



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO OF 2026
(@ Special Leave Petition (Civil) No.16259 of 2019)

**THE DIRECTOR OF MINES AND
GEOLOGY**

...APPELLANT(S)

VERSUS

M/s BMM ISPAT LTD & ANR.

...RESPONDENT(S)

J U D G M E N T

SANJAY KAROL J.

Leave granted.

2. The Director of Mines and Geology, Department of Mines and Geology, Government of Karnataka, in appeal by special

leave, lays challenge to the judgement and order dated 18th March 2019 passed in Writ Petition No. 6979 of 2017 by the High Court of Karnataka at Bengaluru, whereby the Court allowed the respondent's petition directed against an order passed by the appellant herein, rejecting the respondent's representation made against the charge of higher royalty than what was stipulated in the tender agreement, which in itself was a consequence of an earlier round of litigation.

3. The question that we must consider, in essence, is whether the State could, on account of a subsequent change in law, charge an amount of royalty which is different from (*increased*) what is stipulated in the tender agreement. The facts that give rise to this question are:

3.1 This Court, in Writ Petition (Civil) No. 562 of 2009, on 23rd September 2011 constituted a committee¹, for ensuring sale of the existing stock of iron ore. The order is extracted hereunder:

“Learned Amicus Curiae points out that it would be useful if this Court could modify it's Order dated 2nd September, 2011, which was passed on the basis of the Report of Central Empowered Committee ['CEC', for short] dated 1st September, 2011, in which certain recommendations were made by CEC. By the said Order dated 2nd September, 2011, the recommendations of CEC dated 1st September, 2011,

¹ Hereafter 'Monitoring Committee/ Second Respondent'

have been accepted, subject to certain clarifications. Learned Amicus Curiae suggests that it's recommendations may be re-produced. Accordingly, the recommendations contained in the Report dated 1st September, 2011, are being reproduced hereinbelow:

"Pursuant to this Hon'ble Court's order dated 26.8.2011 this Report is being filed by the CEC regarding the modalities for sale and keeping the accounts of the sale proceeds of about 25 million MT (MMT) of the existing stock of iron ore pertaining to the various mining leases in the Districts of Bellary, Chitradurga and Tumkur. Copies of the representations on the subject received by the CEC from the various associations and individuals had been made available to the Learned Amicus Curiae and the Learned Attorney General for their consideration. Detailed discussions were held between the Learned Attorney General, the Learned Amicus Curies Mr. Shyam Divan and Mr. A.D.N. Rao, representatives of the MoEF and Members of the CEC on 1.9.2011 and this report reflects the consensus arrived at.

2. The following modalities for the sale of the existing stock of iron ore, keeping the account of the sale proceeds and related issues are submitted for the consideration of this Hon'ble Court:

- i) the quantity of 1.5 million MT of iron ore per month, as per the breakup given at ANNEXURE-R1 to this Report, will be sold;
- ii) this quantity will be sold through e-auction(s). For this purpose the mining lease-wise/grade-wide reserve price will be fixed after taking into consideration the sale price obtained/ fixed by the NMDC;
- iii) the steel and associated industries, who have been wholly/partly dependent on the iron ore from Karnataka, will be eligible to participate

in the e- auction of iron ore for their own use. No middlemen/traders will be eligible to participate in the e-auction and no exports will be permissible;

iv) the pelletisation and beneficiation plants may participate in the e-auction provided that the iron ore so purchased, after processing/value addition, is made available only to the steel and associate industries. No exports will be permissible;

v) the physical verification of the existing stock of the iron ore will be carried out before e-auction so as to determine the quantity of iron ore of different grades physically available;

vi) the terms and conditions and the procedure being followed for e-auction of low grade iron ore by the NMDC (A copy is enclosed at ANNEXURE-R-2 to this Report), with appropriate changes will be used for the purpose of e- auction and delivery and transportation of the auctioned iron ore;

vii) the e-permit system for the issue of transit passes (Mineral Dispatch Permit/trip sheet) will be followed. The weigh bridges will be linked with the online e-permit system. The transportation route will be determined in such a way so as to ensure that the trucks transporting the iron ore pass through at least one check post having weigh bridge and where the quantity of the iron ore being transported will be verified with reference to the quantity loaded in the truck;

viii) the successful bidder will, in addition to the sale price of the iron ore, be required to pay the applicable royalty (at 10% of the market price), Forest Development Tax, sales tax, cess and other applicable charges;

ix) the sale price along with the royalty applicable taxes and other charges will first be deposited in the designated bank account(s) in the nationalised bank(s). Out of the above, the royalty, taxes and other charges payable on the

sale price will be paid under the respective "Heads of Receipts" to the Government and the balance amount, after payment of the service charges for e-auction, will be invested in fixed deposit(s) in the nationalized bank(s). The accounting of the receipts and payments, mining lease-wise, will be maintained under double entry system;

x) it is submitted that in respect of the mining leases found (by the Joint Team) to be involved in illegal mining no amount towards the sale price may presently be disbursed to them. In respect of the mining leases where the Joint Team has not found any illegality (as per the list enclosed at ANNEXRE-R- 3 to this Report), presently 80% of the sale price may be disbursed to the respective lease holders and the balance 20% of the sale price may be retained;

xi) a Committee comprising of Mr. Deepak Sharma, Additional Principal Chief Conservator of Forest, Karnataka Forest Department, Dr. U.V. Singh, Chief Conservator of Forest, Karnataka Forest Department and Mr. H.R. Srinivasa, Director, Mines & Geology, Government of Karnataka may be constituted (hereinafter called the 'Monitoring Committee') for dealing with the various issues related to the sale and the transportation of the existing stock of iron ore, keeping account of the sale proceeds and related issues. The above said three officers are at present functioning as Members of the Joint Team constituted by the Hon'ble Court by order dated 6.5.2011;

xii) the Monitoring Committee will have the powers and responsibilities for/to:

- (a) physical verification of the existing stock of the iron ore of various grades in each of the mining lease;
- (b) decide upon the frequency of auctions for a month (and within the month), prescribe the terms and conditions of the auction (including Prior Registration of eligible

buyers and their capacities), fixation of the reserve price, including regarding the payment of the EMD, period of transportation, transport route, size of each lot (of various grades of iron ore in each mining lease), procedure for delivery of the iron ore sold, issue of bulk permit, the Mineral Dispatch Permit (trip sheet) and Form No. 27 (Forest Permit). It is suggested that the Monitoring Committee may fix the lot size after taking into consideration the quantum of iron ore that can be transported by the railways in one rake (each rake is estimated to carry about 4012 MT of iron ore based on the assumption that a rake normally has 59 wagons/boxes and the capacity of each wagon/box is approximately 68 MT);

(c) the receipt of sale price, royalty, taxation of applicable charges in bank account(s) maintained in the nationalized bank(s), investment in the fixed deposits in the nationalized bank(s), payment of royalty, taxes and applicable charges, payment of service charges for e-auction, investment of the balance amount in the fixed deposits with the nationalized bank(s) and its disbursal as per the directions of this Hon'ble Court;

(d) co-opt the respective Deputy Commissioner and the Superintendent of Police of the concerned District as special invitees for keeping an effective check on the movement of trucks carrying iron ore including surprise checks and other associated activities; and

(e) to consider complaints with regard to hoarding and to debar a particular party/industry from taking part in the e-auction if

(i) the quantity of iron ore being purchased by it is found to be in excess of its actual requirement and which consequently is adversely affecting the availability of iron ore to the other eligible buyers and (ii) non

compliance of the terms and conditions of e-auction.

xiii) in the event of any violation of the terms and conditions regarding loading, lifting and transportation of the quantity sold by e-auction, the purchaser will be liable for deterrent action including imposition of the penalty and/or debarring him from taking part in future auctions. and xiv) the MSTC Ltd., a Mini Ratna Category I, Public Sector Enterprise under the administrative control of Ministry of Steel, Government of India be engaged for conducting e-auction. For the reasons set out hereafter, service charge of 0.3% may be fixed as payable to the MSTC Ltd.

3. In this regard a copy of the profile of the MSTC Ltd. is enclosed at ANNEXURE-R-4 to this Report. The MSTC Ltd. has been engaged by the NMDC for e-auction of its low grade iron ore. The MSTC Ltd. has vide their letter dated 30th August, 2011 sought service charge of 0.6% of the sale value/ auction value plus the applicable service tax and the cess thereon (enclosed at ANNEXURE-R-5 to this Report). On the other hand the MMTC, which is a Public Sector Undertaking under the administrative control of the Ministry of Commerce & Industry, has vide its letter dated 30th August, 2011 shown its willingness to take up the work of e-auction at a flat rate of 0.1% of the sale price realized (copy enclosed at ANNEXURE-R-6 to this Report). In the premiss, service charge of 0.3% appears to be fair and reasonable.

4. It is also recommended that the Monitoring Committee may not be allowed to utilize any part of the sale proceeds or interest thereon except for depositing the royalty, taxes and other applicable charges, payment of the service charges towards the e-auction service and payment to the lessees as per para 2 (x) above. The CEC may for the present be permitted to release funds to the Monitoring Committee for meeting the expenditure towards

monitoring, online linking of weigh bridges with e-permit system and related activities. The amount paid by the CEC may be reimbursed to it in due course of time and as per directions of this Hon'ble Court.

5. The above modalities for sale and keeping the account of the sale proceeds of the existing stock of the iron ore may also be made applicable in respect of the manganese ore available in the respective mining leases.

This Hon'ble Court may please consider the above Report and may please pass appropriate orders in the matter."”

The Monitoring Committee, functioning on the strength of this Court's order, organised an e-auction being No. 41 (14 – 15) in which the respondent was declared the successful bidder of several lots.

3.2 Having been declared as such, respondent No.1 furnished to the Authority the amount as requested for sale price, royalty, FDT, VAT etc. and acceptance letter was accordingly issued, which is reproduced below:

ANNEXURE P-2

Acceptance Letter/Sale Order Details/Invoice

<i>Buyer Details:</i> <i>Buyer's Ref No : 41456</i> <i>Company Name : BMM ISPAT LIMITED</i> <i>Contact Person : Anil Kumar S C</i> <i>Street/Door No : #114, Danapur Village</i> <i>City : Hospet</i> <i>Country : INDIA</i>	<i>Seller Details:</i> <i>Company Name : MONITORING COMMITTEE, DEPARTMENT OF MINES AND GEOLOGY</i> <i>Contact Person : H R SRINIVASA</i> <i>Location : Bangalore</i> <i>Street : Khanija Bhavan, Race Course Road</i> <i>City : Bangalore – 560 001</i>
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<i>Pin : 583222</i> <i>PAN NO : AACCB3556B</i> <i>VAT/TIN No : 29430245525</i> <i>Telephone No. : +919972309492</i> <i>Mobile No. : 9972309492</i> <i>Email : anil@bmm.in</i>	<i>Country : India</i> <i>TIN No. : 29860633143</i> <i>Telephone : 080 22375346,</i> <i>22269632</i> <i>Fax : 080 22341135</i> <i>Email :</i> <i>moncom.eauction@gmail.com</i>
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Reference : MSTC/BLR/14-15 Tax Invoice No. EA-
Number : 39/41456/215
Date : 28/06/2014
Auction Number : MSTC/BLR/MONITORING
COMMITTEE/39/BANGALORE/14-15/3795
Date Of Opening : 27/06/2014

We acknowledge receipt of your payment of Rs. 25,00,000/- towards EMD as per details below.

DD/Po/Chq No. 575134, Dated: 11/06/2014, Bank/Branch: SBH, Bangalore.

We confirm acceptance of your rate for the following items as per details given below:

<i>Lot No.</i>	<i>Qty (MT)</i>	<i>Rate</i>	<i>Material Value</i>	<i>Royalty</i>	<i>VAT</i>	<i>FDT</i>	<i>Total</i>	<i>EMD/SD :</i>
<i>FINES/JUN/C/338</i>	<i>12000</i>	<i>2428</i>	<i>29136000</i>	<i>2913600</i>	<i>1762728</i>	<i>3496320</i>	<i>37308648</i>	<i>1500000</i>
<i>Inclusive of Rs. 50/- P.T. Contingency (Rs. 6,00,000/-)</i>							<i>*37908648</i>	
<i>LOT DESCRIPTION: Iron Ore fines</i> <i>LOCATION: M/s. NMDC Kumarswamy Mines M.L. No. 1111 (C Block Forest Land) State : Karnataka</i> <i>Royalty: 10%, VAT: 5.5%, FDT: 12%</i>								

**Rs. 50/- per tonne is included to meet variance in royalty or other taxes which may arise in future*

*You are requested to deposit Rs. 3,69,08,648/-** for the above lot into the account No. 31944819186 (IFS Code: SBIN0014431) in the name of MONITORING COMMITTEE with State Bank of India, SPL. AGR. COM. Branch Bangalore 560001 by way of RTGS for the above Lot(s) by 21/07/2014. The EMD amount, mentioned above, is converted into Security Deposit.*

*** After taking into account the amount of Rs. 10,00,000/- received in excess of applicable EMD.*

Remark:

1) SALE IS ON AS-IS WHERE-IS BASIS & GOVERNED BY TERMS & CONDITIONS OF E-AUCTION SALE.

2) LAST DATE TO TAKE DELIVERY OF IRON ORE IS WITHIN 20 DAYS FROM THE DATE OF ISSUE OF BULK PERMIT.

Please note that in case, you fail to make payment towards material value and other charges for any or all lots, your security deposit for the corresponding lot/s shall be forfeited.

You are required to submit Form 27(C) to this office lot-wise while submitting documents for Bulk Permit. Form 27(C) should also be submitted to the Lessees/Stock Yard.

For Monitoring Committee

Sd/-

Signature

3.3 The Central Government, by amendment to the Second Schedule appended to the Mines and Minerals (Development and Regulation) Act, 1957 dated 1st September 2014 revised the rates of royalty for iron ore to

15% w.e.f. the very same date, as opposed to 10% which was the applicable rate as on the date of the tender agreement i.e., 20th July 2014.

3.4 Relevant clauses of the Agreement between respondent no.1 and the Monitoring Committee, are as follows:

***“3. Contract period:** The periods of contract for various quantities of materials are as given below. The period is reckoned from the date of Acceptance letter issued by the MONITORING COMMITTEE.*

<i>QUANTITY OF IRON ORE BOOKED</i>	<i>PERIOD OF CONTRACT</i>
<i>UPTO 20000 WMT</i>	<i>20 CALENDAR DAYS</i>
<i>ABOVE 20000 WMT</i>	<i>ADDITIONAL 5 (FIVE) CALENDAR DAYS FOR EVERY 4000 WMT SUBJECT TO MAXIMUM PERIOD OF CONTRACT THAT IS 60 DAYS</i>
<i>IN CASE OF LOTS FROM NMDC-DIOM</i>	<i>10 DAYS FROM THE DATE OF BULK PERMIT</i>

*The successful bidders have to lift the allocated quantity under this contract within the contractual period as mentioned above. Time is the essence of the contract. The time period given is firm and fixed. Any extension of time may be granted in exceptional circumstances at the sole discretion of the MONITORING COMMITTEE. This contract does not in any way grant the successful bidder any right to claim extension of time. **The bidder shall acquaint him with the local conditions and shall not complain on any issue later.***

8. Security Deposit (SD): *On issuance of Acceptance Letter by the Monitoring Committee, the EMD amounts, corresponding to the Nos. of lots allotted, paid by the successful bidder, will be automatically converted into*

Security Deposit. The security deposit will not carry any interest.

The Security deposit will be returned only after satisfactory performance of contract of sale upon written request from the successful bidder. In case, MONITORING COMMITTEE is held liable to pay any claims to outside agencies due to lack of diligence, skill or care in the performance of duties of the successful bidder, such claims will be recovered from the security deposit. If the amount of such claims exceeds the SD amount, the differential amount shall also be paid by the successful bidder.

The Security deposit will be forfeited in case successful bidder fails to comply with all or any of the Terms & conditions regarding the online auction or to lift allocated quantity within the contract period.

9. PAYMENT: *Full payment shall be made for the entire allotted quantity in advance by RTGS or Demand Draft within the date stipulated in the acceptance letter. The advance amount shall include the bid value, royalty, sales tax, forest development fee (wherever applicable) and any other statutory duties, levies and taxes etc. In addition to the above, the Party has to deposit in cash @ Rs.100/- per tonne to meet the variance in royalty, or other taxes, which may arise in future...*

(emphasis supplied)

3.5 In pursuance of the tender, respondent no. 1 in batches, removed the iron ore from the allotted areas, some of which was after the date of the amendment of the Second Schedule. Upon completion of the tendered work, *vide* letter dated 1st of February 2016 addressed to respondent no. 2, respondent no.1 sought reimbursement of the security deposit.

3.6 In terms of letter dated 11th February 2016, addressed to the Monitoring Committee, the appellant communicated the objections of the Accountant General *qua* deficiency of 5% in the royalty amount considering the rate prevalent at the time of transportation of the tendered goods. Accordingly, the discrepancy in the amount, to the tune of Rs.2,09,26,077/- which was inclusive of VAT @5.5% totaling Rs.10,19,933/- were deducted from the total amount of security deposit amounting to Rs.2,91,92,750/- and the balance amount of Rs.82,66,673/- was refunded. The Monitoring Committee, in its letter dated 18th March 2016 supported the deduction of further 5% royalty as follows:

“1. The effective enhancement in Royalty from 10% to 15% on the material value has come into effect from 01-09-2015. The Monitoring Committee has been recovering Royalty amount of 15% since then. The qualification of the AG's audit was that the collection of Royalty is linked to the removal/consumption of mineral from the leased area. Accordingly the difference arose on account this was recovered. Hope you might have referred Sec.9 (1) pertaining to Royalties in respect of mining leases in Mines & Minerals (Development & Regln.) Act 1957. For your kind information, under this provision only the recovery was made which please note.

2. In para 4 of your letter you have mentioned that the date of bulk permit is the date of despatch of minerals, is not true. Further in para 5 of your letter you have mentioned that the respective letter of acceptance/sale order/invoice which are to be construed as the date of vesting of title and is relevant to levy Royalty is also not acceptable, as Sec.9 (1) of the MMDR act 1957, ascribes

mainly as per the sale of good act 1932. Wherein, Chapter 4 of sale of goods act 1932, Sec. 33 and 34 describes on acceptance and delivery. Unless the delivery takes place, by mere acceptance, the sale is not complete. Accordingly, your mere acceptances of having acceptance letter/sale order/invoice/bulk permit are considered as only your acceptance and not the delivery per se. Completion of sale takes place when you apply for the delivery of the goods and remove thereby. Your submission/issuance of trip sheet is only the conclusive evidence of delivery i.e date of despatch of minerals as against your claim in para 7, that trip sheet can't be construed as despatch of ore.

3. In view of what has been stated above, we may not be in a position to consider refunding of the amount so collected. Further, we have to inform you that, the money so collected has already been transferred to DMG, Bangalore, as per their direction and for any such claim/refund you may please prefer with them.”

Yours faithfully,

Sd/-

*Jaganath Poojary
Finance Manager
Monitoring Committee*

3.7 Such action of the appellant was challenged before the High Court by way of Writ Petition No.57901 of 2016. The same was disposed of by the High Court *vide* order dated 29th November, 2016 observing that the matter has to be reconsidered by the competent authority and as such directed them to appear before the appellant on 7th December 2016.

3.8 The appellant, in compliance of the above order passed an order on 25th/31st January 2017, rejecting the claim of respondent no.1 against such deduction from the security deposit. The ground to do so as it appears from the perusal of the order was Section 9 of the MMDR Act 1957.

3.9 It is this rejection of representation that was challenged before the High Court in the impugned order.

4. The relevant extract of the High Court order is as under:

“6. It is not in dispute that by notification dated 01.09.2014, the Central Government brought amendment to sub-Section (3) of Section 9 of the Act, whereby royalty payable on iron ore was increased from 10% to 15%. It is also not in dispute that petitioner had submitted his bid to purchase iron ore. Petitioner's bids were accepted prior to 01.09.2014. As per e-auction conditions, petitioner has tendered entire value of iron ore and royalty at 10% applicable as on the date prior to 01.09.2014.

7. The contention of Shri Keshava Reddy that, Rs.50/- per tonne of iron ore collected to meet variation in royalty and other taxes if any, which may arise in future is sufficient circumstance to show that petitioner had agreed to pay royalty at increased tariff, must fail because as on the date on which the bids were accepted and amount was paid by petitioner to the Monitoring Committee, the amendment had not come into force.

8. The parties were ad idem so far as sale of iron ore to petitioner at the price offered by him and accepted by the Monitoring Committee together with 10% royalty is concerned. It is not in dispute that petitioner participated in the auction and bid for iron ore mineral which was already extracted. Petitioner has paid the entire value of the iron ore purchased in auction and the royalty payable thereon. The only act remained was to transport the iron ore

from the stock yard. Admittedly, there was no time limit prescribed to do so. However, in the interregnum, the rate of royalty has increased from 10% to 15%.

9. In the facts and circumstances of this case recorded hereinabove, in our considered view, any attempt to impose royalty more than what was applicable as on the date of acceptance of bid would be unjust.

10. In the circumstances, the order dated 25.01.2017/31.01.2017 (Annexure-M) holding that petitioner's application is not maintainable under Section 9 of the Act is unsustainable in law. Hence, this writ petition merits consideration and it is accordingly allowed.

The order dated 25.01.2017/31.01.2017 (Annexure-M) is set aside."

5. We have heard Mr. Devdutt Kamat, learned senior counsel for the appellant and Ms. Kiran Suri, learned senior counsel for the respondent(s) and perused the record as well as the written submissions.

5.1 The substance of the appellant's case is that the enhancement of royalty is a statutory function and discretion vests with the Central Government, which cannot be taken away since there is no legal concept of "crystallisation" of royalty at the time of auction. Royalty, being a statutory import, cannot be frozen by contractual arrangements or equitable considerations.

5.2 On the other hand, the respondents submit, *inter-alia*, that the royalty payable by them would be only at 10%. The provision of Section 9 would not apply to the

present proceedings, since the appellants do not qualify as holders of mining leases within the Act. The word ‘*applicable*’ used in the order of this Court by which they came into the picture does not signal scope for any variance. The ‘*variance*’ that was contemplated, in the Agreement only dealt with existing law and not subsequent legislation.

6. The fulcrum of the dispute rests on Section 9 of the MMDR Act 1957. It reads thus:

9. Royalties in respect of mining leases.—(1) *The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any ¹[mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee] from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.*

(2) *The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.*

(2-A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the

workman does not exceed one-third of a tonne per month.

(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years.

A perusal of the above reveals the following to be the main facets of Section 9:-

1. Existence of a Mining Lease

The provision applies to the holder of a mining lease, whether granted before or after the commencement of the Act.

2. Removal or Consumption of Mineral

Royalty becomes payable when any mineral is removed or consumed from the leased area.

3. Persons Covered

The liability extends not only to removal or consumption by the leaseholder personally but also by his agent, manager, employee, contractor, or sub-lessee.

4. Rate of Royalty

Royalty must be paid at the rate for the time being specified in the Second Schedule of the Act. The rate to be paid shall not be enhanced more than once every

three years.

5. *Power of Central Government to Amend Rates*

The Central Government may, by notification, amend the Second Schedule to enhance or reduce royalty rates, but enhancement cannot be made more than once within a period of three years.

7. So, for Section 9 to be applicable to a given set of facts, there must be an existing mining lease; there must be removal or consumption of mineral, and the person who has done the above two acts, must be covered by the text of the statute.

8. The stockpile in regard to which the order dated 23rd September 2011 came to be passed by this Court in WP (C) No. 562 of 2009 is as a result of this Court having passed an order, banning mining of any nature in the concerned areas on 29th July 2011. The Centrally Empowered Committee, made certain recommendations regarding the mining in that area and the ore that had already been mined and extracted was also thereby allowed to be sold in terms of sale, in which the appellant got the rights over the iron ore in question. Before coming to the core question arising in this matter, we may take care to restate some basic propositions as referred to in *Mineral Area Development*

Authority v. SAIL,²

(a) Rates of royalty

“83. Rates of royalty were primarily governed by the terms of lease prior to the enactment of the MMDR Act. Once a mining lease was entered into between a lessor and lessee, the rates of royalty would remain static during the subsistence of the lease. Section 9 of the MMDR Act has enabled the Central Government to examine the rates of royalty in respect of all minerals and modulate them periodically after taking into consideration various factors, including the uniformity of mineral prices. The primary reason for empowering the Central Government to fix the rate of royalty could be traced to the Industrial Policy Resolution which underscored the active and predominant role of the State in organising and utilising mineral resources. The State Governments were not empowered to determine royalty in order to maintain a uniform regime of royalty across India. This was intended to promote domestic industry and maintain competitive commodity prices in the international market. [Lok Sabha Debates, Vol. VIII (11-11-1957 to 22-11-1957, Third Session) 463.]”

(b) What is a lease?

“86. The expressions “lease” and “licence” have been used in the context of mining operations in the Constitution and in the MMRD Act. Therefore, it is important to understand the meaning of these expressions in their general legal sense to appreciate their application to mineral operations.

87. A “lease” connotes a transfer of a right of enjoyment in immovable property for a certain time in lieu of consideration. [*Mulla on the Transfer of Property Act, 1882* (13th Edn.).] Section 105 of the Transfer of Property Act, 1882 defines a lease of immovable property as a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops,

² (2024) 10 SCC 1

service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. [Transfer of Property Act, 1882, Section 105.] The provision defines “lessor”, “lessee”, “premium”, and “rent”. The “*transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent*”. This Court has interpreted the expression “rent” widely to mean any payment for the use or occupation of land or building including the payment by a lessee in respect of the use or occupation of any land or building. [*State of Punjab v. British (India) Corpn. Ltd.*, 1963 SCC OnLine SC 218 : (1964) 2 SCR 114, para 15]

88. According to Section 3(26) of the General Clauses Act, 1897, immovable property is defined to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. [General Clauses Act, 1897, Section 3(26).] Section 2(6) of the Registration Act defines immovable property to include land, buildings, hereditary allowance, rights of way, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to earth, or permanently fastened to anything which is attached to the earth, except for standing timber, growing crops, and grass. [Registration Act, 1908, Section 2(6).] A mineral is also a benefit arising out of land. The right to carry out mining operations to extract minerals under a mining lease has been held by this Court to be a right to enjoy immovable property within the meaning of Section 105. [*State of Karnataka v. Subhash Rukmayya Guttedar*, 1993 Supp (3) SCC 290, para 6; *Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co.*, (1979) 3 SCC 106, para 37]

89. The expression “licence” is defined in the Easements Act, 1882 as follows:

“52. “Licence” defined.—Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something

which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.” [Easements Act, 1882, Section 52.]”

(c) Characteristics of royalty:

“103. The essential characteristics of royalty are that:

- (i) it is a consideration or payment made to the proprietor of minerals, either the government or a private person;
- (ii) it flows from a statutory agreement (a mining lease) between the lessor and the lessee;
- (iii) it represents a return for the grant of a privilege (to the lessee) of removing or consuming the minerals; and
- (iv) it is generally determined on the basis of the quantity of the minerals removed.”

9. If we consider the recent decision by a Bench of 9 judges of this Court, in *Mineral Area Development Authority (supra)* and its reference to RS Sarkaria J’s opinion rendered *Tarkeshwar Sio ThakurJiu v. Dar Dass Dey & Co*³ wherein the term ‘mining operations’ has been interpreted to be expansive “so as to comprehend every activity by which the mineral is extracted or obtained from the earth irrespective of whether such activity is carried out on the surface or in the bowels of the earth”, then, what the respondent is engaged in, would also be covered.

³ (1979) 3 SCC 106

10. In view of the above, at the outset the respondent's contention of non-applicability of Section 9 of the Act has to be negated. This is more so for the reason that the respondent herein has chosen not to challenge the determination of the Division Bench in the impugned judgment that Section 9 would apply to them. Keeping that aside, we proceed further. It is a matter of record that the contract *inter se* the parties stood signed prior to the amendment coming into force. All payments, including royalty had been made. All that remained was for the iron ore to be lifted and transported away from the site of mining. It is also seen from record that between the time all the payments having been made and the actual moving of the iron ore, took place the rate of royalty stood increased.

11. One would think that a specified amount (*Rs.100 as envisaged in the tender document and Rs.50 as finalized in the contract*) being already given, the respondent's liability on account of increase in royalty would be limited thereto, but according to the appellant it is not so. The difference in royalty between 10% and 15% was subtracted from the security deposit and remainder was returned. This, in our view, appears to be the correct approach for a contractual provision would have to give way to a statutory amendment. Had the increase been by way of any other method other than a statutory amendment, the

contractual provision limiting the respondent's liability would have prevailed.

12. This Court in its order fixing the rate of royalty at 10% use the word '*applicable*', which denotes, in our understanding, applicability at the relevant time, of removing the tendered goods which already stood extracted, and does not intend to freeze the rate of royalty. We are supported in our conclusion by the understanding of a 9-Judge Bench in ***Mineral Area Development Authority (supra)*** wherein the payment of royalty is linked with dispatch. D.Y. Chandrachud, CJI writing for majority held as under:

“92...The expression “dispatch” has been defined to mean the removal of minerals or mineral products from the leased area and to include the consumption of minerals and mineral products within such area. [MMDR Act, Section 3(aa).] It is worth noting that royalty is payable under Section 9 on the removal or consumption of minerals by the lessee in the leased area. Thus, essentially royalty is payable on the dispatch of minerals from the leased area.”
(emphasis supplied)

13. In that view of the matter, the payment is to be made on the date of the movement of the minerals. If the date of the movement is after the enhancement in royalty, a contract entered into prior to the statutory change cannot be limiting its impact. In other words, the appellant was correct in deducting the additional 5% royalty from the security deposit of the respondent. It would

have been entirely open to the respondents to remove the iron ore from the site at one go or at any date prior to the amendment, which they chose not to do. It is they who either adopted the piecemeal approach in moving the mineral or moved the entire quantity after the date of the amendment. As such, they cannot escape payment of enhanced royalty.

14. Resultantly, the appeal is allowed. Impugned judgment, the particulars of which are mentioned in paragraph 1 is quashed and set aside.

Pending application(s), if any, shall stand disposed of.

.....**J.**
(SANJAY KAROL)

.....**J.**
(NONGMEIKAPAM KOTISWAR SINGH)

New Delhi;
June 4, 2026