CASE NO.:
Appeal (civil) 2235 1996

PETITIONER:
STATE OF ORISSA AND ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT: 24/11/2000

BENCH:
G.B.Pattanaik, B.N.Agrawal

JUDGMENT:

PATTANAIK,J.

This appeal is directed against the judgment of the Division Bench of Orrisa High Court and the question for consideration is whether the Railway Administration would be liable to pay the royalty in respect of the minor minerals used by it in laying down the railway line. The facts are not disputed namely for laying the railway line, Government of Orrisa acquired the land and handed over the same to the railway administration. When the Railway Administration utilised certain minor minerals like the rock cut spoils and earth from the very land, which had been acquired for laying the railway line, the Revenue Authorities of the State of Orissa initiated proceedings for realisation of royalty and cess under the provisions of Orissa Minor Mineral Concession Rules. The Railway Administration and the Union of India assailed the same by filing a writ petition in the Orissa High Court. According to the Railway Administration, royalty or cess could be levied against the lessee of any mineral and the railway administration not being the lessee of the land or the minor minerals therein, no royalty is payable for utilisation of the aforesaid minor minerals for laying down the railway line. The State Government on the other hand took the stand that the handing over of the land for laying of the railway track to the railway administration does not amount to conferring ownership right over the minerals existing on the land and in accordance with the provisions of the Mines and Minerals(Regulation and Development) Act, 1957 [hereinafter referred to as the Act] as well as the Orissa Minor Mineral Concession Rules, 1990 [hereinafter referred to as the Rules], the railway administration would be liable to pay royalty for use of any minerals from the land in question and accordingly, the revenue authorities had rightly issued notice. The High Court, in the impugned judgment came to hold that the earth and rock cut spoils excavated by the railway administration are minerals. This finding of the High Court has not been assailed by the railway administration. But so far as the right to levy royalty on the use of minerals from the land in question, the High Court came to the conclusion that the

State would not be justified in levying the royalty in respect of the minerals on the land which had been acquired and possession of which has been delivered to the railway administration. But so far as the land belonging to the State Government is concerned, the High Court came to the conclusion, since no formal transfer deed has been executed, it would be open to the State Government to incorporate in the formal transfer, a term as to the payment of royalty in view of the admission of the railway administration in its letter dated 10.6.1987 that they would abide by the terms and conditions to be decided by the State Government while sanctioning transfer of Government land. It is this judgment of the High Court of Orissa, which is under challenge in this appeal.

Mr. P.N. Mishra, the learned senior counsel, appearing for the State of Orissa, contended that the State is the owner of the mines and minerals within its territory and right to levy royalty or cess in respect of any minerals is governed by the provisions of the Act and the Rules framed thereunder. According to the learned counsel, under the provisions of Orissa Minor Mineral Concession Rules, which has been framed in exercise of power under Section15 (1) of the Act, no person can undertake any quarrying operation or collect and/or remove any minor mineral except under and in accordance with the terms and conditions of quarry lease, permit and/or auction sale provided under the rules. Under the proviso to Rule 3, when extraction and collection of minor minerals is made by a person from his own land for normal agricultural operations or other bona fide domestic consumptions, then that would not tantamount to quarrying operations and it is excluded from the purview of Rule 3. Necessarily, therefore if minor minerals are extracted or removed from ones own land not for any domestic consumption or agricultural operations, but are sold to the public, then the State would be justified in levying the royalty on such extraction and or collection.

Mr. P.P. Malhotra, the learned senior counsel, appearing for the Union of India, on the other hand, contended that unless and until the lease deed is executed in favour of the Union of India, the State Government would not be entitled to levy royalty or cess for extraction of minerals from the land which had been acquired for the purpose of laying down railway track and possession whereof has been given to the Union of India itself. According to the learned counsel, the High Court was justified in disposing of the matter against the State.

The State is the owner of all the mines and minerals within its territory and the minerals vest with the State. It has been so held in the case of Amrit Lal Nathubhai Shah and Ors. Vs. Union Govt. of India and Anr., by this Court in 1976(4) SCC 108. Entry 54 of List I of the Seventh Schedule confers power on the Union Legislature to have Regulation of mines and minerals development under the control of the Union, as declared by the Parliament by law to be expedient in the public interest. The Mines and Minerals (Regulation & Development) Act, 1957 has been enacted by the Union Legislature in exercise of such powers conferred upon it under Entry 54 of List I and in Section 2 thereof, there is a declaration that Union should take under

its control the regulation of mines and the development of minerals to the extent provided under the Act. Entry 23 of List II of the Seventh Schedule deals with regulation of mines and mineral development but the same is subject to the provisions of List I with respect to regulation and development under the control of the Union. Entry 50 of List II is the power of the State Legislature to have taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. This power of the State government to have taxes on mineral rights gets denuded to the extent the MMRD Act has taken over and if any provision has been made for levy of any tax on any mineral in the Central Act, the State cannot make any law in the same field, again by exercise of power under Entry 50 of List II. But if there is no provision in the Central Act, providing for levy of tax on any minerals, then the State will have full power to make law to make levy in question. Section 15 of the MMRD Act itself authorises the State Government to make rules for regulating the grant of quarry leases in respect of minor minerals and for the purposes connected therewith. Minor Minerals is defined in Section 3(e) of the MMRD Act to mean building stones, gravel, ordinary clay, ordinary sand other than used for prescribed purposes and any other mineral which the Central Government may, by notification in the official Gazette, declare to be a minor mineral. In exercise of powers conferred under Section 15 of the MMRD Act, the Government of Orissa has made a set of rules called the Orissa Minor Minerals Concession Rules, 1990. Rule 3 of the aforesaid rules is relevant for our purpose, which is quoted herein-below in extenso:

Rule 3. No person shall undertake any quarrying operations for the purpose of extraction, collection and/or removal of minor minerals except under and in accordance with the terms and conditions of quarry lease, permit and/or auction sale provided under these rules: Provided that extraction, collection and/or removal of minor minerals by a person from his own land for normal agricultural operations or other bona fide domestic consumptions shall not be construed as quarrying operations.

The aforesaid rule makes it explicit that no person can undertake any quarrying operations for the purpose of extraction, collection and/or removal of minor minerals except under and in accordance with the terms and conditions of a quarry lease permit and/or auction sale provided under the Rules. The expression Person has been defined in Rule 2(l) as thus:-

Rule 2(l): person shall include an individual, a firm, a company, an association or body of individuals, an institution or Department of the State or Central Government and a Labour Co- operative Society.

In view of the aforesaid definition of person in Rule 2(l) and in view of the embargo contained in Rule 3, even the Central Government will not be entitled to undertake any quarrying operations, unless such permit is granted and it must be in accordance with the terms and conditions of the permit. The contention of the Railway Administration, that there being no lease in favour of the Railway Administration, it is not bound to pay any royalty, will not hold good, in view of the proviso to Rule 3, which

on the face of it prohibits a person from extracting or collecting minor minerals from his own land, except for agricultural operations or other bona fide domestic consumption. But for the exclusion, contained in proviso to Rule 3 in relation to minor minerals extracted from owners own land for normal agricultural operation or bona fide domestic consumption, it would be a case of quarrying operation within the definition of the expression in Rule 2(o), which is quoted below in extenso:

Rule 2(o): quarrying operations means any operation undertaken for the purpose of winning any minor mineral and shall include erection of machinery, laying of tramways, construction of roads and other preliminary operations for the purpose of quarrying.

This being the position and the use of minor minerals on the railway track, after being extracted from the land, not coming within the expression bona fide domestic consumption, the said operation would be a quarrying operation under Rule 2(o), and consequently, the embargo contained in Rule 3 would apply. A combined reading of Rules 2(l), 2(o) and Rule 3 makes it crystal clear that the Railway Administration, cannot undertake the quarrying operation unless a permit is granted in its favour and, consequently, if the Railway Administration utilises the minor minerals from the land, for the railway track, it would be bound to pay the royalty chargeable under the Orissa Minor Mineral Concession Rules. The liability for payment of royalty accrues under Rule 13 and no doubt, speaks of a lease deed. If the Railway Administration, though not a lessee and at the same time is not authorised under Rule 3 to undertake any quarrying operation for the purpose of extraction of minor minerals, then for such unauthorised action, the Railway Administration would be liable for penalties, as contained in Rule 24. This being the position and in view of the prohibition contained in sub-Rule 2 of Rule 10 and taking into account the fact that such minor minerals would be absolutely necessary for laying down the railway track and maintenance of the same, we would hold that the Railway Administration would be bound to pay royalty for the minerals extracted and used by it, in laying down the railway track. The impugned judgment of the

Orissa High Court is accordingly set aside and this appeal is allowed.