

IN THE HIGH COURT OF ORISSA, CUTTACK  
(ORIGINAL JURISDICTION CASE)

Writ Petition (C) No. 20179/2012

CODE NO. 202008

IN THE MATTER OF

: An application Under Article 226 & 227  
of the Constitution of India.

AND

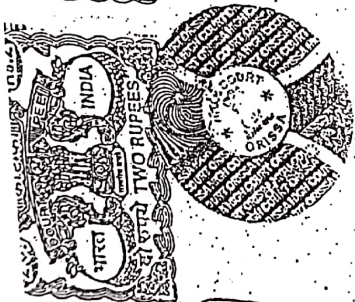
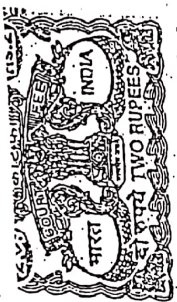
IN THE MATTER OF :

M/s. KMC-RK-SD (JV)  
Plot no.-143/B, Barmunda Duplex  
Colony, Bhubaneswar-751 003,  
Dist.- Khurda, Odisha, represented  
through its Authorized Representative  
Sri Rohit Kumar Das, Managing  
Director of M/s.RKD Constructions Pvt.  
Ltd.

..... Petitioner

-Vrs-

- 1) State of Odisha  
Represented through the Chief  
Secretary, Government of Odisha, At-  
Secretariat, Bhubaneswar, Dist.-Khurda
- 2) Principal Secretary, Department of Steel  
& Mines, Government of Odisha, At-  
Secretariat, Bhubaneswar, Dist.-Khurda.
- 3) Principal Secretary, Department of  
Revenue, Government of Odisha, At-  
Secretariat, Bhubaneswar, Dist.-Khurda
- 4) The District Magistrate cum Collector,  
Dist.-Ganjam, At-Collectorate,  
P.o./Dist.-Ganjam
- 5) National Highways Authority of India  
Through its chairman  
G-5 & 6, Sector 10,  
Dwarka, New Delhi-110 075

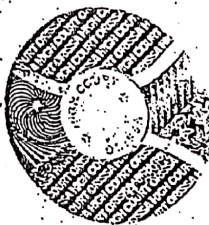
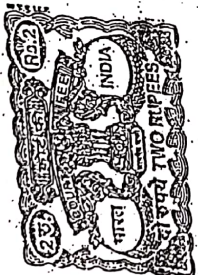
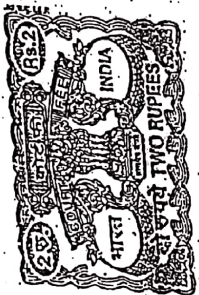


R. C. MISHRA  
NOTARY, CUTTACK TOWN  
(ODISHA), Regd. No-21/05

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- 6) Project Director,  
Project Implementation Unit,  
National Highways Authority of India  
'Surya Niwas', Sales Tax Square  
Engineering School Road  
Berhampur - 760 010, Orissa
- 7) DHV B.V.  
Construction Supervision Consultants  
At-Dura, Pathara on Gopalpur Road,  
(1<sup>st</sup> Floor of United Bank of India  
Building), P.O.-Bahadurpeta  
Dist.- Ganjam - 760 007, Orissa  
.... Opp. Parties




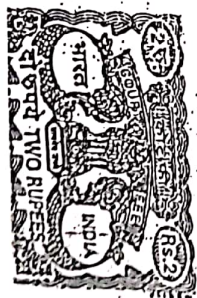
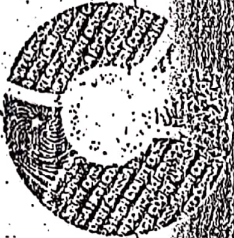
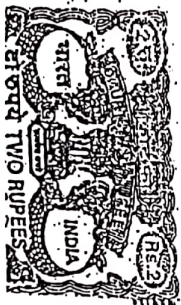
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W.P.(C) No.20479 of 2012

[O. H. C.-98]

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
	18.03.2015	<p data-bbox="571 577 1220 683">Common orders passed vide W.P(C) No. 1830 of 2013.</p> <p data-bbox="938 750 1034 851"> B.O.</p>	



[O. H. C.-98]

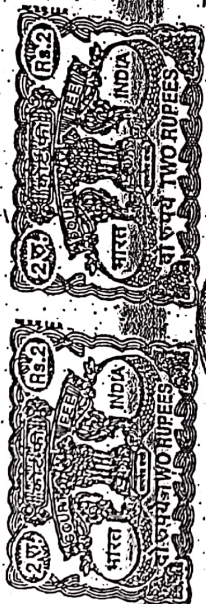
Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
	15. 18.03.2015	<p>W.P.(C) Nos.11830, 11831, 11832, 11835, 11833 &amp; 11834 of 2013, W.P.(C) Nos.24022, 24023, 24024, 24025, 24026, 24027, 24028, 24030, 24031, 24034, 24035, 24036, 24043, 24046, 24079, 24029, 24032, 24033, 24037, 24038, 24039, 24040, 24041, 24042, 24044 &amp; 24045 of 2012 &amp; W.P.(C) Nos.3024, 3025 &amp; 3026 of 2014.</p> <p>Heard Mr. J. Das, learned Senior Advocate and other counsels representing the respective petitioners and Mr. S.P. Mishra, learned Advocate General on behalf of the State.</p> <p>In this batch of writ applications, the following prayer has been made:</p> <p>"In the facts and under the circumstances mentioned above, it is humbly prayed that this Hon'ble Court may graciously be pleased to admit the writ application, issue Rule NISI calling upon the opp. Parties to show cause as to why the royalty collected on the minor minerals at the increased rate effective from 01.09.2010 shall not be declared as illegal and ultra vires the OMMC Rules, 2004 and to refund the royalty already deducted as such enhanced rate."</p> <p>Shorn of unnecessary details, it would be important herein to quote Rule 28 of the Orissa Minor Minerals Concession Rules, 2004, which is as under:</p> <p><b>"28. Liability for payment of Royalty, Dead Rent etc.:</b></p> <p>The lessee shall be liable to pay dead rent, surface rent, royalty and fees for compensatory afforestation at the following rates, namely:</p> <p>(i) The holder of a quarry lease shall pay to the State Government every year the dead rent and surface rent at the rates specified in Schedule I for all the areas included in the instrument of lease:</p>	

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[O. H. C.-98]

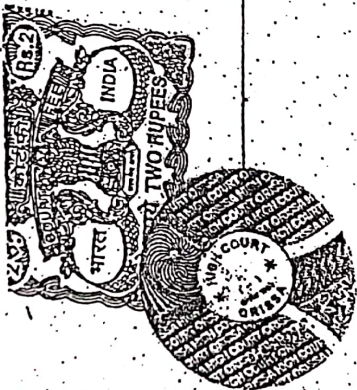
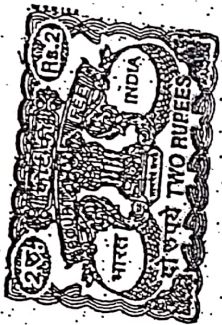
Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
			<p>Provided that the rates specified in Schedule I may be revised by Government from time to time by an amendment made to the said Schedule, but no enhancement shall be made before the expiry of three years from the date when the rates were last fixed:</p> <p>Provided further that in case the rates of dead rent and surface rent specified in Schedule I are not revised after expiry of three years from the date when the rates were last revised due to any reason; an automatic increase of forty percent thereon shall be effective from the fourth year.</p> <p>Provided also that where the holder of the quarry lease becomes liable for payment of royalty for any minor mineral removed or consumed by him or his agent, manager and employees or the contractor from the leased area, he shall be liable to pay either such royalty or the dead rent in respect of that area, whichever is higher.</p> <p>(ii) Royalty shall be leviable on minor minerals removed from the leased area at the rates specified in Schedule II:</p> <p><u>Provided that the State Government, may, by notification in the Official Gazette, amend the Schedule II as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral but no enhancement shall be made before the expiry of three years from the date when the rates were last revised:</u></p> <p>Provided further that in case the rate of royalty specified in Schedule II are not revised after expiry of three years from the date when the rates were last fixed due to any reason; and automatic increase of forty percent thereon shall be effective from the fourth year.</p> <p>(iii) The lessee shall pay, in addition to the surface rent, dead rent or royalty, as the case may be, fees for compensatory</p>





[O.H. C.-98]

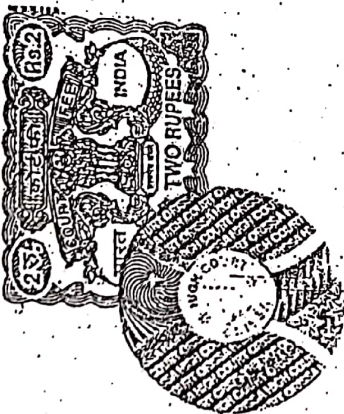
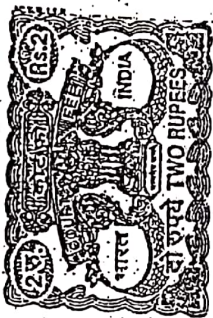
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		<p>afforestation at rates as may be specified by Government from time to time."</p> <p>Learned counsel for the petitioners submits that the aforesaid Rule 28 and Schedule II to the Rules were enacted and notified by the State of Orissa w.e.f. 01.09.2004.</p> <p>Challenge has been made to the Second proviso to Rule 28(II) which appears to have been relied upon by the State to effect revisions on 01.09.2007, 01.09.2010 and 01.09.2013. Learned counsel appearing for the petitioners, who are all holders of quarry leases, contends that it was mandatory on the part of the State to effect any change to the rates stipulated in Schedule II only by way of making a notification amending Schedule II to the Rules. No reliance ought to have been placed on the Second proviso to effect enhancements, that to, repeatedly on successive periods as noted hereinabove.</p> <p>Learned counsel for the petitioners submits in the alternate that even if the Second proviso to Rule 28(II) is upheld it may at best justify enhancement of the rates fixed in Schedule II by 40% w.e.f. i.e. in the 4<sup>th</sup> year, for which reason enhancement was made on 01.09.2007 but, the said proviso could not have been resorted to for justifying the subsequent enhancements made on 01.09.2010 and 01.09.2013.</p> <p>Learned Advocate General on behalf of the State fairly submits that the Second proviso to Rule 28(II) of the OMMC Rules, 2004 could have been resorted to only for effecting the enhancement on 01.09.2007 and no amendment of the notification was necessary, since legislature had mandated in the Second proviso, the</p>	





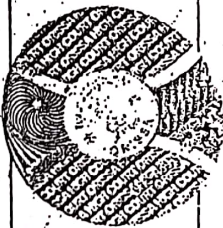
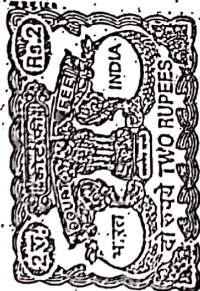
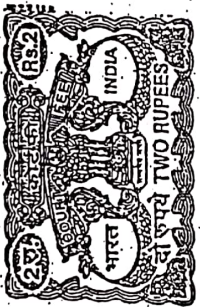
[O. H. C.-98]

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		<p>percentage of enhancement to the schedule, which was made effective originally from 01.09.2004. As a consequence of such submission, it is submitted that the original fixation of rates on 01.09.2004 and the 1<sup>st</sup> revision on 01.09.2007 required no notification since by a legislative Act by introducing the Second proviso, the Schedule II, itself, stood amended/modified by implication.</p> <p>In view of the submissions of the learned counsel for the petitioners as well as learned counsel for the State, it is clear that the enhancements thereafter effected on 01.09.2010 and 01.09.2013 cannot be justified in law since, admittedly the Second proviso itself does not authorize any subsequent enhancements of rates as stipulated in the Schedule II, without carrying out amendment to Schedule II.</p> <p>In view of the submissions advanced by the learned counsels, we have no hesitation in declaring that the enhancements made by the State without effecting any change in Schedule II on 01.09.2010 and 01.09.2013 are without any authority of law.</p> <p>It would be pertinent also herein to take note of the fact that the State Government have made an amendment to various rules including Rule 28 by Notification dated 16<sup>th</sup> September, 2014 publishing in the Odisha Gazette and the said amendment to Rule 28 are not subject matter of challenge in the present writ applications but, obviously the same would be enforceable from the date on which the said amendment came into effect.</p>	



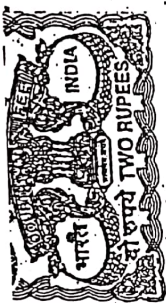
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		<p>In the light of the discussions made hereinabove, the only issue that remains for consideration in the present case is <u>what relief can be granted to the petitioners.</u></p> <p>Learned counsel for the petitioners claim that the petitioners are contractors under the State, who have carried out or carrying out various contracts under the State and the State agencies (employers) are effecting deduction of royalty at the <u>enhanced rates</u> and further claim that they have not been reimbursed the enhanced royalty though deducted from their respective bills.</p> <p><i>gms</i> Learned Advocate General submits that the <u>quashing of the subsequent enhancements made in the rates on 01.09.2010 and 01.09.2013 ought not to result in any unjust enrichment to the petitioners.</u></p> <p>We are in agreement with the above submissions made. This Court had an opportunity to deal with a similar issue in the case of <u>Akuli Charan Das etc. etc. vs. State of Orissa and others reported in A.I.R.2007 Orissa 197</u> and considering the claim of contractors for reimbursement of enhanced royalty, this Court had concluded and issued the directions to the following effect:</p> <ol style="list-style-type: none"> <li>(1) <u>It is hereby declared that the petitioners are justified in their claim for reimbursement on the basis of the revised rate stipulated in 2004 Rules.</u></li> <li>(2) <u>The petitioners may revise their bills to incorporate such enhanced claim on account of revised royalty.</u></li> <li>(3) <u>The State is to effect reimbursement/ payment towards royalty subject to the petitioners furnishing evidence of payment of such royalty."</u></li> </ol>	





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		<p>With reference to the aforesaid judgment cited hereinabove and the present situation that arises for our consideration, we direct as follows:</p> <ol style="list-style-type: none"> <li>1. We declare that the enhancements made by the State to the rate specified in Schedule II on 01.09.2010 and 01.09.2013 are declared <u>unlawful</u>.</li> <li>2. The petitioners shall approach their employers, who are to compute the extent to which royalty has been deducted from their respective bills and also to certify whether the enhanced royalties deducted from the petitioners bills, have been reimbursed and/or added to the contract price or not. In the event the employer gives the necessary certificate indicating that the enhanced royalty deducted has not been reimbursed. Such certificate shall be issued to the petitioners within a period of three months from today.</li> <li>3. On receipt of such certificates, the same may be produced before the respective Tahasildars and the Tahasildars shall in turn treat the certificates as applications for refund of royalty. However, we make it clear that the petitioners who have ongoing projects with the State, may, instead of seeking refund of any excess royalty paid, may opt for allowing adjustment of the refundable amount against any ongoing projects that they may be undertaking.</li> </ol>	



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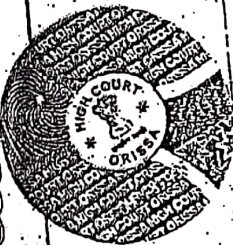
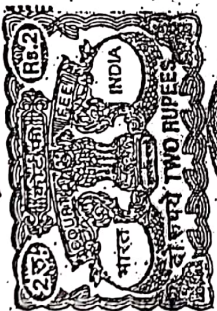
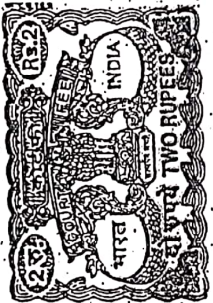
4. The employer will work out and issue necessary computational certification within three months and within two months thereafter the petitioners may either opt for adjustment against their ongoing work or the Tahasildar concerned shall recommend for refund from the Treasury.

With the aforesaid observations and directions, these writ applications stands disposed of.

Free copy of this order be handed over to the learned counsel for the State for necessary communication and compliance.

Urgent certified copy of this order be granted on proper application.

Sd/- I. Mahanty, J.  
Sd/- B. N. Mahapatra, J.



Camp. Reg. -

*Jdi*  
25/3/15