

(1994) 11 OHC CK 0006
In the Orissa High Court
Case No : O.J.C. No. 3670 of 1991

Agrawal Graphite Industries and Others	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 17-11-1994

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 3
Orissa Minerals (Prevention of Theft, Smuggling and Other Unlawful Activities) Act,
1989 — Section 4

Citation : (2001) 1 OLR 498

Hon'ble Judges : K.L. Issrani, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : Govind das, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—The petitioners, who are the Mine owners of Graphite Mines in the State of Orissa have assailed the legality of the orders dated 12.9.1990 and 14.12.1990 annexed an Annexures 4 and 6, and have also challenged the constitutional validity of the Orissa Minerals (Prevention of Theft, Smuggling and Other Unlawful Activities) Act, 1988, (hereinafter referred to as "the Act"). But in course of hearing of the writ application Mr. Das appearing for the petitioners did not challenge the constitutional validity of the Act and contended that the provisions of Act on 4 of the Act will have no application to the petitioners as possession, storage, sell and dealing with the minerals by the petitioner are governed by the Mines and Minerals (Regulation and Development) Act, 1957, a law made by the Parliament on the subject. The correctness of the aforesaid submission depends upon an interpretation of Sections 3 and 4 of the Act which are quoted hereinbelow in extenso :

"3. Act not to supply to certain matters- Nothing contained in this not shall apply to -

- (i) possession, storage, selling, trading in or otherwise dealing with any mineral.
- (ii) transporting or removing of any mineral from one place to other, where such possession, storage, selling, trading, transporting or receiving of minerals is governed by any law made by the Parliament on the subject for the time being in force.

4. Restriction on possession, storage, etc. of minerals - No person shall-

- (i) possess, store, sell, trade in or otherwise deal with any minerals, except under and in accordance with the terms and conditions of a licence :or
- (ii) transport or remove any mineral from any place except under and in accordance with the terms and conditions of a permit.

The Mining Office, Bolangir Circle having called upon the petitioners to acquire licence under the Act by letter dated 12.9.1990 under Annexure- 4 and by letter dated 24.12.1990 under Annexure-6. the petitioners have approached this Court.

2. Though the writ application is of the year 1991 and there was valid service of notices on the opposite parties, but there was no appearance on behalf of the opposite parties nor any return has been filed. To prevent theft, smuggling and other unlawful activities in relation to minerals in the State, the Orissa Legislature have enacted the Orissa Minerals (Prevention of Theft, Smuggling and Other Unlawful Activities) Act, 1988, (Orissa Act 23 of 1989) which provides that no person shall possess, store, sell and trade or otherwise deal with any mineral, except under and in accordance with the terms and conditions of a licence. A bare look at Section 4 of the Act indicates that licence is required for dealing with the mineral in question and, therefore, the Mining Officer called upon the petitioner to obtain a licence for the purpose but the provisions of Section 3 of the said Act clearly stipulates that the Act itself will not apply where the possession, storage, selling or dealing with the mineral is governed by any law made by the Parliament on the subject for time being in force. According to Mr. Das in view of Section 3 of the Act, the petitioners' lease under the Mines and Minerals (Regulation and Development) Act will not be governed by the Orissa Act. Undoubtedly any provision of the Central Act made by the Parliament operates in the field, then the Orissa Act will have no application. In this view of the matter, we have scrutinised the provisions of the Central Act and the different clauses of the lease under the Central " Act and on examining the same, we are satisfied that the possession. storage, sell or dealing with the minerals are all covered by the provisions of the Central Act as well as the statutory lease executed thereunder and consequently the provisions of the Orissa Act will have no application. In this view of the matter, the impugned letters under Annexures 4 and 6 issued by the Mining Officer must be held to be without jurisdiction. In the premises, as aforesaid, the letter under Annexures 4 and 6 are quashed. The writ application is allowed.

K.L. Issrani, J.

3. I agree.