



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 2170/2018

Banarsi Das Mittal S/o Shri Dhanpat Rai, Resident Of 269- Geeta Colony, Asand District Karnal Hariyana Through His Power Of Attorney Shri Parveen Mittal S/o Shri Banarsi Das Mittal, Aged About, Resident Of E-6, S-1, Rohini, Delhi- 110085.



-----Petitioner

Versus

- 1. The State Of Rajasthan Through The Principal Secretary, Department Of Mines, Government Of Rajasthan, Jaipur.
- 2. The Director, Mines And Geology Department, Udaipur.
- 3. The Additional Director Mines, Jodhpur Zone, Department Of Mines And Geology, Jodhpur.
- 4. The Mining Engineer, Bikaner.

-----Respondents

For Petitioner(s) : Mr. G.R. Punia Sr. Adv. Assisted by Mr. Rajesh Punia
For Respondent(s) : Mr. Harshvardhan Singh, assistant to Mr. Mahaveer Bishnoi, AAG

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE CHANDRA PRAKASH SHRIMALI**
Judgment

Reportable

Reserved on 19/03/2025
Pronounced on 10/06/2025

Per Dr. Pushpendra Singh Bhati, J:

- 1. The instant writ petition under Article 226 of Constitution of India has been preferred, claiming the following reliefs:



"It is, therefore most humbly and respectfully prayed that this writ petition filed by the petitioner may kindly be allowed and:-

(a) By an appropriate writ, Order or direction, the 3rd proviso to Rule 16(2) of the Mining Mineral Concession Rules, 2017 may Kindly be struck down.

(b) By an appropriate writ, order or direction, the Order dated 20.09.2017 (Annexure-5) imposing penalty of Rs. 15,11,824/- may kindly be declared illegal and be quashed and set aside and the respondents be directed to permit the petitioner to carry out the mining operation without insisting upon the payment of penalty.

(c) Any other appropriate writ, order or direction which this Hon'ble Court considers just and proper in the facts and circumstances of the present case, may kindly be passed be passed in favour of the petitioner.

(d) costs of the writ petition may kindly be awarded to petitioner."

2. Before delving into the adjudicatory pursuit, pertaining to the reliefs claimed herein, it is pertinent to note that the statutory framework under the Mines and Minerals (Development and Regulation) Act, 1957 (*hereinafter referred to as, "Act of 1957"*) classifies minerals into major and minor categories. As per Section 3(e) of the Act of 1957, minor minerals are those which the Central Government may, by notification in the Official Gazette, declare as such; all other minerals are categorized as major minerals. Such classification determines the regulatory authority; major minerals are governed by the Central Government under the Mineral Concession Rules, 1960, while minor minerals fall under the purview of State Governments, which frame their own Rules under Section 15 of the Act of 1957; in the present case, such rules are known as 'Rajasthan Minor Mineral Concession



Rules, 2017' (*hereinafter referred to as, "Rules of 2017"*) framed by the State of Rajasthan.

2.1 Furthermore, it is also important to note that on 10.02.2015, the Central Government issued Notification No. GSR 423(E), reclassifying 31 minerals, including Ball Clay and Silica Sand, from major to minor minerals. Such reclassification transferred the regulatory control over these minerals to the State Governments, thereby subjecting them to State-specific rules and procedures. The reclassification altered the regulatory landscape, particularly concerning compliance requirements, lease procedures and the imposition of penalties.

2.2. The instant controversy arose when the petitioner herein applied for grant of a mining lease in respect of minerals Ball Clay and Silica Sand on 18.10.2013 for an area situated in Village Guda, Tehsil Kolayat, District Bikaner, registered as M.L. No. 48/2013. At the time of the application, Ball Clay and Silica Sand were classified as major minerals and were governed by the provisions of the Mineral Concession Rules, 1960 and the Act of 1957. On 10.02.2015, the Central Government issued a notification reclassifying Ball Clay and Silica Sand as minor minerals. However, in view of the subsequent developments, the matter came to be governed by the Rules of 2017.

2.2.1. Pursuant to the application for grant of Mining lease, a Letter of Intent (LoI) was issued to the petitioner on 05.05.2015 under the Mineral Concession Rules, 1960 and the Act of 1957, as amended upto 2015. After the change in governing law as stated



above, the petitioner's LoI was saved under Rule 5 of Rules of 2017. The terms of the LoI required the petitioner to submit a mining plan, progressive mining closure plan, and obtain an Environmental Clearance Certificate within six months of the issuance of the said LoI.

2.2.2. On 05.10.2015, a ban was imposed on the grant of mining leases for the relevant minerals until new rules were framed. Subsequently, the Rules of 2017 came into force, with Rule 16(2) prescribing the grant of mining leases subject to payment of premium installments, submission of performance security, approved mining plan, and other consents and approvals.

2.2.3. The third proviso to Rule 16(2) of the Rules of 2017 specifically provided for extension of the period of the LoI issued before the commencement of the Rules subject to payment of late fees at the rate of 10% of the annual dead rent for every month or part thereof for such extended period from the date of issuance of LoI. On 20.09.2017, the competent authority issued an order extending the period of the LoI till 13.02.2017, imposing a late fees of Rs. 15,11,824/- for the delay. The petitioner was granted the mining lease, however the same was made subject to payment of the said penalty and performance security.

2.2.4. The petitioner preferred the present writ petition challenging the legality of the third proviso to Rule 16(2) of the Rules of 2017 and the order imposing penalty, seeking reliefs in the form of quashment of the penalty and issuance of directions to allow mining operations without payment thereof.



3. Mr. G.R. Punia, learned Senior Counsel assisted by Mr. Rajesh Punia, appearing on behalf of the petitioner, submitted that the third proviso to Rule 16(2) of the Rules of 2017, under which the penalty in question has been imposed, is manifestly arbitrary and unreasonable. It imposes a mandatory penalty of 10% of the annual dead rent for every month or part thereof for delay in extending the LoI, without any discretion vested in the competent authority to consider the reasons for such delay. The third proviso to Rule 16(2) of the Rules of 2017 is reproduced as hereunder:-

"Provided also that period of letter of intent, issued before the commencement of these rules, may be extended by the competent authority, subject to payment of late fees at the rate of ten percent of annual dead rent for delay of every month or part thereof for such extended period from the date of issuance of letter of intent."

3.1. Learned Senior Counsel further submitted that the said proviso fails to take into account the circumstances beyond the control of the petitioner, including the prolonged and complex procedure involved in obtaining mandatory approvals such as the Environmental Clearance Certificate. The petitioner had acted diligently and without any default by applying for the Environmental Clearance immediately after the grant of the LoI.

3.2. Learned Senior Counsel also submitted that there was no delay or inaction on the petitioner's part in complying with the conditions of the LoI, particularly with regard to obtaining the Environmental Clearance Certificate. It was further submitted that the petitioner applied for Environmental Clearance Certificate in the year 2014, immediately after issuance of the LoI on



05.05.2014, however, despite the timely submission of application, the Environmental Clearance Certificate was granted only on 30.01.2017, which was more than two years later.

3.2.1. The contention raised on behalf of the petitioner is that the process of obtaining the Environmental Clearance Certificate is known to be lengthy and time-consuming, involving several layers of scrutiny and approvals from various authorities. The delay in grant of Environmental Clearance Certificate, it was submitted, was purely administrative in nature and entirely beyond the control of the petitioner. In this regard, reliance was placed on a clarificatory order dated 04.01.2017 issued by the Government of India, which provides that where the Environmental Clearance Certificate could not be obtained by 11.01.2017, but all other conditions specified in the LoI were fulfilled, the mining lease application would still be required to be considered as valid. The said notification emphasizes that mining operations may not commence without Environmental Clearance Certificate, but does not bar the grant of the lease itself in the absence of Environmental Clearance Certificate, provided the remaining formalities have been complied with.

3.3. Learned Senior Counsel further submitted that the delay in compliance with the preconditions stated in the LoI — occurred due to circumstances wholly beyond the petitioner's control. It was also submitted that during the operative period of the LoI, a ban was imposed by the competent authority of the government on grant or execution of mining leases, and the said ban resulted



into an effective standstill of all procedural steps necessary for progressing from the stage of LOI to lease execution. It was further submitted that the petitioner acted with due diligence and took all reasonable steps to obtain the required clearances and permissions. However, the procedural bottleneck caused by the ban made it practically impossible for the petitioner to meet the timelines prescribed under Rule 16(2) of the Rules of 2017.

3.4. Learned Senior Counsel further submitted that the amount of penalty imposed i.e. Rs.15,11,824/-, calculated at 10% of the Annual Dead Rent per month, is exorbitant, disproportionate, and unreasonable, especially in light of the facts and circumstances of the present case, wherein delay in fulfillment of the conditions stipulated in the LoI, including submission of the Environment Clearance Certificate, was not attributable to the petitioner, but rather to the lengthy and time-consuming statutory process involved in securing environmental clearance certificate and the ban imposed by the government.

3.5. Learned Senior Counsel also submitted that the retrospective application of the penalty provision to LoI issued prior to the commencement of the Rules of 2017 violates the principles of fairness and is contrary to the settled legal principles against retrospective penal legislation. At the time when the LoI was issued and even at the time of grant of Environmental Clearance Certificate, no such penalty clause existed under the earlier Mineral Concession Rules, 1960 or the Act of 1957.



3.6. In the above backdrop, the prayer made on behalf of the petitioner is that the third proviso to Rule 16(2) of the Rules of 2017 deserves to be declared *ultra vires* the Constitution of India and consequently, the order dated 20.09.2017 imposing the penalty in question deserves to be quashed and set aside, thereby permitting the petitioner to carry out mining operations without the payment of the said penalty.

4. *Per contra*, Mr. Harshavardhan Singh, Assistant to Mr. Mahaveer Bishnoi, learned Additional Advocate General, on behalf of the respondents, while opposing the aforesaid submissions made on behalf of the petitioner, submitted that in pursuance of the order, passed in favor of the petitioner, the same was duly acted upon, i.e., the petitioner deposited the amount of penalty along with rent royalty etc., and consequently, a lease deed was executed between the petitioner and the Mining Engineer, Bikaner, on 28.03.2018, and the said lease was registered on the very same day.

4.1. It was further submitted that in light of the above developments, the subject matter of the writ petition no longer survives, as the ultimate relief i.e. grant of the mining lease has already been extended to the petitioner, followed by formal execution and registration of the lease deed. Therefore, it was submitted that nothing remains to be adjudicated in the present petition, and the same is liable to be dismissed as infructuous.

4.2. It was further submitted that the instant writ petition is not maintainable also on count of failure of the petitioner in serving



mandatory notice under Section 80 of the Civil Procedure Code, 1908. It was contended that Section 80 CPC mandates prior service of notice upon the Government or public officer before the institution of any legal proceedings against them, with the objective of giving the authority concerned an opportunity to reconsider the legal position pertaining to the matter, resolve the same, or settle the claim without the necessity of litigation. In the present case, the petitioner has failed to serve such notice before filing the instant writ petition, thereby rendering the writ petition unworthy of acceptance.

4.3. It was further submitted that even if the petitioner was genuinely aggrieved by the imposition of penalty or the demand raised under the third proviso to Rule 16(2) of the Rules of 2017, he ought to have availed the remedy of statutory appeal provided under Rule 63 of the said Rules, rather than invoking the extraordinary writ jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. It was also submitted that Rule 63 of the Rules of 2017, provides for a comprehensive appellate mechanism against any order passed by the Superintending Mining Engineer, Mining Engineer, Assistant Mining Engineer, or their vigilance counterparts. In addition, the respondents submitted that the Rules also provide for the remedy of revision under Rule 64, empowering the Government to revise any order passed under the Rules. Thus, the statutory framework provides an adequate and efficacious remedy for redressal of grievances as raised herein.



4.4. It was further submitted that the petitioner has challenged the validity of the third proviso to Rule 16(2) of the Rules of 2017. However, the Union of India, through the Secretary, Ministry of Mines, Government of India, has not been impleaded as a party respondent in the writ petition. It is a settled proposition of law that the Rules of 2017 have been framed pursuant to the powers delegated under the Act of 1957, a Central Legislation. The authority to frame such Subordinate Legislation has been conferred upon the State Government by virtue of delegation under the Central Statute. In the absence of impleadment of the Union of India as a party to this litigation, the constitutional validity or otherwise of the said provision cannot be adjudicated in the instant writ petition, more particularly, when the Union of India is a necessary and proper party for the purpose of deciding the *vires* of any delegated legislation framed under a Central Statute.

4.5. It was also submitted that the Environmental Clearance Certificate was issued to the petitioner on 30.1.2017, and that the same was submitted to the Directorate of Mines, Udaipur on 13.2.2017. It was contended that issuance of such Certificate cannot lead to inference that the petitioner is exempt from the application of the Rules of 2017. The petitioner was only holding a LoI and had not been granted a mining lease nor had any lease-deed been executed prior to the commencement of the Rules of 2017. Thus, the Rules of 2017 are fully applicable to the petitioner's case.



4.6. It was further submitted that the petitioner's application for grant of mining lease remained pending due to non-compliance with condition No.3 of the LoI, which required timely submission of requisite documents including Environmental Clearance Certificate. In this regard, it was submitted that a D.O. letter dated 15.9.2015 was issued by the Hon'ble State Minister for Mines, Environment, and Forest (Independent Charge), Department of Mines, Government of Rajasthan, Jaipur, which addressed certain administrative aspects, and on 5.10.2015, Hon'ble Mines Minister also issued direction not to sanction any further mining leases until coming into force of the new Rules. It was brought to the notice of the Court that in exercise of the powers conferred by Section 15 of the Act of 1957, the State Government promulgated the Rules of 2017. Hence, the application submitted by the petitioner is governed by the Rules of 2017.

4.6.1. It was also submitted that only those applications have been saved under the Rules of 2017 where LoI was issued prior to 12.1.2015 i.e. coming into force of the Amended Act of 1957. It was contended that the petitioner has been benefited by the said proviso, as his application has not been rejected even after coming into force of the Rules of 2017 in view of issuance of the LoI.

4.7. It was further submitted that the LoI was saved under Rule 5, but its period could only be extended subject to compliance with Rule 16, which includes deposition of penalty at the rate of



10% of the annual dead rent per month of delay. Further, the notification dated 04.01.2017, relied upon by the petitioner, pertains to cases under Section 10A(2)(c) of the Act of 1957 relating to major minerals, whereas the petitioner's case concerns with the minor minerals, and thus the said notification is not applicable in the case of the petitioner herein.

4.8. In support of such submissions, reliance was placed upon the following judgments to contend that imposition of penalty in question under the third proviso to Rule 16(2) of the Rules of 2017 is in consonance with the Statutory framework and Constitutional norms:-

(i) *ITC Ltd. vs. State of U.P. & Ors. (2011) 7 SCC 493:*

The Hon'ble Supreme Court in the said judgment held that if an allotment of land by a public authority is found to have been made in violation of statutory rules or public policy, the authority is not automatically entitled to cancel the lease arbitrarily. Instead, an equitable approach must be adopted, especially when the lessees were not at fault and had acted bona fide. The Hon'ble Court ruled that instead of canceling the leases, the lessees should be given the opportunity to pay the differential premium.

(ii) *Transmission Corporation of Andhra Pradesh Ltd. vs. Sai Renewable Power Pvt. Ltd. & Ors. (2011) 11 SCC 34:*

The Hon'ble Supreme Court upheld the power of the Electricity Regulatory Commission to revise tariffs, even if such revision went against earlier expectations of power producers. The Hon'ble Court rejected the plea of promissory estoppel, holding that public



interest and statutory authority override earlier non-binding promises.

4.9. It was further submitted that it is a settled legal principle that the presumption is always in favour of the constitutionality of an enactment, and the burden lies upon the party who challenges it to demonstrate a clear transgression of constitutional principles.

It was also submitted that where the validity of a law made by a competent legislature is challenged before a Court of law, the Court is bound to presume in favour of the law's validity. Furthermore, while considering the validity of the law, the Court may not confine the adjudication to the pleadings of the State and is free to independently satisfy itself as to whether the law can be sustained under any Constitutional provision. In this regard, reliance was placed on the judgment rendered by the Hon'ble Supreme Court in the case of **Ram Krishna Dalmia v. Justice S.R. Tendolkar (Civil Appeals Nos. 455 to 457 and 656 to 658 of 1957, decided on 28.03.1958)**, wherein it was held as under:

"(b) There is always a presumption in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles; (e) In order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and"

4.9.1. Reliance was also placed on the judgment rendered in the case of **Union of India v. Elphinstone Spinning and Weaving Co. Ltd. (2001) 4 SCC 139** to contend that a statute is to be



construed so as to make it effective and operative. It was further submitted that as per the aforementioned judgment of the Hon'ble Apex Court there is always a presumption that the legislature does not exceed its jurisdiction, and the burden of establishing that the legislature has transgressed constitutional mandates, such as those relating to fundamental rights, lies on the person who challenges its *vires*. It was submitted that this principle is subject to one exception, namely that if a citizen is able to establish that the legislation has invaded his/her fundamental rights, then the State must justify that the law is saved.

4.9.2. Reliance was also placed on the judgment rendered in the case of ***Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh (1984) 4 SCC 27***, wherein the Hon'ble Apex Court laid down the following three-fold test for examining the Constitutional validity of a provision:

- "1. Whether the provisions of such regulations fall within the scope and ambit of the power conferred by the statute on the delegate;*
- 2. Whether the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parent enactment; and lastly,*
- 3. Whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution."*

4.9.3. It was submitted in view of the settled law mentioned hereinbefore, the reliefs claimed by the petitioner in the present writ petition do not deserve to be granted.

5. Heard learned counsel for the parties as well as perused the record of the case, alongwith the judgments cited at the Bar.



6. At the outset, it is pertinent to highlight that, it was contended on behalf of the respondents that, amongst others, since the petitioner has already deposited the penalty amount as contemplated under the impugned third proviso to Rule 16(2) of the Rules of 2017, the instant writ petition has rendered infructuous. However, this Court is of the considered view that mere compliance with the impugned condition — especially when made to avoid further coercive consequences — cannot *ipso facto* be construed as waiver of the right to challenge its legality. Furthermore, in the present case, since the petitioner has assailed the constitutionality of the third proviso to Rule 16(2) of the Rules of 2017, this Court is well within its jurisdiction to entertain the present petition under Article 226 of the Constitution of India.

7. This Court is also conscious of the contention regarding the absence of notice under Section 80 of CPC. However, it is a trite position in law that Section 80 CPC applies to institution of suits and does not govern proceedings initiated under Article 226 of the Constitution of India. The writ jurisdiction, as invoked herein, is of a special and extraordinary nature and is not fettered by procedural formalities governing civil suits. Accordingly, the non-issuance of a notice under Section 80 CPC does not render the present writ petition non-maintainable, and the said objection of the respondents is liable to be rejected at the threshold.



8. Having made the observations on preliminary objections raised by the respondents, this Court further proceeds to substantively analyze the merits of the case, and this Court observes that in matters concerning statutory regulation, including prescription of penalty, royalty and dead rent, the State Government retains full authority under the Act of 1957, to introduce and enforce relevant provisions under the Rules of 2017. Furthermore, the impugned third proviso to Rule 16(2) of the Rules of 2017, is a valid statutory provision framed within the scope of powers delegated to the State under the parent legislation. The said provision serves a regulatory and deterrent purpose to ensure compliance with environmental and procedural norms within a reasonable time-frame. Thus, the petitioner cannot seek exemption from the penalty merely on the ground of delay caused in the issuance of Environmental Clearance Certificate, as the statutory condition requiring submission within six months was clear, and non-compliance in this regard attracts the stipulated consequence. The rules being prospective in nature, their application to a lease granted in 2017, after their enforcement, does not suffer from any legal infirmity.

9. This Court further observes that where public resources are allotted by the State, such allotments must withstand the test of legality, transparency and fairness, especially if they lead to financial loss or breach of statutory obligations. However, rather than declaring every such allotment void, the Courts may allow the beneficiary to retain the benefit, provided he/she compensates



the public exchequer adequately, thus striking a balance between legal rectitude and equity. Applying the above principle, the Hon'ble Supreme Court in the case of **ITC Ltd. (supra)** has upheld the validity of the allotment but directed the beneficiaries to pay the shortfall in consideration as determined by the State.

10. This Court also observes that the petitioner has assailed the validity and legality of the third proviso to Rule 16(2) of the Rules of 2017 on the ground that it is manifestly arbitrary, unreasonable and *ultra vires* the Constitution of India. It is contended that the said proviso mandates a penalty of 10% of the annual dead rent for each month or part thereof of delay in seeking extension of the LoI, without vesting any discretion in the competent authority to consider extenuating circumstances, such as delays in obtaining environmental clearance. However, this Court is unable to accept the said contention for the following reasons:

(i) The power of the State Government to frame rules under the Mines and Minerals (Development and Regulation) Act, 1957, including prescription of penalties, is well-settled. The third proviso to Rule 16(2) of the Rules of 2017 is a fiscal and regulatory measure introduced to ensure discipline in the timely compliance of pre-conditions to lease execution. It cannot be said to be *per se* arbitrary merely because it is couched in mandatory terms.

(ii) The imposition of a uniform penal consequence for delay does not, by itself, amount to discrimination or arbitrariness under the Constitution of India. The rule applies equally to all



similarly situated parties and is a reasonable classification premised on a legitimate objective — namely, the timely initiation of mining operations in accordance with environmental and regulatory safeguards.

(iii) Mining activity has significant environmental and economic implications. Delays in securing mandatory clearances — even if procedurally cumbersome — cannot indefinitely stall the process. The rule incentivizes due diligence and timely action. In the broader public interest, the legislature is entitled to place the onus on the applicant to comply expeditiously with statutory prerequisites.

(iv) As reiterated in ***Ram Krishna Dalmia (supra)*** and ***Union of India v. Elphinstone Spinning & Weaving Co. (supra)***, there exists a strong presumption in favour of the constitutionality of subordinate legislation. The burden lies heavily upon the petitioner to demonstrate a clear transgression of constitutional mandates, which has not been discharged in the present case.

(v) It is also pertinent that the petitioner, with full knowledge of the regulatory framework including Rule 16(2) of the Rules of 2017, accepted the LoI and later executed the lease deed after depositing the applicable penalty. By such conduct, the petitioner has voluntarily submitted to the conditions prescribed under law and cannot now be permitted to assail the very provision under which relief has



already been obtained. The principle of *allegans contraria non est audiendus* is squarely attracted in the present case.

11. Accordingly, this Court finds no merit in the challenge herein to the validity of the third proviso to Rule 16(2) of the Rules of 2017, since the said provision is neither *ultra vires* the parent enactment nor violative of the Constitution of India.

12. Thus, in view of the foregoing discussion, this Court is of the considered view that as third proviso to Rule 16(2) of the Rules of 2017 is a validly framed subordinate legislation, traceable to the enabling provisions of the parent Act, and serves a legitimate regulatory purpose in ensuring timely compliance with statutory obligations relating to mining leases. Hence, once the rule itself has been upheld as constitutionally and statutorily valid, any action taken by the competent authority in furtherance thereof — including the imposition of penalty in extending the LoI — cannot be faulted merely on grounds of hardship or inconvenience, as raised by the present petitioner. The levy of penalty, being in consonance with a valid rule, is equally sustainable in law, and does not warrant interference by this Court.

13. Therefore, in the firm opinion of this Court, there is no legal infirmity in the third proviso to Rule 16(2) of the Rules of 2017, and consequently, the impugned order dated 20.09.2017, imposing penalty of Rs. 15,11,825/- is also valid, thus does not warrant any interference by this Court.



14. Consequently, the present petition is ***dismissed***. All pending applications stand disposed of.

(CHANDRA PRAKASH SHRIMALI),J

(DR.PUSHPENDRA SINGH BHATI),J



SKant/-