(2026) 02 OHC CK 1738

In the Orissa High Court

Case No : Writ Petition (C) No. 30269 Of 2023

Omega Enterprises — APPELLANT

Vs

State Of Odisha And Others — RESPONDENT

Date of Decision : 11-02-2026

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Odisha Minor Mineral Concession Rules, 2016 — Rule 32(3), 39, 39(5)
Companies Act, 2013 — Section 2(45)

Citation : (2026) 02 OHC CK 1738

Hon'ble Judges : Harish Tandon, CJ;M.S. Raman, J

Bench : Division Bench

Advocate : Soma Patnaik, Aishwarya Dash

Final Decision : Disposed Of

Judgement

Harish tandon, CJ

1. The petitioner has challenged the several demand notices issued by the authorities claiming the additional charges in respect of Sarandamal Stone Quarry solely on the ground that the foundation of the levy of the additional charges taking shelter under Rule 39 of the Odisha Minor Mineral Concession Rules, 2016 (for short, "the OMMC Rules") is per se illegal.

2. Undisputedly, on the basis of an application of the petitioner, the lease of the said Sarandamal Stone Quarry under Lakhanpur Tahasil was executed in favour of the petitioner for a period of five years from the year 2018 to 2023. The petitioner observed all the formalities and the paraphernalia, required in execution of the lease deed to operationalize the Stone Quarry, including the payment of additional charges contemplated under Rule 32(3) of the OMMC Rules. According to the petitioner, the impugned demand notices are per se illegal, infirm and liable to be quashed and set aside as the authority cannot invoke a particular provision of the statute, which is not applicable to the persons like the petitioner.

3. On the other hand, a plea of demur is taken by the learned Additional Standing Counsel that since the alternative remedy is available to the petitioner, recourse under Article 226 of the Constitution of India is not permissible. According to her, the writ petition is not maintainable, the moment a remedy by way of appeal is provided under the OMMC Rules. She further submits that the terms and conditions embodied in the lease provides for levy of additional charges and, therefore, the petitioner cannot escape from such contractual obligation.

4. In support of a contention that a writ petition is not maintainable, reliance is placed upon three-Judge Bench decision of the Apex Court in the case of Gurucharan Singh Vs. Kamla Singh and others, (1976) 2 SCC 152. Further reliance is placed upon a judgment of the Apex Court rendered in the case of Radha Krishan Industries Vs. State of Himachal Pradesh and others, (2021) 6 SCC 771, on the proposition that unless violation of the fundamental rights or non-adherence of the principles of natural justice or the order being wholly without jurisdiction and the vires of the Act is assailed, the Court should not entertain the writ petition, when the alternative efficacious remedy is provided in the statute.

5. It is further submitted that pursuant to the letter dated 14th October, 2019, the additional charges are to be calculated on the basis of the formula indicated therein and a subsequent letter dated 24th September, 2020 issued by the Additional District Magistrate, Jharsuguda exposited the fact that the quarry lease holders are liable to pay additional charges in terms of the formula indicated in the preceding letter and, therefore, the demand so raised in commensurate therewith does not warrant any interference.

6. Taking the plea of alternative remedy being a hurdle in maintaining the writ petition at the first, we hasten to add that none of the judgments rendered by the Apex Court spanning over more than two decades from the era of Whirlpool Corporation Vs. Registrar of Trade Marks, (1998) 8 SCC 1 to the judgment rendered in Radha Krishan Industries (supra), it has been held with clarity and the precision that the constitutional jurisdiction exercised by the High Court under Article 226 of the Constitution of India is taken away in absolute terms if the statute provides a forum for ventilating the grievance. From the regime of Kesavananda Bharati Vs. State of Kerala, (1973) 4 SCC 225 to L. Chandra Kumar Vs. Union of India, (1997) 3 SCC 261, it is constant view of the Constitution Bench of the Apex Court that the power of judicial review and the power of superintendence enshrined under Articles 226 and 227 of the Constitution of India respectively are the integral part of the basic structure of the Constitution, which cannot be whittled down and/or abridged or curbed through a legislative exercise. The moment such Constitutional forum is available to the citizen of the country, it is preposterous to suggest that the conferment of such constitutional powers is taken away absolutely as the Legislators have provided remedial forum by promulgating the legislative law. There is a stark distinction between

"maintainability" and "entertainability" of the judicial proceedings. (see, Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority, (2023) 3 SCR 871). It admits no ambiguity that the maintainability strikes at the root of the jurisdiction exercised by the Court; on the other hand, the entertainability provides a discretion into the Court whether to adjudicate upon the reliefs claimed by the litigant or to relegate him to exhaust the statutory remedy provided in this regard. The moment the plea of maintainability is taken as a demur, the Court must visit on an absolute exclusion of the jurisdiction, which in view of the judgment rendered by the Constitution Bench of the Apex Court, is indefeasible and/or indispensable. Such remedy before the Constitutional Court is available to every citizen and upholding the contention that the alternative forum forecloses the doors of the Constitutional Court under Article 226 of the Constitution of India is undermining the ratio of the decisions rendered by the Constitutional Courts of the country. We are unable to countenance the stand of the Additional Standing Counsel that the instant writ petition is not maintainable in view of the alternative forum for an appeal is provided under the aforesaid Rules.

7. It leads to another issue, whether such plea of demur can be permitted at the fag end of the litigation, more particularly after the parties exchanged their affidavits or in other words, after the completion of the pleadings. The plea of entertainability must be raised at the nascent stage of admission and not at the later stage of the proceedings when the parties have already disclosed their stand on facts as well as law. Refer, Utkal Highways Engineers and Contractors Vs. Chief General Manager & others, (2025) SCC OnLine SC 1400; Sanjivani Ultrasound Clinic Vs. State of Odisha, (2025) SCC OnLine Ori 4167. Once such plea has not been taken at the first instance, the Court should frown upon such plea taken at the belated stage of the proceedings or at the fag end of the litigation. Encouraging such plea at the ripe age of the litigation would open a pandora box for all and sundry and at times the onerous responsibilities imposed upon the Constitutional Court is capable of being compromised. At times the Court may relegate the parties to exhaust the remedy of appeal when such remedy becomes barred, if there is a period of limitation provided therefor and it would be a farcical exercise or in other words shirking the responsibilities of adjudicating the dispute on merit.

8. So far as the entertainability of the writ petition is concerned, it is no longer res integra that it vests discretion upon the Court either to adjudicate the rights or the disputes itself or relegate the parties to other statutory forums provided therefor. It is the discretion of a Court and, therefore, cannot be assumed as a compulsion to revert the parties to the statutory forum. It is, therefore, regarded as the rule of discretion than of compulsion. Once the parties have exchanged their pleadings, we do not think that it would percolate the sense of justice if the petitioner is reverted to the statutory forum, that too, after more than two years from the date of institution of the instant writ petition.

9. Reverting to the merit of the instant case, the seminal point involved in the instant writ petition is, whether the authority can be said to be justified in invoking a provision of the Rules which has restricted applicability to a Government Organization / the Government Companies. The origin of fixation of further additional charges can be traced from the letter dated 14th October, 2019 issued by the Additional Secretary, Revenue and Disaster Management Department to all Collectors. The said letter is reproduced as under:-

"No.RDM-MMS-MEET-0009-2019-30986/R&DM,

Dated 14.10.2019

From

Sri B.B. Das

Additional Secretary to Government

To

All Collectors

Sub: Fixation of additional charge on unit quantity of minor minerals in case of quarry lease granted to Government Organisations and for quarry permits under the provisions of OMMC Rules, 2016.

Madam/Sir,

In inviting a reference to the subject cited above, I am directed to say that Rule 39 of the OMMC Rules, 2016 provides for reservation of any area for lease for quarrying operation by government organisations subject to such terms and conditions as may be decided by Government. Sub-rule-5 of the said Rule speaks that the lessee, to whom a lease has been granted under this rule, shall pay to the Government all amounts payable by a lessee under these rules and such additional charges as may be decided by the Government from time to time.

Keeping the above in view, Government, after careful consideration, have been pleased to decide that average of the five highest additional charge bids received during last three to five years for leasing for the same minor mineral sources in the same Tahasil or nearby Tahasil of the same district or nearby district will be taken as the additional charge for lease of minor mineral sources in favour of Govt. organisations on nomination basis and also for issue of temporary quarry permits.

Necessary steps may be taken to carry out the above decision and all concerned may be informed accordingly."

10. Apropos the said direction issued, another letter was caused on 24th September, 2020 by the Additional District Magistrate to Tahasildar, Lakhanpur for fixation of the additional charges on the rate of royalty assessed during the time of settlement of the minor mineral sources beyond the scope of the OMMC

Rules on the basis of a calculation provided in the above quoted letter. The aforementioned two letters are the substratum of the demand raised upon the petitioner which is sought to be challenged on the premise, as narrated hereinabove. The above quoted letter manifestly indicates that the fixation of the additional charge on the unit quantity of the minor minerals is restricted to a quarry lease granted to the Government Organisation, more particularly under Rule 39 of the OMMC Rules. Rule 39 of the OMMC Rules runs thus:-

“39. Reservation of mines for Government organizations:–

(1) Notwithstanding anything contained in these rules, the State Government may, by a written order, reserve any area for prospecting operation or mining operation or quarrying operation by a Government organization, subject to such terms and conditions as may be specified in the said order.

(2) Upon such reservation, prospecting license-cum-mining lease or mining lease or a quarry lease as the case may be, for the area so reserved, shall be granted to the Government organization in whose favour the reservation has been made subject to such terms and conditions, as may be decided by the Government.

(3) Government organization, for the purpose of these rules, shall mean Government, a Corporation established by any Central, State or Provincial Act or a Government Company within the meaning of Clause (45) of Section 2 of the Companies Act, 2013 and includes State level apex cooperatives, such other agencies, authorities or organization controlled substantially by the Government, as may be decided by the Government.

(4) The prospecting license-cum-mining lease or the mining lease, as the case may be, granted under this rule shall be granted for a period not exceeding thirty years and may be renewed for such period not exceeding twenty years at a time, as may be decided by the Government.

(5) The lessee, to whom a lease has been granted under this rule, shall pay to the Government all amounts payable by a lessee under these rules and such additional charges as may be decided by the Government from time to time.”

11. The bare look of the aforesaid Rules contained in separate Chapter-VI postulates the incorporation of the special provision for the Government Organisation. Sub-rule (5) of Rule 39 of the OMMC Rules, which has been pressed in action by the authority, provides for a payment of all amounts payable by the lessee under the OMMC Rules and the additional charges, as may be decided by the Government from time to time. It can be reasonably gathered from the language used in sub-rule (5) of Rule 39 of the OMMC Rules that the said provision is applicable only where lease has been granted under the said Rule and it can be logically inferred that the said Rule has its restricted applicability to the mines given to Government Organisation. Once the provision is restricted to a particular class of persons, its expansion to other class of the persons is impliedly ruled out and, therefore, the authorities cannot expand the

horizon of the said statutory provisions to the other lessees who are not Government Organisations. So far as the imposition of the additional charges are concerned, the liability towards the payment is envisaged under Rule 32 of the OMMC Rules and it is not in dispute that the petitioner paid the said additional charges to the Government. There cannot be any escape from the discharge of the liability imposed by the statutory provisions, but equally it is true that the imposition of any liability de hors the provision of law, is also impermissible.

12. In view of the discussions hereinabove, we find that the demands raised by the authorities, which are impugned hereinabove, are per se illegal, infirm and beyond the statutory powers conferred under the aforesaid Rules. Those are, hereby, quashed and set aside. The writ petition is, thus, disposed of.

13. As a result of the disposal of the writ petition, pending Interlocutory Application(s), if any, shall stand disposed of, but in the circumstances there shall be no order as to costs.