

(2023) 09 OHC CK 0107
In the Orissa High Court
Case No : Writ Petition (C) No. 32467 Of 2021

Harendra Kumar Pattnaik

APPELLANT

Vs

State Of Orissa And Other

RESPONDENT

Date of Decision : 14-09-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Code of Civil Procedure, 1908 — Section 47, Order 21 Rule 2
Odisha General Clauses Act, 1937 — Section 2(16), 26
Prevention of Corruption Act, 1988 — Section 7, 8, 13(1)(d), 13(2)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15(1), 56(1)
Odisha Minor Mineral Concession Rule, 2016 — Rule 8(2), 46(1)

Citation : (2023) 09 OHC CK 0107

Hon'ble Judges : Dr. B.R. Sarangi, J; M.S. Raman, J

Bench : Division Bench

Advocate : Milan Kanungo, S.R. Mohanty, C.K. Nayak, P.P. Mohanty

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J

1. The petitioner, who is a lessee of Nuapada Decorative Stone Quarry, has filed this writ petition seeking to quash the order dated 13.09.2021 under Annexure-7, by which the review petition filed under Rule 46 (1) of the Odisha Minor Mineral Concession Rules, 2016, by the petitioner, against the proceeding of the State Government dated 10.11.2020 rejecting the Application for renewal of mining lease ("RML application", for short) for Decorative Stone over an area of 8.575 Ha. in village Nuapada of Kalahandi district, has been rejected.

2. The factual matrix of the case, in brief, is that the petitioner was granted with a lease for a period of 10 (ten) years with certain terms and conditions, pursuant to which a lease deed was executed on 16.08.2002. In exercise of the powers conferred by Sub-section (1) of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, the State Government, for regulating

the grant of mineral concessions in respect of minerals and for the purposes connected therewith, framed "The Odisha Minor Mineral Concession Rules, 2004" (hereinafter referred to as "OMCC Rules, 2004"). Chapter-III of the said Rules deals with grant of mining lease for decorative stone. Rule-15 of the said Rules, which deals with application for mining lease and its renewal, reads as under;-

"15. Application for mining lease and its renewal. - (1) An application for a mining lease or its renewal shall be made to the State Government in FORM-F in triplicate through Deputy Director/Mining Officer having jurisdiction and shall be accompanied by:-

- (i) The Treasury Challan showing deposit of ten thousand rupees (non-refundable) towards application fee;
- (ii) Plan, boundary description and land schedule, which would facilitate easy identification of the area applied for;
- (iii) An affidavit stating the details of area(s) held by the applicant or with any other person(s) having joint interest by way of mining lease within the State;
- (iv) Attested copies of up-to-date Income-tax and Sales tax clearance certificates or non-assessment certificates, as the case may be;
- (v) A valid clearance certificate of payment of mining dues payable under the Act or the Rules made there under issued by the Director;
- (vi) A solvency certificate and a list of immovable from the concerned Revenue Authority;
- (vii) A recent certificate from his banker stating the extent of his credit worthiness;
- (viii) Where the land applied for belongs to private persons, consent of all such persons for grant of lease;
- (ix) Attested copies of documents to establish that he has already set up or has definite plan for setting up an industry in the State for processing decorative stone;
- (x) Attested copies of documents to establish that he is the Rayat of the land applied for;
- (xi) A copy of the prospecting report if the area was prospected earlier; and
- (xii) Any other information which the applicant intends to furnish such as technical knowledge and experience in prospecting and quarrying of decorative stones of the applicant, machinery under his possession, nature and quality of technical staff employed or to be employed, investment proposed to be made in the mines and in the industry based on the decorative stones.

(2) Every application received by the Deputy Director/Mining Officer shall be entered in the register of application for mining lease in FORM-G.

(3) (a) Where an application for grant or renewal of mining lease is-

(i) delivered personally, its receipt shall be acknowledged forthwith; or

(ii) received by registered post, it shall be acknowledged on the same day;

(b) In any other case the receipt of such application shall be acknowledged within three days of the receipt and the receipt of every such application shall be acknowledged in FORM-C."

2.1. Before expiry of ten years lease period, the petitioner filed an application, on 16.08.2011, for renewal of mining lease, along with definite plan for setting up of industry under Rule 15(1)(ix) of the OMMC Rules, 2004, with prescribed Form-F, as is evident from Annexure-1 to the writ petition. In the list of documents forwarded along the said application at sl.no.14 it was clearly mentioned "Xerox copy of the acknowledgment for setting of Cutting & Polishing Unit". The lease period expired, on completion of 10 years, on 15.08.2012. The approval of mining plan, in respect of Nuapada Decorative Stone Quarry, was granted on 16.02.2015 vide Annexure-2. Thereafter, environmental clearance in respect of the said stone quarry was granted on 17.08.2015 vide Annexure-3. Taking into consideration the above compliance, the Mining Officer, by letter dated 25.04.2016 in Annexure-1, furnished the report of Senior Inspector of Mines regarding status of the quarry, availability of waste boulder and accordingly recommended the RML Application of the petitioner. When the matter was pending, on 19.08.2016, the petitioner set up an industry. Therefore, as per Rule 8(2) of the Odisha Minor Mineral Concession Rules, 2016 (be referred to as "OMMC Rules, 2016"), which came into force w.e.f. 14.12.2016 by superseding the OMMC Rules, 2004, the lease period should have been extended for 30 years.

2.2. For better appreciation, Rule 8(2) of the OMMC Rules, 2016 is extracted hereunder:-

"Rule 8(2) On and from the commencement of these rules, all mining leases for specified minor minerals shall be granted for a period of thirty years."

On perusal of the aforesaid rule, it is made clear that on and from the date of commencement of the said OMMC Rules, 2016 all mining leases for specified minor minerals shall be granted for a period of thirty years.

2.3. The provision of Rule 8A, as inserted by virtue of the Odisha Minor Mineral Concession (Amendment) Rules, 2018 vide Odisha Gazette, Extraordinary No. 774, dated 21.05.2018, resorting to which the application of the petitioner for renewal has been rejected, is quoted hereinbelow:-

"8A. Special provisions for lessees of decorative stones.—

Notwithstanding anything contained in these rules, any holder of the mining

lease for decorative stone granted before the date of commencement of Odisha Minor Mineral Concession Rules, 2016 shall be entitled for extension of lease period up to a period ending on 31st March, 2020 with effect from the date of expiry of the period of lease or of renewal last made or till completion of renewal period, if any, or a period of thirty years from the date of grant of such mining lease with the same terms and conditions, whichever is later, subject to the condition that the terms and conditions of the lease have been complied with and the lessee has set up an industry in the State based on the decorative stone extracted from the said lease hold area:

Provided that the provisions of this rule shall not apply to a mining lease for which renewal has been refused or which has been determined or cancelled.”

2.4. A bare look at the aforementioned provision would indicate that it was specifically introduced for the lessees of decorative stone quarries, with which the petitioner is concerned. By the time the amendment was made to the OMMC Rules, 2016 and Rule 8A was introduced, the petitioner had already set up an industry. Subsequently, on 11.09.2020, a show cause notice was issued, to which the petitioner filed reply. The opposite party-authority considering the reply to the show cause notice rejected vide order dated 13.09.2021 the review petition filed under Rule 46(1) of the OMMC Rules, 2016 by the petitioner against the proceeding of the State Government dated 10.11.2020 rejecting the RML Application for Decorative Stone. Hence, this writ petition.

3. Mr. Milan Kanungo, learned Senior Counsel appearing along with Mr. S.R. Mohanty, learned counsel for the petitioner contended that before expiry of the lease period of 10 years, which was granted pursuant to lease deed dated 16.08.2002, though the petitioner filed RML Application on 16.08.2011 along with all relevant documents including document with regard to setting up industry, the same was not considered. It is contended that the RML Application of the petitioner should have been disposed of by the authority on the basis of the old Rules, i.e., OMMC Rules, 2004. But keeping the matter pending for years together, when the OMMC Rules, 2004 got superseded by the OMMC Rules, 2016, even though the petitioner is protected under the OMMC Rules, 2016, more particularly by introduction of Rule 8A by virtue of the OMMC (Amendment) Rules, 2018, having set up an industry on 19.08.2016 before Rule 8A came into force on 21.05.2018, the authority should have applied its mind in proper perspective and allowed the RML Application, instead of rejecting the same vide Order dated 10.11.2020 which got confirmed in Order dated 13.09.2021 passed in the review petition. It is further contended that had the RML Application been considered under the old OMMC Rules, 2004, where Rule 15 required that an application for a mining lease or its renewal shall be made to the State Government in Form-F in triplicate through Deputy Director/Mining Officer having jurisdiction and shall be accompanied by the documents mentioned in sub-clause (i) to (xii), the same could have been allowed in favour of the petitioner. As because, clause (ix) of sub-rule (1) of Rule 15 of the OMMC Rules, 2004 required

that attested copies of documents to establish that he has already set up or has definite plan for setting up an industry in the State for processing decorative stone. From sl.no.14 of the letter under Annexure-1, it is evident that the petitioner had a definite plan to set up an industry in the State for processing decorative stone. Therefore, it is contended that since the petitioner had satisfied the requirement as per the OMMC Rules, 2004, the authority should not have kept pending the application, instead of disposing of the same well within the time stipulated.

3.1. It is further contended that even if amended OMMC Rules, 2016 came into force during pendency of his renewal application, which does not restrict the authority to grant renewal, rather it supports the case of the petitioner for renewal of lease. As such, by the time the renewal application of the petitioner was considered, he had already set up the industry on 19.08.2016. More so, by the time of incorporation of Rule 8A, which has been inserted by way of notification dated 21.05.2018 (the OMMC Rules, 2018), the petitioner had already possessed an industry. Thereby, his RML Application should not have been rejected mechanically without any application of mind and the law applicable to the petitioner. It is further contended that the authority should have considered the provisions contained under the OMMC Rules, 2004 vis-à-vis the OMMC Rules, 2016 and given effect to the same. Thereby, the order rejecting the petition filed by the petitioner under Rule 46(1) of the OMMC Rules, 2016 cannot be sustained in the eye of law and the same should be quashed. To substantiate his contention, he has relied upon the judgments of the apex Court in the cases of Jagdish Singh v. Governor of Delhi, (1997) 4 SCC 435 : AIR 1997 SC 2239 and Kalyan Dombivalli Municipal Corporation v. Sanjay Gajanan Gharat, AIR 2022 SC 1618.

4. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties contended that the Government of Odisha in the Department of Steel and Mines granted a quarry lease over an area of 8.575 ha. in favour of the petitioner for decorative stone, vide Government Proceeding No.6613/SM dated 11.07.2002, in village Nuapada in the district of Kalahandi for a period of ten years. The lease was executed on 16.08.2002 w.e.f. 16.08.2002 and remained valid till 15.08.2012. The petitioner-lessee submitted RML Application on 16.08.2011 under Rule 8(7) of the OMMC Rules, 2004. When the said application was pending, the OMMC Rules, 2016 came into force and Rule 8A was inserted by way of the OMMC (Amendment) Rules, 2018 with effect from 21.05.2018 with a special provision for lessees of decorative stones providing for extension of lease period for 30 years subject to certain stipulations which inter alia includes setting up of an industry in the State based on decorative stone extracted from the leasehold area. The eligibility for extension of lease period under Rule 8A of the OMMC Rules, 2016 was examined by Internal Verification Committee (IVC) in its meeting held on 02.03.2019 wherein the Committee observed that the lessee has set up industry after filing of RML Application. Therefore, the Committee recommended the State Government to refer the

matter to the Law Department seeking opinion on the eligibility of the lessee.

4.1. The Law Department clarified as follows:

"Rule 8A of OMMC Rules, 2016 is clear and unambiguous so far as the terms and conditions attached to the lease granted commencement of 2016 Rules (i.e. 2004 Rules) shall have to be complied with and it specifically provides that the lessee should have set up an industry in the State based on decorative stone extracted from the said lease. Since no industry was set up during the period of lease, it becomes ineligible for renewal/extension. Similarly the selection of a definite plan made by a person for setting up an industry cannot substitute the statutory requirement of the term 'should have set up'.

So, in both the cases, as per the queries, the lessees are not eligible for renewal/extension."

4.2. On receipt of the clarification from the Law Department, the RML Application pending before the opposite party-authority was rejected. Furthermore, said rejection order got confirmed while disposing of the review petition filed by the petitioner under Rule 46 of the OMMC Rules, 2016. Thereby, no illegality or irregularity has been committed by the authority in rejecting the RML Application of the petitioner, which does not warrant interference of this Court at this stage. Consequentially, dismissal of the writ petition is sought for.

5. This Court heard Mr. Milan Kanungo, learned Senior Counsel appearing along with Mr. S.R. Mohanty, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties by hybrid mode, and perused the records. Since pleadings have been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. On the basis of the undisputed facts, as delineated above, and the rival contentions, as raised by the learned counsel for the parties, the only question revolves around for consideration is whether opposite party no.1 is justified in rejecting the RML Application of the petitioner filed on 16.08.2011 for Decorative Stone over an area of 8.575 Ha. in village Nuapada of Kalahandi district granted in favour of the petitioner under Rule 46(1) of the OMMC Rules, 2016.

7. It is admitted by both the parties that the Government of Odisha in the Department of Steel & Mines granted a quarry lease over an area of 8.575 ha. in favour of the petitioner for Decorative Stone, vide Government Proceeding No. 6613/SM, dated 11.07.2002, in village Nuapada of Kalahandi district for a period of ten years. Accordingly, the lease deed was executed on 16.08.2002 giving effect from 16.08.2002 which was due to expire on 15.08.2012. Before expiry of such 10 years period, on 16.08.2011, the petitioner filed an application for renewal of mining lease along with definite plan for setting up industry, as required to be provided under Rule 15(1)(ix) of the OMMC Rules, 2004, as is evident from the documents annexed to Annexure-1 to the writ petition. When

such renewal application was pending for consideration, the lease period expired on 15.08.2012. Thereafter, in exercise of the powers conferred by sub-section (1) of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 and in supersession of the provisions contained in the OMMC Rules, 2004, except as respects things done or omitted to be done before such supersession, the State Government made "The Odisha Minor Mineral Concession Rules, 2016". The same was published in the Official Gazette on 15.12.2016. Therefore, the pending RML Application, which had been filed under the old Rules, i.e., the OMMC Rules, 2004, was protected under the new Rules, i.e. OMMC Rules, 2016. Even though the application had been filed on 16.08.2011, i.e., before expiry of lease period, till the new Rules, i.e. OMMC Rules, 2016 came into force on 15.12.2016, no action was taken with regard to grant of renewal. Though the application was submitted along with the definite plan, as required under Rule 15(1)(ix) of the OMMC Rules, 2004, in the meantime, the petitioner had established its industry on 19.08.2016. Therefore, the renewal was to be granted under Rule 8(2) of the OMMC Rules, 2016 extending the lease period for 30 years, as the earlier OMMC Rules, 2004 had already been superseded by virtue of commencement of the OMMC Rules, 2016. In spite of the same, the RML Application of the petitioner was not considered. But, in the meantime, on 21.05.2018, Rule 8A was inserted to the OMMC Rules, 2016 by way of amendment, i.e., the OMMC (Amendment) Rules, 2018, providing special provisions for lessees of decorative stones, where a specific provision was incorporated that the lessee has to set up an industry in the State based on the decorative stone extracted from the said leasehold area. Thereby, there is no iota of doubt that by the time Rule 8A of the OMMC Rule, 2016 came into force, i.e., on 21.05.2018, the petitioner had already set up its industry on partnership basis on 19.08.2016. As such, there is no restriction imposed under the Rules, with regard to setting up of an industry on partnership basis. But a notice was issued to the petitioner on 11.09.2020 asking him to show cause as to why his application for renewal of mining lease shall not be rejected. In reply to the said show cause notice, the petitioner stated on 08.10.2020 that he had taken over an industry on 19.08.2016 on partnership basis, which is after expiry of the lease period, i.e., on 15.08.2012, for which the provisions of Rule 8A of the OMMC Rules, 2016 would not be attracted. There is no dispute before this Court at this stage that when the petitioner filed its application on 16.08.2011, he had produced the documents with a definite plan for setting up of an industry, as provided under Rule 15(1)(ix) of the OMMC Rules, 2004. Had the authority taken the decision on the basis of the application filed by the petitioner well within the time specified, then the matter would have been decided then and there only. Moreover, when the renewal of mining lease application was filed under the old Rules, i.e., OMMC Rules, 2004, it should have been decided on the basis of the said old Rules applicable to the petitioner.

8. Even though the OMMC Rules, 2004 were superseded by virtue of the OMMC Rules, 2016, which came into force with effect from 15.12.2016, by that time

also the petitioner had already set up its industry, though on partnership basis. Thereby, the renewal of mining lease application submitted by the petitioner cannot be treated to have suffered from any deficiency, rather, the reliance placed on the opinion of Law Department, basing upon which the rejection order has been passed, has no justification.

8.1. A bare perusal of the opinion as extracted herein above would go to show that the Law Department proceeded with a wrong footing and consequentially the order, which has been passed on the basis of such opinion, cannot be sustained in the eye of law. More so, much reliance has been placed on the report of the Internal Verification Committee, which conducted a meeting on 02.03.2019 and found that the case of the petitioner for extension of lease period is not eligible for consideration, in view of Rule 8A of the OMMC Rules, 2016 due to non-compliance of the condition for setting up industry in the State during the lease period. The petitioner has not been given opportunity to place his fact before the said Committee, which has taken a view adverse to the petitioner. Even though, the show cause notice was issued to the petitioner and he filed his reply, the same has not been considered in its proper perspective. Merely because the Law Department opined something, that cannot be utilized against the petitioner while considering the RML Application. This clearly speaks that the authority, who has passed the order, has not applied its mind, rather mechanically accepted the opinion given by the Law Department and passed the order impugned, which cannot be sustained in the eye of law. Both the OMMC Rules, 2004 and the OMMC Rules, 2016 have full application to the case of the petitioner for consideration of his application filed for renewal. If the petitioner had filed his application for renewal on 16.08.2011 under the OMMC Rules, 2004, whereunder Rule 15(1)(ix) requires that the petitioner has to produce the plan for setting up the industry and, in fact, the petitioner had submitted the same and on the basis of the required documents so furnished, the Mining Officer had made a positive recommendation for grant of renewal of mining lease. Keeping the matter pending for years together cannot disentitle the petitioner to get such renewal because of commencement of the OMMC Rules, 2016. On scrutiny of the said Rules, 2016 it is also made clear that the provisions contained under Rule 8 and Rule 8A, which has been inserted on 21.05.2018, cannot disentitle the petitioner to get renewal of his lease. Thereby, the provisions contained under the OMMC Rules, 2004 vis-à-vis the OMMC Rules, 2016 are to be harmoniously construed so as to reach a conclusion to consider the renewal application filed by the petitioner.

8.2. In Kalyan Dombivali Municipal Corporation (supra), the respondent no.1 was initially appointed as an Assistant Municipal Commissioner of the appellant-Corporation and later also appointed as Assistant Municipal Commissioner of the Corporation. An FIR came to be registered against the respondent no.1 for the offences punishable under Sections 7, 8, 13(1)(d) along with Section 13(2) of the Prevention of Corruption Act, 1988. The Commissioner of the appellant-Corporation passed an order suspending respondent no.1 from service.

Subsequently, sanction was also accorded to hold departmental inquiry against respondent no.1, which was objected by the respondent no.1 for want of jurisdiction. Respondent no.1 did not join the inquiry and filed writ petition, which was allowed by the High Court of Judicature at Bombay. Challenging the said order, the Municipal Corporation preferred appeal and the apex Court held that the legislature could not have intended a situation, wherein though the post of AMC is created by the State Government and a suitable person is appointed by it and though a person appointed on the said post becomes an employee of the Corporation, there would be no provision in the statute to initiate departmental proceedings against him. If such an interpretation is accepted, it would lead to absurdity and create a vacuum. In so far as the contention raised on behalf of respondent no.1, that the term "competent authority" as used in sub-section (1) of Section 56 of the MMC Act will have to be read as a "competent authority" in respect of appointments to be made for the posts in Chapter IV, is concerned, cannot be accepted. Such a restrictive meaning would render the legislation otiose. Thereby, the apex Court held that the High Court has totally erred in setting aside the suspension and the departmental proceedings initiated against respondent no.1. The effect of the impugned judgment is that the respondent no. 1, who has been, prima facie, found to be involved in a serious misconduct, has been left scot free without requiring to face any departmental proceedings and directed to be reinstated in services.

8.3. In the said case, the apex Court took into consideration the judgment rendered in the cases of Philips India Ltd. v. Labour Court, Madras and Others, (1985) 3 SCC 103 and Sultana Begum v. Prem Chand Jain, (1997) 1 SCC 373, where, considering the question regarding the conflict between Section 47 of the Code of Civil Procedure, 1908 and Order XXI Rule 2 thereof, the apex Court held that applying the rule of harmonious construction, the so called conflict between the said two provisions had been dispelled. Observing so, the apex Court reiterated the following well settled principles of interpretation of statutes:

"15. On a conspectus of the case law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its 3 (1997) 1 SCC 373 efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".

(4) The courts have also to keep in mind that an interpretation which reduces

one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose."

8.4. In Jagdish Singh v. Lt. Governor, Delhi and Others, while considering the conflict between Rules 25(2) and 28 of the Delhi Cooperative Societies Rules, 1973, the apex Court held as follows:

"7. ... It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made there under should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several cases that a construction that reduces one of the provisions to a "dead letter" is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction....."

9. Stress has been laid on the documents enclosed to Additional Affidavit dated 05.07.2022 filed by the petitioner which demonstrates that the application for renewal of mining lease in Form-F contained all material particulars supported by necessary document. Perusal of such affidavit indicates that the petitioner furnished details to the District Industries Centre by way of "Entrepreneurs Memorandum for Setting up Micro, Small or Medium Enterprise". This document shows activity of manufacture in "cutting polishing of granite slabs" with expected schedule of commencement of production activity as "30.06.2011". Therefore, it is contended by the learned Senior Counsel for the petitioner that since Rule 15(1)(ix) of the OMMC Rules, 2004 stipulates inter alia "definite plan for setting up an industry in the State for processing decorative stone", and that application for renewal of mining lease being made prior to expiry of the lease period, the Government should not and could not have refused such renewal.

9.1. Said fact is not disputed by the Additional Government Advocate appearing for the opposite parties. Nonetheless, it is the contention of the opposite parties that the petitioner was required to "set up an industry in the State based on the decorative stone extracted" from the leasehold area in terms of Rule-8A as inserted by way of amendment to the OMMC Rules, 2016, i.e., the OMMC (Amendment) Rules, 2018.

9.2. This Court finds that the State Government in exercise of powers conferred by Section 15(1) of the Mines and Minerals (Development and Regulation) Act, 1957 made the OMMC (Amendment) Rules, 2018. Rule 1(2) of the OMMC

(Amendment) Rules, 2018 specified that said rules "shall come into force on the date of their publication in the Odisha Gazette". The OMMC (Amendment) Rules, 2018 was published in the Extraordinary issue of Odisha Gazette No.774, dated 21.05.2018 vide SRO No.178/2018. Therefore, this Court is of the firm opinion that the OMMC (Amendment) Rules, 2018 came into force with effect from 21.05.2018.

9.3. To come to such conclusion, this Court finds support from *Bansapani Iron Ltd. v. State of Odisha*, 2016 (I) ILR-CUT 50. In the said reported case it has been observed as follows:

"3. After the amendment made by Gazette Notification dated 28th May, 2008 to the Orissa Value Added Tax (Amendment) Act, 2007 under (Orissa Act 3 of 2008), it has been stipulated at Sub-Section (2) of Section 1 of the Amendment Act that, the Act would come into force "on such date" as the Government may, by notification, shall appoint. The Government published in the Orissa Gazette dated 28th May, 2008 declaring to the effect that, it appointed on the 1st day of June, 2008 as the date of which, the Act shall come into force.

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8. On a plain reading of the amending Act as well as the further Notification fixing of the appointed date to bring the said amendment into effect, it would clear therefrom that there is no scope for entering into the issue raised by the petitioner as to whether it is retrospective or not, since legislative intent is clear, categoric and unambiguous."

9.4. Thus, the OMMC (Amendment) Rules, 2018 being prospective in nature, the RML Application which was pending consideration much prior to introduction of Rule-8A, the Government should have decided the merit of the RML Application on the basis of the OMMC Rules, 2004.

9.5. Considering in that perspective, the petitioner has rightly contended that Rule-15(1)(ix) of the OMMC Rules, 2004 requires "Attested copies of documents to establish that he ... has definite plan for setting up an industry in the State for processing decorative stone" and the petitioner had furnished such document along with Application for Renewal of Mining Lease in Form-F. This fact is apparent from serial no.14 of letter no.395, dated 25.04.2016 issued by the opposite party no.3 addressed to the opposite party no.2 for consideration. It is noteworthy that said recommendation of the Mining Officer for consideration of case of the petitioner was in tune with the OMMC Rules, 2004 and by that date the OMMC Rules, 2016, being published in the Extraordinary issue no.2280, dated 15.12.2016, came into force with effect from 15.12.2016, thereby on the date of recommendation, said Rules, 2016 did not see the light of the day.

9.6. To fortify that the OMMC (Amendment) Rules, 2018 have prospective effect from the date of publication in the Odisha Gazette, reference can be placed on *Union of India v. G.S. Chatha Rice Mills*, (2020) 14 SCR 571. The Supreme Court

of India held as follows:

"36. It may be noticed that a Bench of three learned Judges came to, however, overrule the Judgment in Collector of Central Excise Vrs. New Tobacco Co., (1998) 109 STC 376 (SC) = (1998) 8 SCC 250 in the decision reported in Union of India and others Vrs. Ganesh Das Bhojraj, (2000) 9 SCC 461. Therein a Notification was issued under Section 25 of the Customs Act on 04.02.1987, amending an earlier Notification of the year 1976 by which exemption had been granted and limiting the exemption to the duty in excess of 25 per cent. The Bill of Entry was filed on 05.02.1987. This Court took the view that under Section 25 of the Customs Act, since the Notification dated 04.02.1987 has been published in the Gazette, it had come into force and constituted the rates prevalent on 05.02.1987, when the respondent had filed the Bill of Entry. In fact, the Court noticed the subsequent development in Section 25 of the Customs Act by which sub-Sections (4) and (5) were added to Section 25, ***

The view in New Tobacco Company (supra) was held to be not good law.

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38. In other words, as far as the Notification issued under Section 8A of the Tariff Act is concerned, the Notification would come into force on the date on which it is published in the Gazette. The question, however, which arises in this case is, as far as this Court is concerned, *res integra*, viz., whether having regard to the time at which it was published, whether Notification would come into force on 16.02.2019, by including the whole of the day or will it operate from the time of its publication, or whether the Notification is to be enforced only after excluding 16.02.2019.

39. The question would pointedly arise whether it was to have effect for the whole of the day, viz., 16.02.2019, which means, since the day 16.02.2019 was born, immediately after the midnight on 15.02.2019, does a day mean the first moment after the midnight? If that were the effect, what would be its impact on the Bills of Entry which were electronically presented under Section 46(1) of the Customs Act read with Rule 4(2) of the 2018 Regulations, which have already been referred to above. It is here that it becomes necessary to notice the provisions of Section 9 of the General Clauses Act, 1897.

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41. In this case, there is no dispute that Notification under Section 8A was published in the Gazette. It was published at 20:46:58 hrs. on 16.02.2019. It is to be noticed that we are not dealing with a case, where a period of time, limited by two different termini, is present. A Statute may fix a *terminus aquo*. The Statute may be made to last without indicating when the period is to end, which is the *terminus ad quem*.

42. Section 9 of the General Clauses Act enunciates the principle, that for, excluding the first in a series of days or any other period of time, it suffices to

use the word "from". It also provides, likewise, for the devise of using the word "to", for the purpose of including the last in the series of days or other period of time. It is clear from Section 9 that it contemplates a period, or a series of days which is marked by both terminus aquo and terminus ad quem. Section 9 is expressly intended to apply to a Central Act or Regulation."

9.7. Applying the ratio of Union of India and others Vrs. Ganesh Das Bhojraj, (2000) 9 SCC 461, this Court observed the following in Order dated 18.05.2022 of this Court passed in United Spirits Ltd. Vrs. State of Odisha, STREV No.499 of 2008:

"1. This revision petition was admitted on 17th July, 2009 and the following question was framed for consideration:

"Whether publication of the Notification in the Orissa Gazette can be made effective from the date of its printing or the date it is made available to the public."

2. In view of the decision of the Supreme Court of India Union of India Vrs. Ganesh Das Bhojraj (2000) 9 SCC 461, the position is clear that the notification comes into force on the date it is printed in the Official Gazette and not in the date on which it is made available to the public. The question is accordingly answered in the affirmative by holding that publication of notification of the Orissa Gazette can be made effective from the date of its printing."

9.8. This Court takes cognizance of Section 26 of the Odisha General Clauses Act, 1937 (Odisha Act 1 of 1937) which is to the following effect:

"Publication of orders and notifications in the Gazette.—Where in any Odisha Act or in any rule made under any such Act, it is directed that any order, notification or other matter shall be notified or published, such notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the Gazette."

9.9. Further, Section 2(16) of the Odisha General Clauses Act, 1937 defines the term "Gazette" to mean the Official Gazette of the State.

9.10. When the rule-making authority, namely, Department of Steel and Mines in Government of Odisha, in exercise of power under Section 15(1) of the Mines and Minerals (Development and Regulation) Act, 1957, while promulgating the OMMC (Amendment) Rules, 2018, has specified the date of effect as the date on which the same is published in the Odisha Gazette vide Rule 1(2) *ibid.*, there is no ambiguity in construing that said Rules have prospective effect. Therefore, the opposite party-Government while rejecting the review petition of the petitioner under Rule-46 vide Order dated 13.09.2021 fell in gross error of law by simply following the opinion of the Law Department.

10. There is no dispute with regard to the principle decided in the judgments, referred to above. But fact remains, in the present case, there is no conflict with

regard to any of the provisions of the OMMC Rules, 2004 vis-à-vis the OMMC Rules, 2016. Rather, so far as the petitioner is concerned, the provisions contained in the OMMC Rules, 2004 vis-à-vis the OMMC Rules, 2016 are sacrosanct and, as such, the petitioner having complied with the requirements of those Rules, there was no justification to reject his RML Application. Under the circumstances, this Court is of the considered view that the RML Application of the petitioner has been rejected on the basis of absolute non-application of mind by the authority on being swayed away by the opinion given by the Law Department.

11. In view of the facts and law, as discussed above, this Court is of the considered view that the proceeding of the State Government dated 10.11.2020 rejecting the RML Application of the petitioner for Decorative Stone over an area of 8.575 Ha. in village Nuapada of Kalahandi district and the order dated 13.09.2021 passed by the State Government in rejecting the review petition filed under Rule 46(1) of the OMMC Rules, 2016 vide Anenxure-7 cannot be sustained and the same are liable to be quashed and hereby quashed. The matter is remitted back to opposite party no.1 to re-consider the RML application filed by the petitioner on 16.08.2011 in accordance with law as expeditiously as possible, preferably within a period of three months from the date of communication of this judgment.

12. The writ petition is thus allowed. However, there shall be no order as to costs.

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