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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.30325 of 2025
CNR No. ODHC010749892025

M/s. Lal Trades and Agencies Pvt. Ltd., Mayurbhanj …. **Petitioner**

-Versus-

Union of India and others …. **Opposite Parties**

Advocates appeared in this case:

For Petitioner : Mr. Durga Prasad Nanda,
Senior Advocate assisted by
Mr. Subhankar Rout, Advocate

For Opposite Parties : Mr. P.K. Parhi, Deputy Solicitor General of India along with
Mr. S.S. Kashyap,
Central Government Counsel

Mr. D. Tripathy,
Addl. Government Advocate

CORAM:

HON' BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE CHITTARANJAN DASH

J U D G M E N T

Date of Hearing : 18th August, 2026
Date of Judgment : 11th November, 2026

HARISH TANDON, CJ.

1. The present writ petition is filed assailing the order dated 1st October, 2025 passed by the Revisional Authority in R.A. No.

22/(22)/2024-RC-1, whereby and whereunder the challenge was made to a demand notice dated 26th July, 2024 for excessive extraction of ore during the period 2019-20.

2. An interesting point is raised in the instant writ petition, which was also taken before the Revisional Authority, but the order of the Revisional Authority was restricted to one aspect without touching the other, and the counsel appearing for the respective parties were invited to advert to the said issue and arguments were advanced thereupon.

3. In order to appreciate the contention raised herein, the narration of the facts emanating from the pleadings is required to be recapitulated and/or adumbrated hereinafter. The petitioner is a beneficiation of the iron ore since last 15 to 20 years in the district of Mayurbhanj by processing low grade iron ore to high grade iron ore. The Environmental Clearance (EC) was issued to the petitioner by the Ministry of Environment and Forest, Government of India on 9th April, 2010 in accordance with Environmental Impact Assessment (EIA) Notification 2006 for an annual production capacity of 0.72 MT per annum. The mining scheme was also approved by the Indian Bureau of Mines (IBM) vide letter dated 27th March, 2015 enhancing the production of iron ore from 0.72 Million Tonnes Per annum (MTPA) to 1.5 MTPA. A

supplementary lease deed was executed on 20th December, 2016 having validity until 26th May, 2020. An application was made online on 9th March, 2018 to establish the Terms of Reference for conducting a detailed Environmental Impact Assessment study to obtain environmental clearance for the increased production capacity from 0.72 MTPA to 1.5 MTPA. The Ministry of Environment and Forest approved the recommendation of the Expert Appraisal Committee to enhance the production as prayed for. However, in the interregnum the Mining Plan for Badampahar Iron Ore Mines was modified and approved by IBM on 26th July, 2018 and a proposal for the enhancement of the production capacity as aforesaid was recommended by the Expert Appraisal Committee on 22/23rd January, 2019 and the Ministry of Environment and Forest granted EC for enhanced production capacity of 1.5 MTPA. The Production capacity between April, 2019 to March, 2020 having enhanced and accepted by the office of the Deputy Director of Mines, Baripada Circle as there was no irregularity found in respect of the production achieved. The statutory payments including the royalty for the year 2019-20 was also paid.

4. There being no whisper on the part of the authority in raising any discrepancy in the production of the iron ore and having accepted the

statutory payments required under the Mines and Minerals (Development and Regulation) Act (MMDR Act in short) until a show cause notice dated 31st May, 2023 was issued by the Deputy Director of Mines, Baripada Mining Circle, Baripada touching upon the production achieved during the financial year 2019-20, and raising a demand of more than Rs.50.00 crores and odd as it exceeds the limit setforth in the EC. The said show cause was duly responded by the petitioner and specific stand was taken that the target of the production is always fixed on annual basis and not on monthly basis, and once the annual target is modified in the EC, the production so made is well within the purview thereof. After receiving the reply to the said show cause notice, a fresh show cause notice was issued on 07th May, 2024 by the said authority wherein the demand was reduced from Rs.50.00 crores and odd to Rs. 40.00 crores and odd for the same year, which was also responded by the petitioner taking a plea that IBM has already approved the variation up to 20% of the tentative annual production, and therefore, any variation that has been perceived by the authorities are within the purview of the same, and it cannot be said to be unlawful extraction of the ore. Despite the specific stand having taken in the reply that the

variation up to 20% is accepted and approved by the IBM, the demand notice was issued on 26th July, 2024 for Rs.40.00 crores and odd.

5. The said order was assailed before the Revisional Authority, wherein the parties filed their respective pleadings. However, in the interregnum, the authorities issued trading license in Form-D from time to time upon compliance of all the requisites provided in the statute, which was valid until 21st May, 2025. On expiration of the same, the petitioner made an application for issuance of the said trading license to be issued, but the same was withheld as there has been outstanding dues.

6. The said decision was challenged by the petitioner in W.P.(C) No. 14602 of 2025, which was disposed of on 20th May, 2025 directing the authorities to take a decision on the said application within the time stipulated therein with specific observation that until the decision is taken on the renewal application, he shall be permitted to continue the trade on the basis of the trading license granted earlier. Subsequently, the payments were made under the statutory heads. Yet, the renewal of the trading license was rejected on the ground that the petitioner did not submit the Mining Dues Clearance Certificate (MDCC). Be that as it may, ultimately the Revision Application pending before the Revisional

Authority was dismissed on 1st October, 2025, which is assailed in the instant writ petition.

7. The principal issue involved in the instant writ petition is whether the variation of ± 20% can be read harmoniously with the judgment rendered by the apex Court in ***Common Cause v. Union of India and others***, reported in ***(2017) 9 SCC 499*** in relation to excess production beyond the legally permissible production framework. Even the State in the counter affidavit have clearly averred that the petitioner extracted the ore within the limit provided in the Mining Plan, but beyond the limit set for in the EC provided for the year 2019-20, and in view of the judgment rendered by the apex Court in ***Common Cause*** (supra), it would be regarded as an unlawful extraction of the ore inviting the penalty under Section 21 (5) of the MMDR Act.

8. Before we proceed to decide the same, the object and purpose, and the scheme of the MMDR Act is required to be succinctly narrated and understood. Section 4(1) of the said Act creates an embargo on a person to undertake any mining operation except in accordance with the terms and conditions of the mining lease granted under the said Act and the Rules made thereunder. The "mining operation" is defined in Section 3(d) of the Act to mean any operation undertaken for the purpose of

winning any mineral. Such prohibition can also be seen under Section 4(2) of the said Act, whereas Section 5 postulates certain restrictions on the grant of a mining lease upon the State Government unless the mining plan is duly approved by the Central Government or the State Government in respect of a specific mine. Section 18 of the Act is repository of the duties and responsibilities of the Central Government to take all steps for conservation and systematic development of minerals in India, and also for protection of the environment by preventing or controlling any pollution, which may be caused by mining operation. Two Rules i.e. Mineral Conservation and Development Rules, 1988 (MCDR) and Mineral Concession Rules, 1960 (MCR) are framed in exercise of the rule making power where the MCR is focusing on the grant of a mining lease; on the other hand, the MCDR contains an exhaustive provisions relating to commencement of the mining operations and protection of the environment. Section 21(5) of the MMDR Act, which is central to the core issue, contains a penal provision—where any person raises without any lawful authority, any mineral from any land, the State Government may recover from such person the minerals so raised or where such mineral has been disposed of, the price thereof. In addition to the same, the State Government may

also recover rent, royalty or tax as the case may be for the period during which the land was occupied without any lawful authority.

9. The MCR contains a provision relating to the mining plan, which will incorporate a tentative scheme of mining and annual programme and plan for excavation for year-to-year for a specified period. It further mandates the mining operation to be undertaken only in accordance with the duly approved mining plan, and therefore, it assumes the character of an essential document without which no mining operations can be commenced and/or undertaken. Even a mining scheme is to be framed and it would not be incongruous to suggest that both the mining scheme and mining plan are essential for grant of the mining lease. The prescribed form therein also obligated the lessee of the mining lease to maintain a record of quantity and quality of the mineral released from the leased land, the prices and other particulars of the sales of the mineral and many other facts as the Central Government or a State Government may require. One of the clauses contained in the prescribed form further imposed an obligation on the part of the lessee to take all possible measures to protect the environment by using various devices and restoring the same at their expenses. So far as the MCDR is concerned, it contains an exhaustive provision not only in relation to the

commencement of the mining operation in accordance with the approved mining plan, but a right conferred upon the lessee to modify the same as and when the circumstances so warrant, and also to ensure all possible steps to protect the environment and control the pollution while conducting such mining operation. The Central Government issued an Environment Impact Assessment (EIA) Notification dated 27th January, 1994 signifying that the mining activity should be undertaken in accordance with the EC and the procedure provided therein, and from time to time have issued further Notifications. The said EIA Notifications were considered by the Apex Court in ***Common Cause*** (supra) and held to be a prohibitory in nature, and mining activities in departure from a mining plan or an EC was considered to be unlawful.

10. The scheme and object as discussed hereinabove leaves no ambiguity that the winning of the minerals should be in conformity with the mining plan as well as the EC, and the apex Court in ***Common Cause*** (supra) has held that the mining plan is 'subordinate' to EC. The comprehensive provisions contained in both the substantive Act as well as the Rules framed thereunder engulf within its folds both the necessity of a mining plan as well as the EC. The issue was raised in this regard, which was clarified in the letter dated 12th December, 2011 issued by

the Central Government that if there is any violation of the actual production limit laid down in the mining plan, the State Government should take steps to curb such illegal mining in respect of overproduction. It was also suggested that 20% deviation from the mining plan (in terms of the overproduction) would be reasonable and permissible. The Apex Court noticed the said letter but was focusing on the issue that there have been several mining leaseholders, who were making overproduction beyond 20% of the deviation limit. The Apex Court also noticed the noting of the High Level Committee (Hoda Committee) on the National Mineral Policy in its report date 22nd December, 2006 and quoted such observations contained in paragraph 3.47 in the following:

> **"120.** xxx
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> "3.47 An EMP [Environment Management Plan] has to be prepared under the MCDR and got approved by IBM. However, this EMP is not acceptable to the MoEF. The miner has to prepare two EMPs separately—one for IBM and another for MoEF. The Committee suggests that IBM and MoEF should prepare guidelines for a composite EMP so that IBM can approve the same in consultation with MoEF's field offices. This will eliminate anomalous situations where increase of even a few tonnes in production requires project authorities to get a fresh EMP approved from the MoEF although the IBM allows a grace of ±10%,

keeping in view the fluctuations in the market situation and process complexities. If a single EMP is accepted in principle such anomalies can be resolved in advance. The Committee feels the MoEF should also have a cushion of ±10% in production while giving EIA clearance."

11. In Paragraph 121 of the said judgment, the Apex Court held that though the permissible variation in production as per the IBM is ±10%, but in the said letter, the Ministry of Mines accepted the variation upto ±20%, and a categorical observation was made that no clarity can be seen why there has been a shift from ±10% to 20% in the following:

"121. The above passage indicates that the permissible variation in production as per the Indian Bureau of Mines is ±10% but according to the Letter dated 12-12-2011 issued by the Ministry of Mines, the reasonable variation limit could be ±20%. It is not clear why there was a shift in the variation, but as rightly pointed out by the learned counsel for the petitioners, the fact that in some cases the variation exceeded 20% was a cause for concern which necessitated strict and punitive action."

12. The Bench proceeded to hold that although the extraction of the minerals beyond the leased area is unlawful but even if the extraction is beyond the permissible limit within the leased area is also unlawful. The Bench in ***Common Cause*** (supra) extensively dealt the permissible

variation upto ±20% and held that at best there could be a variation in extraction of 20% in each year but it would be subject to the overall mining plan limit of a variation of 20% over the five years, and observed that it would be preposterous that in one year the leaseholder would extract 20% in excess of the mining plan for one year and for rest of the years, it would extract the minerals, which brings within the said limit of 20% in the following:

> **"Adherence to the mining plan**
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> 136. A side issue raised by the learned counsel for the mining leaseholders in this regard was the necessity (if any) of adhering to the annual plan or calendar plan of mining. It was contended that a mining leaseholder could mine in excess of the annual plan. While it is so, this submission must be tempered and appreciated in the proper context. A mining plan is valid for a period of five years but there could be a 20% variation in extraction over and above the mining plan. This is the maximum that is stated to be reasonably permissible according to the Ministry of Mines. In terms of Rule 22(5) of the MCR a mining plan shall incorporate a tentative scheme of mining and annual programme and plan for excavation from year-to-year for five years. At best, there could be a variation in extraction of 20% in each given year but this would be subject to the overall mining plan limit of a variation of 20% over five years. What this means is that a mining leaseholder cannot extract the five year quantity (with a variation of 20%) in one or two years only. The extraction has to be staggered and continued over a period of five years. If any other interpretation is given, it would lead to an

absurd situation where a mining leaseholder could extract the entire permissible quantity under the mining plan plus 20% in one year and extract miniscule amounts over the remaining four years, and this could be done without any reference to the EC. The submission of the learned counsel in this regard simply cannot be accepted.

137. In the Letter dated 12-12-2011 sent by the Secretary in the Ministry of Mines of the Government of India to the Chief Secretary of the Government of Odisha (adverted to above) concerning violation of annual production limit laid down in the approved mining plan, it was stated, inter alia, that an analysis of production and violations in 104 mining leases for bulk minerals in the last ten years was undertaken by the Indian Bureau of Mines. It was noted that in 71 cases there was excess ore produced beyond the reasonable variation limit of 20%. It was noted that this was partly due to the failure of the State machinery to restrict the movement of minerals."

13. In paragraph 140 of the said judgment, it is ultimately held that while mining in excess of permissible limits under the mining plan or the EC or FC on leased area would amount to illegal or unlawful mining or mining without authority of law. It is, thus, apparent from the aforesaid observations that the Apex Court also took into consideration the variation in the production limit up to ±10% as the decision to permit the variation up to ±20% was held to be without any clarity having brought in this regard. It is to be remembered that both the

mining plan as well as EC are complementary to each other, and the IBM, being the statutory authority under the MMDR Act, is not only undertaking a subjective satisfaction in relation to an extraction of the mineral on an yearly basis but also taking into account the environmental impact that may be caused, and therefore, if the variation of ±10% is considered to be permissible because of the working procedures for the simple reason that while extracting the minerals, the practical aspect has also to be taken into consideration as the winning of the minerals manually or in a merchandised way may not bring the strict precision of the limit.

14. The Apex Court also took into consideration the calculation suggested by Central Empowered Committee (CEC) when there is a variation in extraction of the minerals in accordance with the EC limit. The reliance on Paragraph 151 of the said judgment by the State has to be understood in the perspective of calculating the compensation from the leaseholder, and has no bearing on the issue that if the variation up to ±10% is permitted, it would invite any such compensation or penalty under Section 21(5) of the Act.

15. It is thus apparent from the meaningful reading of the judgment rendered in ***Common Cause*** (supra) that both the mining plan as well as

the EC are mandatory and complements each other, but it would further be evident from the observation that the Supreme Court accepted the variation in terms of the said report up to ±10%. Taking into account the practical aspect of operating the mines, we find no reason as to why the State Government would not consider the said aspect, and once the Apex Court has accepted that the variation as suggested by the IBM is reasonable and justified, the authorities ought to have taken into consideration the aforesaid aspect in calculating the compensation as suggested by CEC and reflected in paragraph-155 of the said judgment.

16. We find no reason that such variation is not applicable in this regard, and therefore, held that the authorities ought to have given the buffer of ±10% variation while calculating the compensation as per the formula given by the CEC and reflected in paragraph 155 of the said judgment while calculating the permissible annual production and not on monthly production. The order of Revisional Authority is, thus, quashed and set aside. Consequently the demand raised is also quashed and set aside. The authorities are directed to recalculate taking into account ±10% variation over and above the EC limit, and in the event it is found that the extraction of the ore exceeds the said variation limit, would calculate the compensation in terms of the judgment rendered in

Common Cause (supra) by giving a reasonable time to meet such requirement.

17. The writ petition is, thus, disposed of.

I agree.

(Chittaranjan Dash)
Judge

(Harish Tandon)
Chief Justice

Arun Mishra/
M. Panda

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Location: High Court of Orissa, Cuttack
Date: 11-Nov-2026 14:16:30