



## REPORTABLE

**CIVIL APPEAL NO.     OF 2026**  
**[ARISING OUT OF SLP (CIVIL) DIARY NO. 15252 OF 2017]**

## VERSUS

**WITH**

**CIVIL APPEAL NO.      OF 2026**  
**[ARISING OUT OF SLP (CIVIL) DIARY NO. 30225 OF 2017]**

## VERSUS

**M/S. GANPATI ENTERPRISES SLATE MINES** ... RESPONDENT

## J U D G M E N T

**DIPANKAR DATTA, J.**

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## **PREFACE**

3. These two appeals task us to interpret relevant clauses of a mining lease deed, read with the applicable statutory provisions and the rules framed thereunder in the context of the power of the lessor (appellant – State<sup>1</sup>) to increase the rate of royalty and dead rent during the subsistence of the lease. Notably, the lease deeds executed by and between the State and the lessees – respondents contain no express provision permitting such increase.

## **RELEVANT LAWS**

4. To understand the present case better and before we proceed to notice the facts involved, we find it prudent to inform ourselves of the relevant laws.
5. For development and regulation of mines and minerals in the country, the Parliament, in the 8<sup>th</sup> year of the Republic of India, enacted the Mines and Minerals (Development and Regulation) Act, 1957<sup>2</sup>. The MMDR Act distinguishes between major and minor minerals. While major minerals are substantially regulated by the Union, minor minerals are largely governed by rules framed by the States. Sub-section (1) of Section 15 of the MMDR Act grants power to a State Government to make rules for regulation, *inter alia*, of mining leases. Sub-section (3) of section 15 thereof mandates that the consideration (namely, royalty or dead rent,

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<sup>1</sup> State

<sup>2</sup> MMDR Act

whichever is more) is to be paid as per the rate prescribed by the State Government in the rules framed by it.

6. Section 15, to the extent relevant, is reproduced below:

**15. Power of State Governments to make rules in respect of minor minerals.**—(1) The State Government may, by notification in the Official Gazette, make rules for, regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

(1A) ...

(2) ...

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:

Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years.

(emphasis ours)

7. In exercise of the power conferred by Section 15 of the MMDR Act, the erstwhile State of Punjab framed Punjab Minor Mineral Concession Rules, 1964<sup>3</sup>. Upon reorganisation of the State, the 1964 Rules were adopted by the State of Haryana (appellant in the present appeals) with some amendments.
8. Rules 10 and 21 of the 1964 Rules are relevant for the purposes of deciding the present appeals. In brief, Rule 10 provides that a lease will be granted by auction to the highest bidder on “annual dead rent” which will be equivalent to the highest bid amount. The State is enabled to enhance the dead rent after expiry of a three-year lease period. Sub-rule (5) of rule 10 mandates that “other terms and conditions” shall be

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<sup>3</sup> 1964 Rules

in accordance with Rule 21. Relevant conditions laid down in Rule 21 are that: (i) the lessee shall pay royalty at rates in accordance with the First Schedule of the Rules; (ii) the lessee has to pay royalty at rates which may be revised from time to time; and (iii) the lessee has to pay yearly dead rent as fixed by the Government in accordance with the second schedule.

9. Rules 10 and 21 of the 1964 Rules, to the extent relevant, are reproduced below:

**10. Grant of mining lease by auction:-**

(1) Notwithstanding anything contained in these rules, any minor mineral deposit may be granted on mining lease for a period of seven years by public auction.

(2) The annual dead rent shall be determined by the highest bid offered in the auction and such dead rent shall be subject to enhancement upto 50% after the expiry of three years lease period.

(3) .....

(4).....

(5) Other terms and conditions of the lease shall be in accordance with rule 21 of the said rules.

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**21. Conditions of mining lease.**

- (1) Every mining lease shall be subject to the following conditions. –  
(i)(a) The lessee shall pay royalty on minor minerals dispatched from the leased area at the rates specified in the First Schedule:

Provided that the lessee shall pay royalty at such revised rates as may be notified from time to time.

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(iii) The lessee shall also pay for every year, such yearly dead rent within the limits specified in second Schedule as may be fixed by the Government and if the lease permits the working of more than one minor mineral in the same area the Government may charge separate dead rent in respect of each minor mineral:

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(emphasis ours)

10. Annual dead rent and royalty are two stipulations which ordinarily find place in a mining lease deed. The controversy in the present matter

turns on the enhancement of the rates thereof by the State. The principal question which arises for our consideration is whether such enhancement was validly effected.

**FACTS OF THE LEAD AND THE CONNECTED APPEALS**

**11.** Facts pertaining to the lead appeal<sup>4</sup> are as follows:

- a. For the purposes of grant of mining lease for extraction of road metal and masonry stone in various areas of district Faridabad including the subject lands<sup>5</sup>, an auction notice dated 12<sup>th</sup> October, 2001<sup>6</sup> was issued by the Mines & Geology Department, Government of Haryana.
- b. M/s Faridabad Gurgaon Minerals<sup>7</sup>, first respondent in the lead appeal, offered the highest bid and consequently two letters of acceptance<sup>8</sup> dated 6<sup>th</sup> November, 2001 were issued in its favour with respect to the subject lands. Later, a mining lease deed was executed on 17<sup>th</sup> September, 2002.
- c. It is profitable to refer to certain clauses of the AUCTION NOTICE and the LoA, hereunder.

**AUCTION NOTICE:**

- i. Clause 3 provides that the mining lease shall be for a period of seven years from the date of execution/grant of permission for mining.

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<sup>4</sup> arising out of SLP (CIVIL) Diary No. 15252 of 2017

<sup>5</sup> 86.8 hectares of land in village Sirohi and 131.05 hectares of land in village Khori Jamalpur

<sup>6</sup> AUCTION NOTICE

<sup>7</sup> M/s. FGM

<sup>8</sup> LoA

- ii. Clause 5 stipulates that the highest bid offered in the auction sale shall be fixed as 'dead rent' per annum.
- iii. Clause 6 provides that "[T]he annual dead rent shall be enhanced by 50% after the expiry of every three years period of the lease."
- iv. Clause 13 provides that in addition to the terms and conditions expressly provided for in the AUCTION NOTICE, other conditions as contained in Rules 10, 21 and 61 of the 1964 Rules shall also apply:  
"Other conditions as applicable to grant of mining lease for minor minerals as contained in Rules 10, 21 and 61 of Punjab Minor Mineral Concession Rules, 1964 shall also apply."  
(emphasis ours)

**LoA:** Clauses 3 and 9 of the LoA are the same as clauses 6 and 13 of the AUCTION NOTICE and are not repeated for brevity.

- d. **LEASE DEED:** Suffice to note that the mining lease deed executed on 17<sup>th</sup> September, 2002 between the State and M/s. FGM did not contain a stipulation of applicability of the 1964 Rules or envisage a stipulation of fluctuating rates of royalty.
- e. *Vide* a notification dated 3<sup>rd</sup> June, 2005<sup>9</sup>, the State in exercise of its powers under sub-section (1) of section 15 of the MMDR Act amended the 1964 Rules and enhanced the rates of royalty and dead rent by 50%.
- f. Aggrieved by the increase in dead rent and royalty, M/s. FGM instituted a writ petition<sup>10</sup> before the High Court. An application for amendment<sup>11</sup> was filed, which stood allowed *vide* order dated 12<sup>th</sup> December, 2007.

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<sup>9</sup> No. S.O.40/C.S. 67/1957/S.15/2005

<sup>10</sup> CWP No.17958 of 2005

<sup>11</sup> C.M. No. 20186 of 2007

Prayers, as per the amended writ petition, sought quashing of the said notification on, *inter alia*, the following grounds:

- i. Since the lease deed executed by and between the parties did not contain any stipulation making the lease subject to other rules providing for fluctuating or revised rates of royalty, the rights and obligations of the parties stood confined to the terms of the lease deed itself. Consequently, any enhancement in the rate of royalty effected after execution of the lease deed could not operate to alter or prejudice the rights accruing to the petitioner-lessee under the lease.
- ii. There was no empirical data or rationale premised on which the increase of royalty was sought to be made.
- g. It appears that M/s. FGM also filed an application<sup>12</sup> seeking permission to rely on additional documents received through invocation of the 'right to information' machinery. By an order dated 14<sup>th</sup> October, 2015, such application was directed to be "heard with main case".
- h. In the aforesaid application, a reference was made to an additional affidavit dated 8<sup>th</sup> May, 2010 (not on record) filed by M/s. FGM whereby it sought to urge a new/additional ground of challenge, viz. the notification dated 3<sup>rd</sup> June, 2005 stands vitiated for breach of the mandatory provisions of the Rules of Business of the Government of Haryana, 1977<sup>13</sup> framed under Article 166 of the Constitution. The plea

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<sup>12</sup> C.M. 5224 of 2015

<sup>13</sup> Rules of Business

taken in the additional affidavit and the aforesaid application appears to be that the notification dated 3<sup>rd</sup> June, 2005 was not preceded by either the Council of Ministers or the Finance Department's concurrence of the proposal for increasing the royalty.

- i. Jitender Kumar, respondent no. 2 in the lead appeal, had also filed a writ petition<sup>14</sup> before the High Court. Despite service, he has not entered appearance. Since his writ petition before the High Court is not on record, we proceed on the assumption that he too was aggrieved by the enhancement of rates.
- j. M/s Ganpati Enterprises Slate Mines<sup>15</sup>, respondent in the connected appeal<sup>16</sup>, in a similar way was granted a mining lease with respect to a different land<sup>17</sup> on the same date, that is, 17<sup>th</sup> September, 2002.
- k. Aggrieved by the increase in royalty (vide notification dated 3<sup>rd</sup> June, 2005), M/s. GESM had priorly instituted a writ petition<sup>18</sup> praying, *inter alia*, for quashing of the same.

#### **OUTCOME OF THE PROCEEDINGS**

- 12.** The three writ petitions were heard together and allowed *vide* the common impugned judgment and order dated 2<sup>nd</sup> June, 2016<sup>19</sup> of the High Court of Punjab and Haryana at Chandigarh<sup>20</sup>.

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<sup>14</sup> C.W.P. No.14468 of 2005

<sup>15</sup> M/s. GESM

<sup>16</sup> arising out of SLP (CIVIL) Diary No. 30225 of 2017

<sup>17</sup> 232.55 hectares of land in village Majra Manethi, District Rewari

<sup>18</sup> Civil Writ Petition No.14306/2005

<sup>19</sup> impugned judgment

<sup>20</sup> High Court

- 13.** The High Court agreed with the arguments advanced by the lessees-petitioners before it and noted that the mining lease deeds did not provide for a change in rate of royalty or dead rent and, thus, any further enhancement by the State would not bind the lessees; enhancement of rate by 50% was arbitrary as it was not based on any material; and that the Rules of Business framed by the State under Article 166 of the Constitution were violated. Curiously, no order seems to have been recorded by the High Court disposing of the application for permission to rely on additional documents once it decided the writ petitions of the respondents finally.
- 14.** Thereafter, the State applied for review<sup>21</sup> of the common impugned judgment. The said review petitions were dismissed on 3<sup>rd</sup> March, 2017 and 26<sup>th</sup> May, 2017, both on merit as well as on delay. The said orders have also been impugned before us along with the common impugned judgment dated 2<sup>nd</sup> June, 2016.

**SUBMISSIONS OF THE APPELLANT-STATE**

- 15.** Mr. Balbir Singh, learned senior advocate, appeared for the State and prayed for interference with the impugned judgment which, according to him, is wholly erroneous apart from being illegal.
- 16.** Points argued on behalf of the State by Mr. Singh are encapsulated hereunder:

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<sup>21</sup> RA-CW No.82/2017 in CWP No.17958 of 2005 and RA-CW No.84/2017 in CWP No.14306 of 2005

***Respondents are bound by the enhancement of royalty/dead rent***

- a. Referring to the 1964 Rules, particularly Rules 10(5) and 21(1)(i)(a), Mr. Singh contended that every mining lease is subject to these rules. This position was reiterated in clause 13 of the AUCTION NOTICE and clause 9 of the LoA. Moreover, clause 3 of Part III of the lease deed itself provides that “the lessee/lessees shall also pay for every year dead rent at the rate specified in Schedule II of the Rules ...” (emphasis supplied by Mr. Singh). According to Mr. Singh, these provisions leave no manner of doubt that the respondents accepted the leases with full knowledge that the statutory regime under the 1964 Rules governed the same (including the provisions relating to enhancement of dead rent and royalty) and, thus, were bound thereby.
- b. Next, Mr. Singh contended that Rule 21(1)(i)(a), by using the word “shall” casts a mandatory obligation on every lessee to pay royalty at the rates specified in the First Schedule, while its proviso further mandates payments at rates specified “from time to time”. Although Rule 21 had not been expressly reproduced in the lease deed, its applicability was expressly incorporated in both the AUCTION NOTICE and the LoA. In any event, Rule 21 being the statutory edict governing the lease, its operation cannot be excluded, ignored, or diluted merely because it is not specifically set out in the lease deed.
- c. Inviting our attention to the decision of this Court in ***Mineral Area Development Authority v. SAIL***<sup>22</sup> [9-J], Mr. Singh submitted that the

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<sup>22</sup> (2024) 10 SCC 1

State acts as the trustee for all minerals and has the constitutional duty to regulate their exploitation in public interest. "The fact that the State Government cannot alter the clauses in the mining lease cannot be understood to mean that all the powers of the State with respect to regulation of mines and mineral development as well as the power to tax mineral rights have been extinguished"<sup>23</sup> was referred to with great emphasis by him.

- d. Referring to Section 9 of the MMDR Act, Mr. Singh submitted that it is the charging provision for royalty but does not itself prescribe the rate or method of computation. Those are provided in the Second Schedule, making the charging and computation provisions an integrated statutory scheme. Reliance was placed on paragraphs 23 and 24 of the decision in **National Mineral Development Corpn. Ltd. v. State of M.P.**<sup>24</sup>.
- e. Continuing further, Mr. Singh placed paragraph 42 of the decision in **State of Rajasthan Vs. J. K. Synthetics**<sup>25</sup>, where this Court held that when *vide* amendment in the rules, the rate of interest was enhanced, then any stipulation in the lease deed prescribing a lower rate of interest would necessarily yield to the statutory mandate (amended rules) (emphasis supplied by Mr. Singh).
- f. Paragraphs 47 and 48 from the decision in **D.K. Trivedi & Sons v. State of Gujarat**<sup>26</sup> was next cited where this Court held that the power of the

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<sup>23</sup> para 231 of **Mineral Area Development Authority** (supra)

<sup>24</sup> (2004) 6 SCC 281

<sup>25</sup> 2011 (12) SCC 518

<sup>26</sup> 1986 Supp SCC 20

State Government to prescribe royalty or dead rent under Section 15(1) by framing rules necessarily carries with it the power to amend, vary, enhance or reduce the rates so prescribed.

***Enhancement in rate of royalty was an informed decision and not a decision taken without material***

- g. Mr. Singh submitted that before enhancing the rates, the rates in neighbouring States were considered. Although a sub-committee was initially proposed, the matter proceeded on the basis of comparative material already available. Further, the State Government was statutorily competent under the MMDR Act to revise the royalty rates after the expiry of three years. In the present case, although the previous revision in Haryana was effected in September 1999 with an enhancement of 100%, the subsequent revision was made only on 3<sup>rd</sup> June, 2005, after a lapse of about five and a half years, and even then the increase was restricted to 50% and received the approval of the then Chief Minister.
- h. Reliance was placed on paragraph 52 of the decision in ***Kirloskar Ferrous Industries Ltd. v. Union of India***<sup>27</sup> to contend that policy matters, including computation and levy of royalty on minerals, fall within the exclusive domain of the executive and are not to be tested on merits by courts.

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<sup>27</sup> (2025) 1 SCC 695

***There were no violations of the Rules of Business***

- i. Mr. Singh's final contention was that the amendment dated 3<sup>rd</sup> June, 2005 cannot be invalidated for alleged non-compliance with the Rules of Business. The Rules, framed under Article 166 of the Constitution of India are directory, and not mandatory, and substantial compliance is sufficient as held in the decision in ***Narmada Bachao Andolan v. State of M.P.***<sup>28</sup>. Reliance was placed on paragraphs 33-37 of this decision to support the contention.
- j. Alternatively, Mr. Singh submitted that the alleged violations (of Rules 5, 7, 11 and 31) are irrelevant, as those provisions govern executive action, whereas the present case concerns delegated legislation. In support, he relied on Rule 4, the opening provision under the heading "Part I – Disposal of Business", which reads as follows:

The Council shall be collectively responsible for all executive orders issued in the name of the Governor in accordance with these rules whether such orders are authorised by an individual Minister on a matter pertaining to his portfolio or as a result of discussion at a meeting of the Council or howsoever otherwise.

(emphasis supplied by Mr. Singh)

The above, Mr. Singh pointed out, goes to show that the Rules apply to "executive orders". For delegated legislation, such as the 1964 Rules, rules 48<sup>29</sup> and 49<sup>30</sup> of the Rules of Business only require ordinary reference to the Law Department.

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<sup>28</sup> (2011) 12 SCC 333

<sup>29</sup> **48.** Whenever it is proposed in any Department, other than the Law Department:-

(i) to issue a statutory rule, notification or order; or

(ii) ....

(iii) ....

the draft shall ordinarily be referred to the Law Department for opinion and for revision where necessary.

<sup>30</sup> **49.** (1) All Administrative Departments shall consult the Law Department on-

k. Mr. Singh further contended that consultation with the Finance Department was also not mandatory, as rule 7 of the Rules of Business requires prior consultation with the Finance Department only when an “order” will “affect the finances of the State”. Rule 7 reads as follows:

7. (I) No Department shall without previous consultation with the Finance Department, authorise any orders (other than orders pursuant to any general delegation made by the Finance Department) which:-

(a) either immediately or by their repercussion will affect the finances of the State or which, in particular-...

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(emphasis supplied by Mr. Singh)

l. Since the amendment, by enhancing royalty and dead rent, increased the State revenue and did not adversely “affect the finances of the State”, Mr. Singh submitted that there was no requirement to consult the Finance Department. In this context, reference was again made to ***Narmada Bachao Andolan*** (supra) and it was submitted that compliance with the Rules of Business may be mandatory when a decision entails adverse financial implications for the State, particularly where an expense is not backed by an Appropriation Act, but remain directory where there is no adverse financial implication and substantial compliance suffices.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

**17.** Mr. Dhruv Mehta and Mr. Yashraj Singh Deora, learned senior counsel, appeared for M/s. FGM and M/s. GESM, respectively.

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(a) the construction of statutes, Acts, regulations and statutory rules, orders and notifications;

(b) ...

(c) ....

***State (Appellant) is bound by the terms of the lease***

- a. Mr. Mehta referred to the lease deed to highlight that there was no provision therein which enabled the State (or reserved its liberty) for any increase. The parties being bound by the terms of the lease deed, increase in rates *vide* notification dated 3<sup>rd</sup> June, 2005 cannot apply to the respondents.
- b. Although the proviso to Rule 21(1)(i)(a) of the 1964 Rules mandates for payment of royalty at rates notified from “time to time”, Mr. Mehta highlighted that the deed consciously departed from that formulation by fixing a specific rate without providing for future increase.
- c. Referring to Rule 21(1)(i)(a), it was argued that the said rule contains no non obstante clause permitting it to override the terms of the lease.
- d. Next, it was urged that a contractual stipulation entered into pursuant to statutory power does not become invalid merely because it limits the future exercise of another statutory power. Thus, the power to increase royalty would operate subject to the binding terms of the statutory contract, and would stand restricted to that extent. Reliance was placed on paragraphs 14–16 of the decision in ***Indian Aluminium Co. v. Kerala State Electricity Board***<sup>31</sup>.
- e. Parties may waive a statutory benefit, and the State did so by entering into a lease deed that did not reserve its power to increase royalty. This

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<sup>31</sup> (1975) 2 SCC 414

was the next point urged by Mr. Mehta, placing reliance on paragraphs 7 and 8 of the decision in ***Sita Ram Gupta vs PNB***<sup>32</sup>.

- f. Mr. Mehta then argued that reference to Rule 21 in the AUCTION NOTICE and the LoA is immaterial, since the finally executed lease deed contains no such stipulation. In this context, reliance was placed on paragraph 54 of the decision in ***Joshi Technologies International Inc. v. Union of India***<sup>33</sup>, wherein this Court while interpreting the terms of a contract [Product Sharing Contract (PSC)] held that the benefit (deductions under Section 42 of the Income Tax Act) cannot be claimed by the petitioner therein as the same did not form a part of the contract, even though the other party to the contract had admitted that the said benefit was not made part of the contract due to an inadvertent error.
- g. The repeal of the 1964 Rules and promulgation of the Haryana State Minor Mineral Concession, Stocking, Transportation of Minerals, and Prevention of Illegal Mining Rules, 2012<sup>34</sup>, according to Mehta, is significant. The model form for lease deeds (Form ML-1), appended to these Rules, specifically provides that the "*lessee shall pay royalty ... at the rates as per First Schedule ... Rules, 2012 and as may be revised by the State Government from time to time.*" Building upon this, it was submitted that the very fact that the State found it necessary to amend the prescribed form of contract/mining lease so as to expressly incorporate a stipulation for revision of royalty clearly demonstrates that

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<sup>32</sup> (2008) 5 SCC 711

<sup>33</sup> (2015) 7SCC 728

<sup>34</sup> 2012 Rules

under the earlier lease form, no right was reserved to revise royalty during the subsistence of the lease.

- h. Reliance on the decision in ***D.K. Trivedi & Sons*** (supra) by the State was commented to be misplaced as in the said case, the mining lease itself provided that royalty will be payable "at the rates for the time being in force under Schedule-I to the Gujarat Mineral Rules, 1966".

***Notification dated 3<sup>rd</sup> June, 2005 is bad for violation of the Rules of Business which mandated prior consultation with the Finance Department and approval by Council of Ministers***

- i. In response to the State's contention that the Rules of Business are merely directory, it was submitted on behalf of the respondents that they are mandatory. Reliance was placed on paragraph 92 of the decision in ***MRF Limited vs. Manohar Parrikar***<sup>35</sup>.
- j. In continuation, Mr. Mehta submitted that the argument now advanced by the State that the Rules of Business framed under Article 166(3) are directory was also raised in ***MRF Limited*** (supra) by placing reliance on the Constitution Bench decision of this Court in ***R. Chitralekha vs. State of Mysore***<sup>36</sup>, but was rejected. This Court clarified that ***R. Chitralekha*** (supra) had been misread, as the observations therein were made in the context of clauses (1) and (2) of Article 166 and not clause (3). Paragraph 77 from the decision in ***MRF Limited*** (supra) was relied on in this behalf.

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<sup>35</sup> (2010) 11 SCC 374

<sup>36</sup> AIR 1964 SC 1823

k. Next, it was submitted that the Rules of Business are applicable not only to executive actions but also to legislative actions. In this context, our attention was invited first to Rule 5 of the Rules of Business, which provides that "*Subject to the orders of the Chief Minister under rule 11, all cases referred to in the Schedule-I shall be brought before the Council...*" and thereafter to cases referred in Schedule-I, which as per Rule 5 are required to be brought before the Council. The heading of Schedule-I is "SCHEDULE-I, (See Rules 5 and 11)". Mr. Mehta highlighted a few entries in the Schedule to show that some of them relate to legislative functions. He sought to impress upon us that proposal for amendment of rules and regulations (Serial Nos. 2<sup>37</sup>, 4<sup>38</sup> and 7<sup>39</sup>), for legislation (Serial No. 9<sup>40</sup>), and for imposition of a new tax (Serial No. 10<sup>41</sup>), are all required to be dealt with in accordance with Rules 5 and 11 of the Rules of Business. These cases, it was submitted, are legislative in nature. Thus, the State's argument that the Rules apply only to executive functions is misconceived.

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<sup>37</sup> Proposals for the making or proposals involving amendment, other than routine amendment of rules regulating the recruitment and the conditions of service of—

(a) Persons appointed to the Secretariat staff of the Assembly [article 187(3)];  
 (b) officers and servants of the High Court under article 229, provisos to clauses (I) and (2);  
 (c) persons appointed to the public service and posts in connection with the State(proviso to article-309).

<sup>38</sup> Proposals for the making or amending of rules under article 234.

<sup>39</sup> Proposals for making or amending regulations under article 318 or under the proviso to clause (3) of article 320.

<sup>40</sup> Proposals for legislation, including the issue of Ordinance under article 213 of the Constitution.

<sup>41</sup> Proposals for the imposition of a new tax, or any change in the method of assessment, or the pitch of any existing tax, or land revenue, or irrigation rates or for the raising of loans on the security of revenues of the State, or for giving of a guarantee by the Government of the State.

- I. The decision to increase the rate of royalty and dead rent was criticised by Mr. Mehta as bad for want of consultation with the Finance Department and for approval by the Council based on the following points.
  - i. Any such decision will affect the finances of the State. Rule 7 of the Rules of Business mandates that no order on a proposal which “will affect the finances of the State” shall be authorised “without previous consultation with the Finance Department”. Such consultation was, therefore, mandatory but was not undertaken.
  - ii. Further, Rule 5 provides that “all cases referred to in the Schedule-I shall be brought before the Council”. Entry 11 of Schedule-I covers “Any proposal which affect the finances of the State which has not the consent of the Finance Department.” Since the decision to enhance the rates was likely to affect finances of the State and lacked consent of the Finance Department, it required approval of the Council. Instead, it was approved only by the Minister-in-Charge of Mining, who was then the Chief Minister.
- m. The contention that consultation with the Finance Department is mandatory only where the proposal adversely affects State finances, and merely directory where it enhances State revenue, it was asserted, is misconceived. The expression “affect the finances of the State” cannot be read restrictively to mean “adversely affect”, as that would amount to adding words to the provision. “Affect” must include both positive and negative financial consequences. It was further argued that:

- i. The scheme of the Rules also militates against such an interpretation. Rule 7 uses the word “affect” in relation to grants, including mining rights, which may have either a positive or negative impact on State finances. Likewise, Entry 10 of Schedule-I refers to proposals for imposition of new taxes, which would ordinarily augment State revenue. These provisions show that “affect” is used broadly, not merely in the sense of adverse financial impact.
- ii. A word of everyday use, unless defined in the statute, must be construed in its popular and ordinary sense. There is nothing in the Rules of Business to indicate that the word “affect” was intended to mean only “adversely affect”.
- iii. Reliance was placed upon the decision of this Court in ***Haridwar Singh v. Bagun Sumbrui & Ors.***<sup>42</sup>. In that case, a decision which would have enhanced the revenue of the State had been taken without consultation with the Finance Department. While considering Rule 10 of the Business Rules of the State of Bihar, which is *pari materia* with Rule 7 in the present case, this Court held that the requirement was mandatory and that the decision, notwithstanding its revenue-enhancing effect, necessarily required the approval of the Finance Department.
- iv. Referring to the decision in ***Daniraiji Vrajlalji, Junagadh v. Vahuji Maharaj Shri Chandraprabha***<sup>43</sup>, Mr. Mehta submitted that this

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<sup>42</sup> (1973) 3 SCC 889

<sup>43</sup> (1975) 1 SCC 612

Court recognised that the word “affect” means to alter, influence, or have an impact on. In the statutory context considered therein, the Court further held that the expression ordinarily means to touch, relate to, or concern.

- v. In 12<sup>th</sup> Edition of Black's Law Dictionary, the word “affect” has been defined as "Most generally, to produce an effect on: to influence in some way..."
- n. Thus understood, Mr. Mehta contended that without the Finance Department's approval, the decision taken by the Chief Minister alone could not have been given effect.
- o. Reliance on ***Narmada Bachao Andolan*** (supra) by the appellant, urged Mr. Mehta, is misplaced. The issue in that case was whether a decision taken by a Committee of Ministers, comprising the Ministers in charge of the concerned Departments and the Chief Minister, in exercise of powers delegated by the Council of Ministers, was required to conform to the Business Rules. In that context, ***MRF Limited*** (supra) was distinguished on the ground that it concerned rules involving financial implications. Even assuming that ***Narmada Bachao Andolan*** (supra) limited the application of ***MRF Limited*** (supra), the distinction does not assist the appellant as ***Narmada Bachao Andolan*** (supra) did not involve any issue relating to consultation with, or approval of, the Finance Department; whereas here, when the question specifically concerns the mandatory requirement of approval by the Finance Department, ***MRF Limited*** (supra) will apply with full rigour.

p. Finally, paragraphs 22-24 of the decision in ***Delhi International Airport Ltd. v. International Lease Finance Corp.***<sup>44</sup> were placed where this Court held that the Business Rules specially relating to the finances of the State and falling under Article 166(3) are mandatory and non-compliance with the same vitiates the State action.

***Notification dated 3<sup>rd</sup> June, 2005 is arbitrary and suffers from the vice of non-application of mind***

- q. Argument advanced by Mr. Mehta was that the State had issued the said notification and increased the rates, without considering any statutory criteria or supporting material.
- r. Reliance was placed on paragraph 15 of the decision in ***State of M.P. v. Mahalaxmi Fabric Mills Ltd.***<sup>45</sup> where this Court upheld the delegated power to enhance royalty. The Court held that Parliament permitted periodic revision by the Central Government to account for inflation and the falling value of money. The power was held not to suffer from excessive delegation, as it was subject to statutory safeguards: enhancement could be made only after the prescribed interval, had to be guided by the object of regulation of mines and mineral development, and was subject to parliamentary oversight under Section 28.
- s. Building on the above, Mr. Mehta submitted that after expiry of three years under the proviso to Section 15(3) of the MMDR Act, the State is merely enabled, not bound, to revise royalty having regard to inflation

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<sup>44</sup> (2015) 8 SCC 446

<sup>45</sup> 1995 Supp (1) SCC 642

and the fall in money value. Any enhancement beyond such adjustment must be supported by relevant material and objective reasons. In the present case, the 50% increase in royalty was arbitrary, having been proposed merely because three years had elapsed since the last revision, without any objective basis for fixing the increase at 50%.

- t. It was further submitted that the enhancement disregarded the most relevant statutory consideration, namely uniform development and conservation of minerals. Although the State had called for royalty rates in neighbouring States and found them to be substantially lower, ranging between Rs. 8–15 per tonne, it ignored this data and enhanced the rate from Rs. 24 to Rs. 36 per tonne. Neither rate reflected price uniformity or uniform mineral development. Such disparity would distort mineral prices, incentivise procurement from adjoining States where minerals are cheaper, and defeat the objective of uniform mineral development within Haryana.
- u. Even though the State itself contemplated constitution of a Sub-Committee and even after having found that existing rate in Haryana (Rs. 24 per tonne) was already higher than neighbouring States, Mr. Mehta complained that the State, without formulation of such a committee or placing any fresh material on record, proceeded to increase the rates.
- v. Furthermore, Mr. Mehta commented that any argument of increase in rates being for the purpose of augmentation of revenue is equally unsustainable. The record shows that only two leases of the respondents

were operational in the District of Faridabad, and the enhancement would apply only to them. At the same time, the State continued to grant mining contracts under which no royalty was payable (only a fixed contractual amount was to be paid). Thus, the decision not being based on any rational revenue consideration, was an arbitrary exercise of discretion.

***Without prejudice, if the present appeals were to be allowed, a reasonable interest rate on the arrears of royalty ought to be awarded.***

w. Without prejudice to the above contentions, Mr. Mehta and Mr. Deora submitted that if this Court were inclined to allow the present appeals, then the interest rate to be charged on the arrears of royalty ought to be waived. It was highlighted that the notification dated 3<sup>rd</sup> June, 2005 remained stayed from 4<sup>th</sup> May, 2006 till the High Court's judgment dated 2<sup>nd</sup> June, 2016. The State thereafter approached this Court after a delay of 245 days, and the matter has remained pending for years, with repeated adjournments sought by the State. The mining lease expired on 5<sup>th</sup> February, 2009 and all commercial transactions related to the same stand closed. Respondents did not recover the enhanced royalty from purchasers. Any liability would, therefore, fall directly on the respondents. Further, the State's own subsequent rules, i.e., the 2012 Rules, reduced interest on delayed royalty from 15–21% to 12% per annum, while prevailing bank rates are substantially lower. In these circumstances, and in light of ***South Eastern Coalfields Ltd. v. State***

**of M.P.**<sup>46</sup>, it was submitted that the respondents be not saddled with any interest.

### **ISSUES**

- 18.** Having heard learned senior counsel appearing for the parties, the following issues arise for our consideration:
- I. Whether, in the absence of any stipulation in the lease deed subjecting the lease to statutory rules (providing for fluctuating or revised rates of royalty and dead rent), the State was precluded from enhancing the rate of royalty after execution of such deed?
  - II. Whether the enhancement of royalty was arbitrary and unsustainable for want of empirical data or rational basis?
  - III. Whether the decision to enhance royalty stood vitiated for violation of the Rules of Business?

### **ANALYSIS**

- 19.** We propose to answer the issues in *seriatim*.
- 20.** However, to avoid prolixity, the multiple precedents relied on by the parties are not being individually referred to, except when considered imperative. Nonetheless, we intend to draw guidance from those precedents to navigate the principles emerging therefrom and maintain consistency in law while addressing the complexities of the issues involved.

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<sup>46</sup> (2003) 8 SCC 648

**ISSUE I**

- 21.** Does a statutory contract entered into by and between the Government of a State (lessor) and a private party (lessee), containing various terms and conditions for regulation of mining in the leasehold area, forecloses the Government's right to exercise a statutory power which though otherwise available is not expressly mentioned in the contract? The answer to this question, ordinarily, would be in the negative. A contract cannot foreclose the Government from exercising a statutory power is the settled law. However, there is an exception, i.e., if the statute itself allows contracting out of that power and giving up that statutory power by the Government is a part of the agreed terms of the contract.
- 22.** The reason seems to be this. When Government enters into a contract, it can wear two hats. First, is the hat of a sovereign. Source of the power is a statute and the purpose of exercise of power would be to advance public good. Second, is the commercial/private hat where source of the power is derived only from the contract. No statute is involved and there is absence of any public regulatory element.
- 23.** Now, where statutory power is granted for public purposes or regulatory functions, the Government cannot by entering into a contract surrender, restrict, or abdicate that power. If the power is statutory and regulatory, such power would survive despite the contract. The contract would bind the Government only to the extent it does not conflict with the statute, on the principle that though the contract governs commercial terms, yet, the terms cannot restrict the exercise of a statutory power, if available.

In two conceivable situations, we would think that the contract could prevail. First, if the statute itself says that the Government may enter into agreements and be bound by the terms thereof, irrespective of what the statute says (which is quite unlikely), and secondly, if the power to contract is exercised by the Government while acting like a private party (happens quite often) and where the contract is the complete code, for example, like in pure business/commercial deals of supply contract, disposal of property not regulated by statute, taking office space on rent, making contractual appointments, etc. In such cases, no public element is likely to be involved except that there too the State action has to be fair and not arbitrary.

- 24.** While a mining lease is a statutory grant, royalty is a statutory levy. Power to revise royalty at periodic intervals flows from section 15 of the MMDR Act and the rules framed thereunder [in particular, proviso to Rule 21(1)(i)(a) of the 1964 Rules]. Mere silence in the lease deed with regard to revision of royalty cannot denude the State of a statutory power and/or operate as a bar to the exercise of power under section 15 of the MMDR Act and the rules framed thereunder; hence, a lessee cannot claim any vested right to static royalty for the entire lease period.
- 25.** Bearing these principles in mind, we proceed to decide the first issue.
- 26.** As discussed under the heading 'FACTS', the lease deed in the present case was preceded by an Auction Notice and the LoA, both of which specifically contained a stipulation that Rules 10 and 21 of the 1964 Rules shall apply. Be that as it may, the lease deed is silent about

application of such Rules. Should applicability of the relevant provisions of the 1964 Rules be not read into the lease deed? The answer is clearly 'YES'.

- 27.** In the peculiar facts and circumstances of the present case and for the reasons that follow, we hold the requirement to comply with Rules 10 and 21 of the 1964 Rules formed an implied condition in the lease deed.
- 28.** A mining lease granted under the 1964 Rules does not stand in isolation as a purely private contract between the State and the lessee; it is a statutory grant, necessarily governed by the MMDR Act and the Rules under which it is executed. Once the lease can be traced to the MMDR Act and the 1964 Rules, the incidents of the lease must be read subject to the statutory regime then in force, including Rules 10 and 21. These provisions, by their very nature, regulate the continuing financial obligations of the lessee and expressly contemplate revision of royalty and dead rent during the subsistence of the lease. Their application, therefore, is not a subsequent imposition upon the lease, but an implied condition inherent in the lease deed itself.
- 29.** According to us, the combined effect of Section 15 of the MMDR Act and Rules 10 and 21 of the 1964 Rules makes it evident that the liability of a lessee to pay royalty and dead rent is not frozen on the date of execution of the mining lease, but remains subject to revision in accordance with the statutory rules framed by the State Government.
- a. Section 15(1) empowers the State Government to frame rules regulating the grant of mining leases and other mineral concessions in respect of

minor minerals. In exercise of the said power, the 1964 Rules were framed and later adopted by the State.

- b. Section 15(3) further mandates that the holder of a mining lease shall pay royalty or dead rent “at the rate prescribed for the time being” in the rules framed by the State Government. The expression “for the time being” clearly indicates that the rates are dynamic and subject to revision from time to time. The proviso merely restricts the frequency of enhancement by stipulating that such enhancement cannot be made more than once within a period of three years.
- c. Rule 10(2), which governs leases granted by public auction, specifically provides that the annual dead rent determined on the basis of the highest bid shall be subject to enhancement up to 50% after expiry of three years of the lease period. Thus, the rule itself incorporates a statutory condition permitting enhancement of dead rent during the subsistence of the lease.
- d. Further, Rule 21, which prescribes the conditions of every mining lease, reinforces the same position. Rule 21(1)(i)(a) expressly provides that the lessee shall pay royalty at the rates specified in the First Schedule and further stipulates, by way of the proviso, that the lessee shall pay royalty “at such revised rates as may be notified from time to time.” The proviso is significant because it expressly reserves to the State Government the power to revise royalty rates during the subsistence of the lease, and correspondingly obligates the lessee to pay royalty at the revised rates.

e. Similarly, Rule 21(1)(iii) provides that the lessee shall pay yearly dead rent “as may be fixed by the Government” within the limits prescribed in the Second Schedule. The term “as may be fixed by the Government” indicates that the fixation of dead rent is a statutory determination by the Government and is not an immutable contractual term.

**30.** Therefore, a conjoint reading of Section 15(3), Rule 10(2), Rule 21(1)(i)(a) and Rule 21(1)(iii) leads to the inescapable conclusion that enhancement of royalty and dead rent is traceable to statutory power and forms an implied condition of every mining lease granted under the Rules. Consequently, even in the absence of an express clause in the lease deed providing for enhancement, the lessee remains bound by revisions validly made under the statute and the rules framed thereunder.

**31.** Our conclusion is further fortified by the fact that both the AUCTION NOTICE and the LoA expressly stipulated that the lease would be governed by Rules 10 and 21 of the 1964 Rules. Thus, at every material stage preceding execution of the lease deed, the applicability of the said Rules was made clear to the lessee. The omission of this stipulation from the lease deed, for reasons best known to the State, was undoubtedly avoidable, and it would have been desirable for the lease deed to have incorporated the condition in express terms. However, such omission cannot efface the statutory character of the lease or dilute the binding force of the rules under which the lease was granted.

- 32.** Looked at from another perspective, the interpretation suggested by the respondents would be wholly inconsistent with the nature of the State's authority over mineral resources. Minerals are not ordinary commodities; they are held by the State in trust for the people. The State is under a constitutional obligation to ensure that their exploitation subserves the public interest, including securing an appropriate revenue for the public exchequer (emphasis ours). If the lease deed is interpreted to mean that the State is disabled from enhancing royalty or dead rent during the subsistence of the lease merely because such power is not expressly recited therein, the result would be that mineral resources may continue to be exploited at rates which are no longer appropriate, fair or commensurate with their value. Such a consequence cannot be countenanced. It would not only undermine the State's obligation to secure a fair return for the exploitation of public resources, but would also run contrary to the object, spirit and statutory philosophy underlying the MMDR Act and the 1964 Rules. The lease deed must, therefore, be read in a manner that preserves the State's statutory authority to revise such rates in accordance with law, rather than in a manner that renders that authority nugatory.
- 33.** In ***J.K. Synthetics Ltd.*** (supra), though not concerned with enhancement of royalty or dead rent, this Court recognized the broader principle that the terms of a mining lease must yield to the statutory rules governing the lease. In that case, the lease deed provided for interest at the rate of 10% per annum on delayed payment of royalty.

However, Rule 64-A of the Mineral Concession Rules, 1960 was subsequently amended to prescribe interest at the rate of 24% per annum. It was held that, from the date of such amendment, any term in the lease deed prescribing a lesser rate of interest would have to yield to the amended statutory rule, since the rule would prevail over the contractual stipulation in the lease deed. The decision proceeds on the premise that a mining lease, governed by the statutory rules under which it is granted, cannot be construed as a closed contract immune from subsequent statutory modifications. Paragraph 42 of the decision is instructive and, hence, reproduced below:

42. The contesting respondent in the last case (Shree Cement) raised an additional contention. It was submitted that Clause VI(iii) of the lease deed in its case provided that any royalty which was not paid within the prescribed time shall be paid with simple interest at the rate of 10% per annum. It is therefore contended that the interest on any arrears cannot be more than 10% per annum in its case. The lease is governed by the Mineral Concession Rules, 1960 and execution of the lease deed is itself in compliance with one of the requirement of the Rules, namely, Rule 31. Once Rule 64-A was amended by Notification dated 20-2-1991 increasing the rate of interest to 24% per annum, any term in the lease deed prescribing a lesser rate of interest, shall have to yield to Rule 64-A from that date as the Rule will prevail over the terms of the lease. This position is evident from the decision in South Eastern Coalfields [(2003) 8 SCC 648] also.  
(emphasis ours)

- 34.** Respondents relied on paragraphs 14 to 16 of the decision in ***Indian Aluminium Co.*** (supra) to contend that since the lease deed in the present case was executed in exercise of statutory powers, it would remain valid even if it fettered the future exercise of other statutory powers, namely, the power to enhance the rate under Rules 10 and 21. Relevant portions of those paragraphs are reproduced below:

14. .... The discussion of these two cases shows that the principle that a public authority cannot by contract fetter the exercise of the statutory power, which is conferred upon it for the public good, is limited in its application to those cases where the attempt to do so is otherwise than by the valid exercise of a statutory power.

15. ... To put it differently, where a stipulation in a contract is entered into by a public authority in exercise of a statutory power, then, even though such stipulation fetters subsequent exercise of the same statutory power or future exercise of another statutory power, it would be valid and the exercise of such statutory power would *pro tanto* stand restricted. That would follow on the principle of harmonious construction. The public authority would not, in such a case, be free to denounce the stipulation as a nullity and claim to exercise its statutory power in disregard of it. If that were permissible, it would mean that the stipulation has no binding force and the public authority has no statutory power to enter into such stipulation. But that would be plainly contradictory of the premise on which the argument is based.

16. The distinction must always, therefore, be borne in mind whether the stipulation by which the public authority is alleged to have fettered in advance the future exercise of the statutory power, is one which is entered into as part of "private contract in general terms", or in exercise of a statutory power. If it is the former, the stipulation would be bad on the principle that a public authority cannot by contract fetter the exercise of a statutory power which is conferred upon it for the public good. But if it is the latter, the stipulation being in exercise of a statutory power would be valid and it would not be open to the public authority to disregard the stipulation and exercise the statutory power inhibited or fettered by it. This last statement, must, however, be qualified by making it clear that a case may conceivably arise where there may be an overriding statutory provision which expressly or by necessary implication authorises the public authority to set at naught, in certain given circumstances, a stipulation though made in exercise of a statutory power. Where there is such a statutory provision, the stipulation would certainly be binding, but when the specified circumstances arise, the public authority would have the power to override the stipulation and act in derogation of it. But that again would be a matter of construction.

(emphasis supplied by Mr. Mehta)

**35.** We fail to comprehend how the aforesaid principle aids the respondents.

In the present case, the lease deed contains no express stipulation barring future enhancement by the State. It merely fixes a rate, without expressly foreclosing the possibility of subsequent enhancement. The principle laid down in ***Indian Aluminium Co.*** (supra) which applies where there is an express stipulation restricting the future exercise of

statutory powers, therefore, has no direct application to the present case. We also consider it appropriate to reiterate that having regard to the peculiar facts and circumstances of this case, particularly the prior AUCTION NOTICE and the LoA, both of which expressly contemplated applicability of Rules 10 and 21, the requirement of those rules formed an implied condition of the lease deed.

**36.** One must also not lose sight of the fact that the lease deed executed in the present case was in the model form prescribed under the 1964 Rules. Upon the repeal of those Rules and the introduction of the 2012 Rules, a more precise model form of mining lease came to be formulated. Form ML-1, appended to the 2012 Rules, specifically provides that the “lessee shall pay royalty ... at the rates as per First Schedule ... Rules, 2012 and as may be revised by the State Government from time to time.” This subsequent formulation may indicate that the model form has since been made more explicit. However, it cannot be interpreted to mean, as the respondents contend, that under the earlier model form of contract or mining lease, the State had no authority to revise the rate of royalty during the subsistence of the lease.

**37.** Therefore, enhancement of the rates in the present case is neither unjustified nor illegal. Thus, this issue is answered in favour of the State.

## **ISSUE II**

**38.** We are unable to accept the contention of the respondents that the decision to enhance the rates *vide* notification dated 3<sup>rd</sup> June, 2005 suffers from either arbitrariness or non-application of mind.

- 39.** As highlighted by Mr. Singh, the State did not proceed in the absence of material. Though the State had initially contemplated the constitution of a sub-committee, such sub-committee was eventually not constituted; however, that circumstance by itself does not vitiate the decision to revise the rates. Before such revision, the State had called for and considered the rates prevailing in the neighbouring States, and once comparative material was available and taken into account by the competent authority, that ruled out any allegation of the matter being dealt with mechanically.
- 40.** It is not the law that the State is required to demonstrate, with mathematical precision, the exact basis for fixing the increase at 50%. This is for the reason that it is not the Court's role to sit in appeal over a policy decision and inquire whether a 40% or a 60% increase would have been better. In matters of fiscal and economic policy, the Government machinery would not work if it were not allowed some free play in its joints. Ergo, the Court is not to examine if a lesser increase would have sufficed. Judicial review does not extend to the wisdom of the rate. The test is *Wednesbury* unreasonableness. The limited inquiry is to examine whether the decision is so unreasonable, disproportionate, or extraneous that no reasonable authority could have arrived at it.
- 41.** In the present case, the enhancement cannot be said to be unreasonable or disproportionate. The earlier revision had taken place in September 1999. The impugned revision was made only in June 2005, after a lapse of about five and a half years. Unlike dead rent, which can be increased

by a maximum of 50% after every three years, there is no maximum cap for royalty. Proviso to Rule 21(1)(i)(a) only provides that royalty is to be paid at “such revised rates as may be specified from time to time”. Therefore, an enhancement after more than five years, and that too by 50% (which is within the ceiling contemplated for dead rent, if used as a comparable benchmark) cannot be characterised as excessive or arbitrary.

- 42.** Nor can it be said that the respondents were taken by surprise. The possibility of revision was built into the statutory scheme itself. Persons carrying on mining operations were aware, or must be deemed to have been aware, that the rates were liable to be revised after the prescribed period. In that sense, the enhancement was not an unexpected imposition, but an ordinary incident of mining business.
- 43.** Assuming that the rates in neighbouring States were lower, this does not render the State’s decision arbitrary. Comparative rates are a relevant input, but they do not bind the State to adopt the lowest prevailing rate in the region. The State was entitled to consider its own circumstances, its existing rates, the lapse of time since the previous revision, and the statutory permissibility to revise the rates. Once the decision is shown to be based on relevant material and to fall within the permissible statutory limits, the Court would not substitute its own assessment for that of the competent authority.
- 44.** We, therefore, hold that the notification dated 3<sup>rd</sup> June, 2005 was issued after due consideration of relevant material, was within the competence

of the State, and cannot be struck down on the ground of arbitrariness or non-application of mind. This issue too is, thus, answered in favour of the State.

### **ISSUE III**

- 45.** Both Mr. Singh and Mr. Mehta took us through the Rules of Business and advanced elaborate submissions on whether the said rules are mandatory or directory, whether they stood violated in the present case, and whether their mandatory character is attracted only in matters involving financial implications. However, before adverting to the merits of these submissions, we deem it appropriate in the passing to refer to a fundamental flaw in the writ petitions filed by the respondents before the High Court.
- 46.** Bare perusal of the amended writ petitions reveals absence of any pleading to the effect that the Rules of Business were violated. It was only in the application of M/s. FGM seeking permission to rely on additional documents that such a plea was raised. In such application, reference was made to an additional affidavit filed earlier on 8<sup>th</sup> May, 2010 (not on record). However, no formal further amendment of the amended writ petition was sought by M/s. FGM. In the absence of any such pleading, should the High Court have ventured to decide that question?
- 47.** If the proceedings before us had arisen from a suit instituted under and governed by the provisions of the Code of Civil Procedure, 1908, we

would naturally have been strict with the rules of pleadings. However, in the present case, we find from an order dated 22<sup>nd</sup> July, 2015<sup>47</sup> that the State had filed a reply to the application seeking permission to rely on additional documents. Therefore, notwithstanding that the writ petition of M/s. FGM was not further amended, it is not a case where, because of lack of the requisite pleadings, the State was taken by surprise.

**48.** Since we have been addressed by the parties quite elaborately, and independent of the conclusion recorded above as to lack of pleadings, we wish to examine the issue because of its importance.

**49.** In ***MRF Limited*** (supra), an individual minister had taken a decision contrary to the Business Rules and without informing either the Council of Ministers or even the Chief Minister of Goa, who heads the Council. The declaration of law in ***MRF Limited*** (supra) is to the effect that the Business Rules framed under the provisions of Article 166(3) of the Constitution are mandatory and must be strictly adhered to and any decision by the Government in breach of these Rules will be a nullity in the eye of the law.

**50.** On facts and in the circumstances found by this Court, certain other observations were also made which assume importance for a decision on these appeals as discussed hereafter. The relevant observations read:

**72.** ... Therefore, if it is held that the non-compliance with these Rules does not vitiate the decisions taken by an individual Minister concerned alone, the result would be disastrous. In a democratic set-up the decision of the

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<sup>47</sup> of the High Court in CWP No. 17958 of 2005

State Government must reflect the collective wisdom of the Council of Ministers or **at least that of the Chief Minister who heads the Council.** The fact that the decisions taken by the Minister alone were acted upon by issuance of notification will not render them decisions of the State Government even if the State Government chose to remain silent for a sufficient period of time or the Secretary concerned to the State Government did not take any action under Rule 46 of the Business Rules. If every decision of an individual Minister taken in breach of the Rules are treated to be those of the State Government within the meaning of Article 154 of the Constitution, the result would be chaotic. The Chief Minister would remain a mere figure head and every Minister will be free to act on his own by keeping the Business Rules at bay. Further, it would make it impossible to discharge the constitutional responsibility of the Chief Minister of advising the Governor under Article 163. Therefore, it is difficult to accept the contentions of the appellants that the Business Rules are directory.  
(emphasis ours)

51. The declaration of law in **MRF Limited** (supra) has to be read and understood bearing in mind the facts of the case before the Court. After perusing the facts of **MRF Limited** (supra), we are of the opinion that the law laid down therein cannot be applied in full to the present case, as the facts are distinguishable. The decision to revise the rates was not taken by an individual minister but by the Minister-in-charge of Mining who was none other than the Chief Minister himself. Thus, the requirement of approval of the Chief Minister is satisfied in the present case, unlike in **MRF Limited** (supra).
52. The insistence by this Court in **MRF Limited** (supra) on compliance with the Business Rules in matters having financial implications is understandable and we are *ad idem* with the reasoning and conclusion therein. If any individual minister takes a decision without complying with the Business Rules in matters of public importance (which must necessarily depend on the facts of each case) in a manner that affects the finances of the State and if such decision, expressed in the name of

the Governor and authenticated as required by clauses (1) and (2) of Article 166, is passed off as a decision of the State Government, obviously such decision cannot be saved by urging that the Business Rules are directory and not mandatory. Regardless of the technical character of the Business Rules, matters touching upon the public exchequer are too vital to be dealt with without the knowledge and approval of the Chief Minister. What is relevant, therefore, is that decisions impacting the finances of the State should have the imprimatur of the Chief Minister.

53. Notwithstanding our concurrence with the decision in ***MRF Limited*** (supra) relied on by the respondents, for the reasons already noted, we regret, the said decision does not advance their cause.
54. The decisions in ***Haridwar Singh*** (supra) and ***Delhi International Airport Ltd.*** (supra) have been perused.
55. In ***Haridwar Singh*** (supra), the decision taken by the Minister in-charge of the Forest Department was held to violate the Business Rules of Bihar, though it was in furtherance of the financial interest of the State. We have not found from the discussion the involvement and approval of the Chief Minister, not to speak of his knowledge, in the chain of events giving rise to the writ petition.
56. In ***Delhi International Airport Ltd.*** (supra), this Court was tasked to consider Rule 4 of the Government of India (Transaction of Business) Rules, 1961 which, *inter alia*, provided for consultation with the Finance Department; and, the decision reached by multiple departments was

held to be bad for want of consultation with the Finance Department. In the absence of any discussion on the role assigned to the Prime Minister, we do not consider this decision to be relevant for our consideration.

- 57.** Before concluding the discussion on the contentious issue (the State contending that the Business Rules are directory and the respondents contending that they are mandatory when matters pertaining to finances are concerned), we wish to develop what paragraph 72 of ***MRF Limited*** (supra) intended to convey. Articles 154 and 163 of the Constitution instruct us that the executive power of the State shall be vested in the Governor who shall, in the exercise of his functions, be aided and advised by a Council of Ministers with the Chief Minister at the head. Financial decisions of the State, by their very nature, form part of the collective responsibility of the Council and would necessarily require the knowledge and approval of the Chief Minister. It is a constitutional necessity. Any purported fiscal decision, even if taken by the Council of Ministers or the Finance Department ought not to be given effect without the involvement and approval, or at least the knowledge, of the Chief Minister. This is what ***MRF Limited*** (supra) emphasises. To hold otherwise would be to permit a parallel centre of power, which the Constitution does not envisage. This could violate the scheme of constitutional governance and collective responsibility and, thus, render such decision susceptible to a successful challenge. Therefore, irrespective of who the decision maker is or how the decision came to be made, any decision taken in relation to finances without the Chief

Minister at the helm is not to be construed as a decision of the Government. Whether the Business Rules under clause (3) of Article 166 are mandatory or directory, cannot be decided without keeping this aspect in mind.

- 58.** Moving forward, the respondents also argued that since the decision to increase the rates is a decision which "affects the finances" of the State, the Finance Minister should have been consulted before such increase [Entry 11 of Schedule I of the Rules of Business]. It is important to note the language employed in Entry 11. It reads:

"11. Any proposal which affects the finances of the State which has not the consent of the Finance Minister."

- 59.** To establish that the decision of the Chief Minister did 'affect' the finances of the State and the proposal for increase did not have the consent of the Finance Minister, appropriate pleadings in the amended writ petitions or, even in the application that was filed by M/s. FGM, were a *sine qua non*.

- 60.** No such pleadings exist in the amended writ petition.

- 61.** However, there is a faint averment in the application. Relevant excerpt from the additional affidavit (as reproduced in the application filed by M/s. FGM seeking permission to rely on additional documents) reads as follows:

Thus it is apparent from the above, that the notification dated 03.06.2005 providing for increase in royalty by 50% i.e. from Rs. 24/- per tonne to Rs. 36 per tonne, as well as increases in dead rent from Rs.1,000/- to Rs.2,000/- per hectare were proposals for the change in "the pitch of any existing tax" and also affects the finances of the State which had not the consent of the Finance Department, therefore in terms of the provisions of Rule 5 read with Rule 11, the said proposal for issuance of the impugned

notification had to be approved by the Council of Ministers. The impugned notification suffers from procedural irregularity and is otherwise bad in law.

The above is the only pleading of the respondents in support of their contention that the proposal for increase in the rate of royalty and dead rent affects the finances of the State and there was no consent of the Finance Department.

- 62.** As we have noted above, the additional affidavit itself has not been placed on record by any of the parties. The annexures forming part of the application too are not on record. This has disabled us to examine the worth of the allegations made in the additional affidavit/application. Even otherwise, importantly, there is nothing on record to suggest that the Finance Minister had any reservation in regard to the decision of the Chief Minister to increase the rate of royalty and dead rent. In terms of Rule 34, the Finance Minister was empowered to call for any paper in a case in which any of the matters referred to in Rule 7 or Rule 31 is involved. Both Rules 7 and 31 refer to orders of the Government that could affect the finances of the State. In the absence of any evidence of the Finance Minister disagreeing with the Chief Minister and since financial decisions form part of the collective responsibility of the Council of Ministers, we hold in the peculiar facts and circumstances, that there was deemed consent of the Finance Minister to increase in the rates of royalty and dead rent.
- 63.** In light of approval granted by the Chief Minister, deemed consent of the Finance Minister, increase of dead rent to the maximum limit permissible under the 1964 Rules and increase of royalty by 50% after 5 (five) years

of previous increase [i.e., much after the permissible gap of 3 (three) years], there is no room to hold that the decision to increase the rates was vitiated because of absence of express concurrence of the Council of Ministers or the Finance Department.

- 64.** The contention founded on alleged violation of the Rules of Business, in our opinion, appears to lack in substance for the foregoing reasons.
- 65.** Thus, the challenge based on the Rules of Business fails and, accordingly, we answer this issue also in favour of the State.

### **CONCLUSION**

- 66.** The appeals deserve to be and are allowed, with the result that the impugned judgment stands set aside.
- 67.** Pending application(s), if any, shall stand disposed of.
- 68.** Parties shall bear their own costs.

### **LIMITED RELIEF FOR THE RESPONDENTS (M/s FGM, M/s GESM AND JITENDER KUMAR)**

- 69.** Unpaid dead rent or royalty, if any, may be realised by the State from the respondents, according to law.
- 70.** However, considering the submissions made by the respondents aforementioned, namely, that the notification dated 3<sup>rd</sup> June, 2005 remained stayed for a substantial period, that the mining lease itself expired on 5th February, 2009, and that the State's subsequent statutory regime provides for a lower rate of interest on delayed royalty, we are of the opinion that ends of justice would be met if, instead of directing waiver

of interest as claimed, rate of interest on arrears of dead rent or royalty, if imposed, be limited to 12% per annum. Ordered accordingly.

.....J.  
**(DIPANKAR DATTA)**

.....J.  
**(SATISH CHANDRA SHARMA)**

**NEW DELHI.**  
**July 13, 2026.**