issued by the State of U.P. to bring about transparency and to safeguard the government revenue and was consistent with the decisions of this Court on Article 14 of the Constitution. The validity thereof was upheld by the High Court in **Nar Narain Mihra**. The said judgment applied to the mineral in question as specifically laid down by the High Court. The High Court upheld the stand of the State that pendency of application did not create any right in favour of the appellants. All applications pending as on 31.05.2012 stood rejected including the application of the appellant. Admittedly, the appellants did not make an application after the changed policy dated 22.10.2014 and thus the said G.O. had no application to the present case. We are not called upon to decide validity of order dated 22.10.2014 in cancelling order dated 31.05.2012. This question can be gone into as and when raised."*



12.1 In the present case, the issue is with regard to new discovery being made after the commencement of 2017 Rules with respect to quarry lease granted under 2017 Rules and even with regard to quarry lease granted prior to commencement of 2017 Rules. The discovery has to be subsequent to the 2017 Rules i.e. after 24.05.2017, which is not so in the present case. Thus, the judgment of the Supreme Court in the case of **Sulekhan Singh and Company (supra)** will have no application in the facts of the present case.

12.2 Further from the definition clause, Rules in the 2017 Rules and the use of the said words in Rule 15(1) will restrict the application of Rule 15 and its proviso to a discovery made after 24.05.2017. Otherwise, if the Government wanted even new discovery made prior to the enforcement of 2017 Rules to be considered and covered by Rule 15(1) of the 2017 Rules, then another proviso ought to have been added similar to the proviso already existing regarding quarry lease granted prior to the

commencement of the Rules. Provision could have been made with respect to new discovery made prior to the 2017 Rules where the lease is being granted after the coming of the 2017 Rules. But there is no such proviso and as such we cannot read anything which is not mentioned in the Rules. Statutory provisions are to be strictly adhered to under the settled principles of interpretation of statutes. We are therefore not impressed by the argument raised by Ms. Pathak. On the other hand we find that as the discovery has been made prior to the commencement of the 2017 Rules, Rule 15(1) and its proviso will have no application.

13           The proper function of the proviso is to qualify something enacted in the substantive clause, which but for the proviso would be within that clause unless the context, setting and purpose of the provision warrants a different construction.

13.1          It is a cardinal rule of interpretation, that a proviso to a particular provision of a statute only embraces the field that is covered by

the main provision to which it has been enacted as a proviso and to no other.

13.2 The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within or outside the purview of the enactment. (See *Kedarnath Jute Manufacturing v. Commercial Tax Officer*, AIR 1966 SC 12).

13.3 Justice G.P.Singh in "Principles of Statutory Interpretation" explains the use and purpose of 'proviso' as "..... The insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. ...." (See "Principles of Statutory Interpretation," Seventh Edition by Justice G. P. Singh, Chapter 3, Sub-paragraph (f) at pages 166-167).

13.4 Maxwell on "The Interpretation of Statutes," Twelfth Edition, at pages 190-191 states as under :-

*"..... If, however, the language of the proviso makes it plain that it was intended to have an operation more extensive than that of the provision which it immediately follows, it must be given such wider effect.*

*If a proviso cannot reasonably be construed otherwise than as contradicting the main enactment, then the proviso will prevail on the principle that "it speaks the last intention of the makers. ...."*

13.5 Rule 15 of 2017 Rules carries a heading of new discovery. Rule 15(1) of 2017 Rules confines its application to quarry leases registered under the said Rules as also new discovery made during the currency of quarry lease granted and registered under the said Rules.

13.6 Taking assistance of the settled canons of construction and particularly in view of the language employed in the proviso and in the context in which

it appears in the said Rule 15(1) of the 2017 Rules, we are of the opinion that the said proviso adds and enhances the scope of the main provision by only including the quarry leases executed prior to the enforcement of 2017 Rules. In no case does it carve out an exception of adding new discovery made prior to the enforcement of the said Rules i.e. 2017 Rules.

14 Ms. Pathak, learned Assistant Government Pleader further made a submission that in the order of Commissioner granting sanction for mining BLACKTRAP vide order dated 09.07.2018, the petitioner was informed about the payment of the premium as fixed by the Government Resolution dated 18.10.2017 which order of the Commissioner, the petitioner never challenged, and therefore, it does not lie in the mouth of the petitioner to challenge the demand notices. According to her, if the Department had committed an error in not raising demand for premium / rate fixed by the Government under the proviso to Rule 15(1) of the 2017 Rules vide Government Resolution dated 18.10.2017, the petitioner cannot derive any advantage thereof.

15 In reply to the above submission, Mr. Vakil, learned counsel for the petitioner submitted that the petitioner had no occasion to file the present petition earlier inasmuch as the demand which was being raised for mining the new mineral i.e. BLACKTRAP as per the order of the Commissioner dated 09.07.2018, the lease deed dated 02.08.2018 and the order of the Collector dated 03.08.2018 was only the royalty which the petitioner was duly paying without failure or default. It was only when the impugned demand was raised in July, 2020 and November, 2020 that the petitioner was compelled to approach this Court, as such it is incorrect to say that the petitioner has filed this petition with great delay.

15.1 It is also submitted by Mr. Vakil that the respondents were rightly charging the royalty on the mining of BLACKTRAP till July, 2020 when for the first time they raised the demand of the premium amount of additional 80% royalty as per the Government Resolution dated 18.10.2017. It is also submitted by Mr. Vakil that the Government Resolution

dated 18.10.2017 would be applicable to a new mineral discovered after the commencement of the 2017 Rules. In the present case, admittedly there being no new discovery of any mineral after the commencement of 2017 Rules, Rule 15(1) and its proviso of the 2017 Rules will have no application and consequently the Government Resolution dated 18.10.2017 will also not have any application.

15.2 Mr. Vakil has further drawn our attention to the order of the Commissioner dated 09.07.2018 and submitted that royalty or the payment for mining of BLACKTRAP would be as per the law. Merely because the reference is made to the Government Resolution dated 18.10.2017 in the Commissioner's order dated 09.07.2018, it cannot include payment of 80% of royalty as premium in addition to the royalty. He further submitted that the lease deed clearly mentions of payment of royalty and making other payments required to be made under the Rules as per the clause 2.3 of the lease deed. So, if under the Act and Rules, the Government Resolution dated 18.10.2017 issued under the proviso to Rule 15(1) of

the 2017 Rules is not applicable any demand raised under the said resolution would not be covered by the lease deed. Clause 2.3 of the lease deed is reproduced below:

*“2.3 Subject to the Lessee complying the provisions of the Act and the Rules, paying the royalties and making other payments required to be made under the Act and Rules and hereunder and observing and performing all the covenants and agreements herein contained and on the part of the Lessee to be observed and performed, the Lessee shall and may quietly hold and enjoy the rights and premises of the Lease Area for and during the term hereby granted without any unlawful interruption from or by the Government or any person rightfully claiming under it.”*

15.3 He further submitted that the order of the Commissioner dated 09.07.2018 although refers to the Government Resolution dated 18.10.2017, the Commissioner could not have imposed a condition, which would not be applicable otherwise under law and to that extent the same deserves to be quashed.

15.4 Mr. Vakil has also drawn our attention to



Rule 92 of the 2017 Rules and has submitted that the application dated 19.09.2015 was saved and had to be dealt with under the provisions of 2010 Rules. According to Mr. Vakil, from August, 2018 till July, 2020 the petitioner was rightly being charged the royalty under the 2010 Rules which was the correct position in law.

15.5 Mr. Vakil also drew our attention to Rule 56(5) of the 2017 Rules to submit that the Department was rightly charging separate royalty on both the minor minerals being excavated by the petitioner under the lease deed. According to him, the same was permitted very clearly under the aforesaid Rule.

16 We have perused the order of the Commissioner as also the lease deed. The lease deed is the contract signed between the parties and would be binding *inter se* parties. The lease deed clearly mentions that royalty and other payments payable would be as per provisions of the Act and Rules. We have already held that Rule 15(1) and its proviso of 2017 Rules has no application to the present case. As

such the demand raised cannot be justified under law.

16.1 Having held that the lease deed dated 02.08.2018 could not have been under Rule 15(1) or its proviso under the 2017 Rules, the question would be then under which provision the lease has been granted for mining BLACKTRAP. Under the 2017 Rules, other grants of lease for minor minerals has to be by way of public auction. The lease for new discovery was permitted under Rule 15(1) and its proviso of the 2017 Rules. Now that under 2017 Rules, insofar as the petitioner is concerned, BLACKTRAP is not a new discovery as it was discovered prior to the enforcement of 2017 Rules when the November, 2013 lease deed was in existence. According to the petitioner's counsel, the quarry lease for mining BLACKTRAP granted in favour of the petitioner would be under 2010 Rules and only royalty would be payable as per the provisions contained in 2010 Rules. Otherwise, if BLACKTRAP is not treated to be a new discovery in the case of the petitioner, then its lease has to be by way of public auction. The fact remains that the Government Resolution dated

18.10.2017 issued for determining the rate of payment under the proviso to Rule 15(1) of the 2017 Rules would have no application. As such, the demand notices dated 21.07.2020 and the subsequent notice dated 07.11.2020 cannot be sustained.

16.2 Rule 92 pertains to the Repeal and Saving of the previous Rules of 2010. As per Rule 92, on the commencement of these rules, the old Rules of 2010 shall cease to be in force with respect to all minor minerals covered under the Rules, 2017 except as regards **things, done or omitted to be done before such commencement.**

16.3 The moot question which begs to be answered is whether the act of the State in not deciding the application filed by the petitioner pursuant to the discovery of the new mineral, falls within **an act omitted to be done** before the commencement of the 2017 and thus, shall be covered by Rule 92. The literature on the subject has been expounded in great detail by the Hon'ble Apex Court. And it has time and

again been held that the previous statute would continue to remain in operation for acts committed or omitted to be committed. The observations of the Hon'ble Supreme Court in ***Rayala Corporation (P) Ltd v. Director of Enforcement, New Dethi*** {(1969) 2 SCC 412} may be noted in this regard:

*"...the saving provision laid down that the operation of that Act itself was not to be affected by the expiry as respects things previously done or omitted to be done. The Act could, therefore, be held to be in operation in respect of acts already committed, so that the conviction could be validly made even after the expiry of the Act in respect of an offence committed before the expiry."*

16.4 Under Rule 92 of the 2017 Rules, which deals with repeal and savings, what is protected and saved is the things done or omitted to be done before such commencement. The application dated 19.09.2015 was pending since much before the commencement of the 2017 Rules. The application was saved under Rule 92 of the 2017 Rules and to that extent 2010 Rules would be applicable. The application dated 19.09.2015 thus

ought to have been decided under the 2010 Rules. Apparently for the above reason, after the lease deed dated 02.08.2018 was executed for mining BLACKTRAP the royalty was being charged under the 2010 Rules only till 09.07.2020 when the impugned demand notice was raised. Merely because Rule 15(1) and its proviso of 2017 Rules was mentioned in the order of the Commissioner would not make the Rule applicable. Wrong mention of a provision cannot make the provision applicable. We therefore hold that the lease dated 02.08.2018 would be one under the 2010 Rules in particular Rule 41 thereof.

16.5 It is settled that no mining lease is to be given without holding public auction so that the maximum revenue is earned by the State. That is the provision under the Rules also for granting a general lease of minor mineral. It was only in the case of new discovery by the lessee during the subsistence of lease for a minor mineral that provision was made under Rule 41 of the 2010 Rules to grant lease to the same lessee for mining the newly discovered minor mineral as otherwise it would be

practically impossible to grant lease to two different persons for mining two different minor minerals from over the same land covered by the two lessees. It would not only create regular dispute, but also everyday law and order problem between the two lessees operating over the same area of land permitted mining of two different minor minerals. This is the primary reason for granting lease to the existing lessee without holding public auction at the rate prescribed under the Schedule for the newly discovered minor mineral.

16.6 There is one more reason why the lease deed should be saved. In case no lease deed had been executed in favour of the petitioner, then not only the revenue but also the petitioner would have suffered financial loss as the royalty of more than two and half crores already paid by the petitioner for two years from August 2018 to June 2020 would have been a loss to the revenue. Further, the profit earned by the petitioner on such mining activity of BLACKTRAP would have been a loss to the petitioner. In case the State had decided not to save the lease

deed, then the only option left would have been to hold public auction for the minor mineral BLACKTRAP which again would have been a completely impractical and almost an impossible task for the State to manage and run two lease deeds in favour of two different parties over the same plot of land. For the above reason also, the lease deed dated 02.08.2018 deserves to be saved under the 2010 Rules.

16.7 Ms. Shruti Pathak, learned Assistant Government Pleader submitted that the order of the Commissioner dated 09.07.2018 pursuant to which the lease dated 02.08.2018 was executed clearly contained a stipulation that 80% of the royalty would be payable in addition to the royalty as per Government Resolution dated 18.10.2017, the petitioner having accepted the same and the lease deed having been executed pursuant to the order of the Commissioner, cannot now turn around and object that Government Resolution dated 18.10.2017 does not apply. This argument of Ms. Pathak does not merit consideration in view of the discussion made above holding that Government Resolution dated 18.10.2017 does not apply

in the facts of the present case.

16.8 We may also refer to Rule 56(5) of the 2017 Rules which deals with rate of royalty and surface rent. Rule 56(5) of the 2017 Rules is reproduced below:

*"56. Rate of Royalty, dead rent and surface rent:-*

*[1] to [4] xxx xxx*

*[5] If in the same lease hold area, more than one minor mineral is permitted to be mined, the lessee shall be liable to pay royalty for each such mineral or as the case may be, the Government shall not charge separate dead rent for every such minor mineral:*

*Provided that the lessee shall be liable to pay: [a] the aggregate of royalty in respect of all minerals; or [b] the highest dead rent applicable with respect to the minerals included in the relevant quarry lease, whichever is higher."*

16.9 It provides that if in the same lease hold area, more than one minor mineral is permitted to be



mined, the lessee shall be liable to pay royalty for each such mineral or as the case may be, the Government shall not charge separate dead rent for every such minor mineral. It further provides that the lessee would be liable to pay aggregate of royalty in respect of all minerals and the highest dead rent applicable to the minerals included in the quarry lease. In the present case there is no question with regard to payment of dead rent. The only issue involved in this petition is with regard to payment of royalty. The petitioner is admittedly paying royalty on both the minor minerals.

16.10 The challenge to the vires of the provisions of Rule 15(1) and its proviso of 2017 Rules pale into insignificance once we have accepted the contention of the petitioner that the said provision do not apply in the facts of the present case.

17 For the reasons recorded above, the writ petition succeeds and accordingly it is allowed with the observations made in the preceding paragraphs.

Both the impugned demand notices dated 21.07.2020 and 07.11.2020 issued by the respondent No.4 are hereby quashed.

**(VIKRAM NATH, CJ)**

P. SUBRAHMANYAM/K.V.RADHAKRISHNAN

**(R.M.CHHAYA, J)**