2025 INSC 763

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.12314 OF 2024

CHANDRA BHAN SINGH ... APPELLANT

VERSUS

STATE OF UTTAR PRADESH
& OTHERS ... RESPONDENT (S)

WITH

CIVIL APPEAL NO.12315 OF 2024
AND
CIVIL APPEAL NO.12316 OF 2024

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. The instant batch of appeals challenge the respective Demand Notices issued by the District Magistrate/District Officer to the Appellants demanding 10% of the total bid amount to be deposited with the

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Reason:

concerned District Mineral Foundation(s) (hereinafter, "DMF").

2. Since the issue involved in all these appeals is common, the facts are being taken from Civil Appeal No.12314 of 2024, which assails the Judgement dated 15.11.2017 passed by the High Court of Allahabad (hereinafter, "Impugned Judgment") and has been taken as the lead case.

3. The facts, as culled out from the said Civil Appeal are that Chandra Bhan Singh, who was a successful bidder for mining of minor minerals i.e., sand (hereinafter, "Appellant") was allotted a tender. In pursuance to this tender and in consonance with the requirements as has been laid down by the Policy decision dated 22.04.2017, the Appellant had been called upon to deposit an amount of ₹54,12,960/- being 10% amount of the deposited title amount of ₹5,41,29,600/- in favour of the District Mineral Foundation Trust, Kanpur (hereinafter, "DMF Trust") apart from 2% stamp fee on the same vide Demand Notice dated 25.10.2017. It needs mention here

that as per the terms for allotment and the Mining Permit dated 16.10.2017, the Appellant as required, had deposited the amount payable for the approved mining quantity at the rate of ₹630/- per cubic meter of sand as per his bid totalling ₹5,41,29,600/-.

4. This Demand Notice dated 25.10.2017 had been challenged by the Appellant before the High Court through a writ petition asserting that the said amount as has been claimed would be contrary to the provisions of Section 9B of the *Mines and Minerals (Development and Regulation) Act, 1957* (hereinafter, "1957 Act"), which required deposit of the amount as per the royalty fixed in Second Schedule of the 1957 Act. The said challenge before the High Court failed vide the Impugned Judgment dated 15.11.2017 leading to the filing of the present appeal.

5. The learned Senior Counsel for the Appellant has asserted that the Policy decision dated 22.04.2017 itself is not sustainable as the due process for issuance thereof as provided for in Rule 68 of the *Uttar Pradesh Minor*

Minerals (Concession) Rules, 1963 (hereinafter, "1963 Rules") have not been adhered to. Going by and referring to the said Rule, it has been submitted that it enables relaxation of the Rules whereas by way of the impugned Policy in fact the amount which has been claimed is much more than the one which has been fixed in First Schedule, as appended along with the 1963 Rules. He, therefore, asserts that the Policy as well as the Demand Notice is unsustainable.

6. Referring to Section 9B of the 1957 Act, it has been contended that the DMF, as has been formulated and conceptualized, provides for charging and deposit of amount in addition to the royalty equivalent to such percentage of the royalty paid in terms of the Second Schedule of the 1957 Act which would not be exceeding one-third of such royalty, as may be prescribed by the Central Government. He asserts that going by the said Schedule, when rate has been fixed by the State at 10% of the royalty, the amount payable would be limited to that extent and the demand on the bid amount as a whole

is unsustainable. Apart from that, reference has also been made to Section 15 of the 1957 Act, which confers powers on the State Government to make Rules in respect of minor minerals. He on the basis of sub-Section (4) thereof asserts that Section 9B would be applicable for all intents and purposes and not merely for constitution, composition and functioning of the DMF, which includes the amount in addition to the royalty required to be deposited with it. State cannot claim an amount which is contrary to the rate as has been fixed by the Central Act.

7. The learned Senior Counsel for the Appellant has made reference to Rule 54 which deals with deposit of royalty for the total quantity of the mineral allowed to be extracted under the Permit. It is further submitted that under Rule 21 of the 1963 Rules, royalty had to be paid at the rates specified in First Schedule of the 1963 Rules. Counsel on this basis has asserted that the High Court erred in coming to a conclusion that Rule 21 and Rule 54 would not be applicable. On the above grounds, prayer

has been made for setting aside the Impugned Judgment and allowing the appeal.

8. On the other hand, learned Additional Solicitor General for the Respondent-State has defended the Impugned Judgment by asserting that the provisions of Sections 9 and 9B of the 1957 Act would not be applicable to the case in hand in light of Section 14 of the said Act, which provides that Sections 5 to 13 would not apply to minor minerals. She, on this basis submits that reliance on Section 9B by the Appellant is misplaced. That apart, with reference to Section 15 of the 1957 Act, it is asserted that the State Government, by Notification in the Official Gazette, stands empowered to 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. Under sub-Section (4) of Section 15, Government without prejudice to sub-Sections (1), (2) and (3), by Notification could make Rules for regulating the provisions of the Act, which includes the manner in which the DMF Trust shall work for the

interest and benefit of the persons and affected areas as provided in sub-Section (2) of Section 9B. Similarly, for composition and functions of the DMF Trust, reference has been made to sub-Section (3) of Section 9B. She, on this basis, asserts that applicability of Section 9B is restricted to and for the purposes as have been specified in Section 15 and nothing beyond that. This, in any case, has to be regulated on the basis of the Rules to be framed by the State Government. Reference has further been made to Clause (c) of sub-Section (4) of Section 15 which empowers the State Government to fix and regulate the amount of payment to be made to the DMF Trust by the mining concession holders of minor minerals as provided in Section 15A which, in turn, empowers the State to prescribe the payment to be made of the amount to the DMF Trust. On this basis, it is asserted that the rate of 10% of the amount as has been fixed by the State to be deposited with the DMF Trust, cannot be faulted with.

9. Reference has also been made to sub-Rule (2) of Rule 10 of *District Mineral Foundation Trust Rules, 2017*

(hereinafter, "2017 Rules") as have been framed by the State Government, where in addition to the royalty every Permit holder is required to deposit with the DMF Trust, an amount which is equivalent to the 10% of the royalty or as may be prescribed by the State Government from time to time. On this basis, it is asserted by her that 10% of the royalty amount would be payable in case no other amount is prescribed by the State Government. In situations where amount or rate has been prescribed other than 10% of the royalty, the said amount or rate shall prevail. In the present case, what has been fixed and prescribed is 10% of the total amount deposited by the bidder.

10. As regards the challenge to the Policy decision dated 22.04.2017, the learned ASG has asserted that the said Policy had not been challenged before the High Court and thus, the same cannot be challenged before this Court now. Furthermore, it is under this Policy which is now sought to be questioned that the e-tender was floated in which the Appellant had participated and succeeded. The

Appellant, therefore, cannot be permitted to turn around and challenge the very Policy under which he had sought benefit and had actually availed as well. The terms and conditions were clear from the very beginning, with there being no ambiguity. On the above referred basis, prayer has been made for dismissal of the appeals.

11. We have considered the submissions as have been made by the Counsel for the parties and with their assistance have gone through the pleadings and records.

12. For the sake of brevity, the facts are not being reiterated, as they are not in dispute.

13. Broadly speaking the challenge in the present appeal to the Demand Notice is based upon the Policy decision dated 22.04.2017 as issued by the Respondent-State under which the e-tender process was initiated leading to the Appellant participating therein and succeeding followed by the allotment of the tender and issuance of the Mining Permit. The ground pressed into service is of non-compliance/violation of the procedure as required to be followed under Rule 68 of the 1963 Rules which

enabled the State Government to, in relaxation of the 1963 Rules, grant mining lease.

14. In pursuance of the order passed by this Court on 24.09.2024, the original records relating to the process of finalising the decision resulting in the issuance of the communication dated 22.04.2017 with reference to Rule 68 of the 1963 Rules were produced before the Court on 15.10.2024 which was perused and a copy of the original file was retained on record.

15. On considering the records as produced, the process which has been followed while considering, evaluating and deliberating the factors which weighed while assigning reasons for coming to the conclusion have been perused by us. The same finds reflected, projected and mentioned in the letter dated 22.04.2017 after due consideration at different levels upto the highest competent authority leading to a reasoned decision at the end of the State for exercising its powers under Rule 68 of the 1963 Rules which is found to be fulfilling the requirement of the Rule. It would not be out of way to

mention here that an Order dated 18.04.2017 was passed by the Lucknow Bench of the High Court in a Public Interest Litigation which had permitted and required the exercise of powers under Rule 68 of 1963 Rules by the State. This was because of the peculiar situation which was being faced by the State for the total ban on mining activity having been imposed leading to the stopping and delaying of construction and other development works, both in the Government sector as well as the private sector. Exercise of such power in those circumstances when the vital projects were being adversely affected would fall within the purview of Rule 68 empowering the State to proceed to frame such a Policy and therefore, we find no fault in the whole process and procedure adopted by the State.

16. The challenge, thus, is limited to the extent of the amount required to be deposited at the end of the Appellant in the DMF Trust. The Appellant asserts that the amount payable would be 10% of the amount of royalty as have been laid down in Second Schedule of the 1957 Act with

reference to Section 9B(5) or under sub-Rule (2) of Rule 10 of the 2017 Rules as framed by the State of Uttar Pradesh. On this basis, it is being sought to be asserted that nothing beyond 10% of the royalty amount as provided under the Schedule referred to above could be called upon to be deposited in the DMF Trust. Demand Notice dated 25.10.2017 requiring the Appellant to deposit 10% of the amount of the title amount would be much beyond the liability of the Appellant as per the Statute. Demand cannot be in excess of the one which is prescribed under the Statute or the Rules.

17. This contention of the Appellant is unsustainable firstly on the ground that Section 9B of the 1957 Act would not be applicable in the light of Section 14 of the said Act, which reads as follows:-

> *"**14. Sections 5 to 13 not to apply to minor minerals –** The provisions of sections 5 to 13 inclusive shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals."*

18. A perusal of Section 14 would make it clear that Sections 5 to 13 of the 1957 Act would not be applicable to the present case as the mineral which is sought to be mined

is a minor mineral i.e., sand. The plea therefore of the Appellant based on Section 9B(5) is misplaced and thus, unacceptable.

19. The applicability and the effect of Section 9B (2) and (3) is limited to the extent as has been mentioned in Clause (a) and (b) of sub-Section (4) of Section 15 of the 1957 Act, which reads as follows:-

> "**15. Power of State Government to make rules in respect of minor minerals –**
>
> …
>
> *(4) Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely:-*
>
> *(a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining under sub-section (2) of section 9B;*
>
> *(b) the composition and functions of the District Mineral Foundation under sub-section (3) of section 9B; and*
>
> *(c) the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under section 15A*."

20. A perusal of the above would itself make it clear that Clauses (a) and (b) are to operate within the domain for which they have been incorporated and permitted to function. The said sub-Clauses do not deal with the amount to be charged or deposited in the DMF. This

aspect has been dealt with and provided for under Clause (c) of sub-Section (4) of Section 15, which refers to amount of payment to be made by the concession holder in the DMF under Section 15A. Meaning thereby, the State Government has been empowered under Section 15A to determine and fix the amount. Section 15A reads as follows:-

> ***"15A. Power of State Government to collect funds for District Mineral Foundation in case of minor minerals.*** *- The State Government may prescribe the payment by all holders of concessions related to minor minerals of amounts to the District Mineral Foundation of the district in which the mining operations are caried on."*

21. The empowerment being there under the Statute conferred on the State to determine the amount and the fixation thereof for minor minerals cannot be faulted with. The impugned Demand Notice thus being in consonance with the Statutory provisions cannot be said to be illegal or unsustainable.

22. Reference with regard to sub-Rule (2) of the Rule 10 of 2017 Rules would also not come to the rescue of the Appellant. The same reads as follows:-

> *"**10. Contribution to the Trust Fund.***
>
> *…*

(2) In case of minor minerals-

The holder of every mineral concession/permit shall in addition to the royalty, pay to the Trust of the district in which the mining operations are carried on, an amount which is equivalent to 10% of royalty or as may be prescribed by the State Government from time to time."

23. A perusal of above Rule 10(2) would show that apart from the royalty, an amount of 10% of the royalty is payable to the DMF Trust of the district in absence of any prescribed amount by the State Government. However, in case an amount is prescribed by the State Government then the said rate or amount would prevail and be payable at the end of the holder of the mineral concession or permit.

24. In the present case, the tender notice dated 11.05.2017, the Approval Letter (Letter of Intent) dated 01.06.2017 and the Mining Permit dated 16.10.2017, it was made amply clear with regard to the amount required to be deposited by the Appellant. The Demand Notice dated 25.10.2017 issued to the Appellant requiring him to deposit 10% of the title amount i.e. the total amount payable for the minor minerals to be extracted was under

and in accordance with the statutory Rules i.e., Rule 10(2) of the 2017 Rules.

25. As regards the applicability of Rules 21 and 54 of the 1963 Rules, which have been sought to be pressed into service by the Appellant to support his claim, the same would not cut any ice in the light of Rule 23(3) of the 1963 Rules. For ready reference Rule 23(3) is reproduced hereinbelow:-

> ***"23. Declaration of area for auction/tender/auction-cum-tender lease***
> *...*
> *(3) On the dec1aration of the area or areas under sub-rule (1) the provisions of chapters II, III and VI of these rules shall not apply to the area of areas in respect of which the declaration has been issued. Such area or areas may be leased out according to the procedure described in this Chapter."*

A perusal of the above makes it clear that in case of e-tender process is being followed, Chapter II, III and VI of these Rules would not apply. Rule 21 falls in Chapter III whereas Rule 54 falls in Chapter VI and, therefore, the said Rules would not be operative, rather not available to be used. This argument, therefore, also fails.

26. In view of the above, we do not find any merit in the appeal and, therefore, the same is dismissed. The Impugned Judgment dated 15.11.2017 passed by the Division Bench of the High Court of Allahabad is upheld along with the Demand Notice dated 25.10.2017, implying liability of the Appellant as towards the DMF Trust.

27. In light of the decision in Civil Appeal No.12314 of 2024, the other two connected appeals, being Civil Appeal Nos.12315-16 of 2024 also stand dismissed.

28. There shall be no orders as to costs.

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

..... J.
[ABHAY S. OKA]

.....J.
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
MAY 23, 2025