

- : 1 :-

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 7th OF SEPTEMBER, 2022

MISC. PETITION No. 3390 of 2022

BETWEEN:-

M/S BHARTIYA CONSTRUCTION BANSAWADA,
R/O KUSHALBAG RAJRAJESHWARI COLONY,
BANSAWADA, DISTRICT BANSWADA (RAJ.), AT
PRESENT SADAKHEDI THROUGH THROUGH
ADHIKRAT HASTAKSHAR SURESH KUMAR S/O
SAJJANLAL JI SANGHVI, AGED ABOUT 55
YEARS, OCCUPATION: CONSTRUCTOR ADD.
BHARTIYA CONSTRUCTION COMPANY
KUSHALBAG RAJRAJESHWARI COLONY
BANSWADA (RAJASTHAN)

.....PETITIONER

*(SHRI ASHOK KUMAR SETHI ALONG WITH SHRI PRAVIN KUMAR
BHATT, LEARNED COUNSEL FOR THE PETITIONER)*

AND

- THE STATE OF MADHYA PRADESH THROUGH
1. COMMISSIONER UJJAIN DIVISION UJJAIN
(MADHYA PRADESH)
 2. JILADHEESH, RATLAM DISTRICT RATLAM
(MADHYA PRADESH)

.....RESPONDENTS

*(SHRI COUNSEL BHASKAR AGRAWAL, LEARNED GOVERNMENT
ADVOCATE FOR THE RESPONDENT/STATE.*

*This petition coming on for order this day, JUSTICE VIVEK
RUSIA passed the following:*

ORDER

Petitioner has filed the present petition being aggrieved by the letter dated 19.07.2022 written by the Reader of the Commissioner Ujjain Division directing petitioner to deposit 10% of the penalty Rs.8,64,00,000/- and submit the receipt on 04.08.2022 thereafter the appeal shall be considered on merit.

[2] The petitioner was allotted government land survey No.06 area of 2.00 hectares for mining purposes. The allegation is that instead of excavating the mineral from the aforesaid land, he excavated the stone and crushed it into dust on survey No.175 area of 14.500 hectares with the help of JCB. The Mining Officer submitted a report to the Collector Ratlam that the petitioner has dug a land other than the lease area measuring length 120 meters, width 80 meters and 3 meter depth and extracted 28800 cubic meters of the minor mineral without payment of royalty, hence, penalty Rs.8,64,00,000/- is proposed.

[3] The Collector served the notice to the petitioner under Rule 53(1) of M.P. Minor Mineral Rules, 1996 (hereinafter referred to "Rules, 1996" for short) to which the petitioner submitted a reply. Vide letter dated 30.10.2019, in exercise of power under Rule 53-(1) of Rules, 1996, the Collector has imposed the penalty at the rate of 30 times of royalty i.e. Rs.8,64,00,000/-.

[4] Being aggrieved by the aforesaid order the petitioner preferred an appeal cum revision under Rule 57 and 58 of Rules, 1996 before the Director Mining (Appellate Authority) on 12.11.2019. The appeal was accepted and fixed for the final argument on 06.10.2021. According to the petitioner, due to the Corona period, the appeal could not be heard finally and remained pending. Thereafter, vide impugned letter, the petitioner came to

know that the pending appeal has been transferred to the Commissioner Division Ujjain and 10% of the penalty amount is liable to be deposited before entertaining the appeal on merit.

[5] Being aggrieved by the aforesaid notice, the petitioner has filed the present petition *inter alia* on two grounds *firstly*, the appeal was filed under Rule 57 and 58 of Rules, 1996 in which the Appellate Authority is Director Mining therefore, the appeal has wrongly been transferred to the Commissioner, Division Ujjain and *secondly*, under the aforesaid Rules there is no requirement of deposit of 10% before entertaining the appeal, hence, impugned notice be set aside and appeal be decided on merit.

[6] On 10.08.2022, this petition came up for hearing, Shri Agrawal was directed to seek instructions on the following points:

1. Under which amendment in the Act, the appeal filed before the Director (Mining) has been transferred to the Commissioner, Division Ujjain.
2. Whether the amendment in respect of deposit of 10% amount under recovery by way of amendment dated 11.01.2021 shall apply to an appeal filed prior to the aforesaid date?

[7] Bhaskar Agrawal learned Government Advocate submits that in the exercise of the power conferred under Section 23C of Mines & Minerals (Development & Regulation) Act, 1957 (hereinafter referred to as " Act, 1957" for short), the State Government has framed Rule called M.P. Pradesh Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2022 (hereinafter referred to as " Rules, 2022") by repealing Madhya Pradesh Minerals (Prevention of Illegal, Mining, Transportation and Storage) Rules, 2006 in which under Rule 27 an appeals lies before the Divisional Commissioner and as per proviso the appeal shall be accepted on payment of 10% of the amount of total penalty, hence

the Reader with prior approval of the Commissioner has rightly directed to the petitioner to deposit 10% the of the penalty amount.

[8] Shri Agrawal learned Government Advocate further submits that in compliance with Rule, 2022, vide letter dated 27.04.2022 the Office of Director of Mines and Minerals has transferred all the pending appeals to Commissioner Ujjain for adjudication under Rule 27 of the Rules, 2022 and as per the proviso Sub-rule (1) of Rule 27 of Rules, 2022 the appeal shall be accepted only on payment of 10% of the total amount of penalty. Learned Government Advocate further submits that Rule 31 of Rules, 2022 clearly provides that appeal/revision pending under these repealed Rules shall be transferred to the concerned Appellate or Revisional authority as the case may be. Rule 31 of Rules, 2022 provides a Repeal and Saving clause under which anything done or any action taken under Rule 53 of the Rules, 1996, Rules, 2019 and Rules, 2006 shall be deemed to have been done or taken under the corresponding provisions of three rules, therefore, Writ Petition has no substance and liable to be dismissed.

[9] Shri A.K. Sethi learned Senior counsel argues that by virtue of Rule 31 of Rules, 2022 only Rule 53 of Rules, 1996 has been repealed whereas the petitioner has filed an appeal under Rule 57 and 58 of Rules, 1996 which has not been repealed by Rules, 2022. Hence, the appeal is maintainable. Shri Sethi learned Senior Counsel further submits that under the old Rules, there is no requirement for deposit of 10% of the amount of penalty, therefore, an appeal filed before 4th April 2022 is liable to be decided under Rule 57 and 58 of Rules, 1996.

We have heard the learned counsel for the parties and perused

the record.

[10] In the exercise of the power conferred by Section 15 of Mines and Minerals (Development & Regulation) Act, 1957 the State Government has been delegated power to make rules in respect of minor minerals. Rule 53 of Rules, 1996 provides imposition of penalty for unauthorized extraction and transportation of minerals. Against the order passed under Section 53, an appeal lies under Section 57 of Rules, 1996 to the Director and any order passed by the Director the appeal lies to the State Government. Rule 58 of Rules, 1996 provides the revision by the State Government and Director on its own motion to examine the legality and propriety of the order passed by the Subordinate Officer.

[11] In the exercise of power under 23C of Act, 1957, the State Government has also framed the Rules, 2006. In these Rules also, Rule 18 provides imposition of penalty for unauthorised mining, transportation and storage of minerals and Rule 19 and 20 provide a remedy of Appeal to the Divisional Commissioner and Revision to the State Government. Now by enacting M.P. Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2022, the State Government has repealed *Rule 53 of the Madhya Pradesh Minor Mineral Rules, 1996, Rule 20 of the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 and Madhya Pradesh (Prevention of Illegal Mining Transportation and Storage) Rules, 2006*. It has also been provided that appeal/revision pending under these repealed Rules, shall be transferred to the concerned Appellate Authority or Revisional Authority, therefore, by virtue of Rule 31, the pending appeal of the petitioner has rightly been transferred to the Commissioner Ujjain for adjudication.

[12] As far as the condition to deposit 10% of the penalty before hearing an appeal on merit is concerned, now the appeal filed by the petitioner is treated to be filed under Rule 27 of Rules, 2022 by virtue of the Repeal and Saving clause.

[12] Shri A.K.Sethi, learned Senior Counsel appearing on behalf of the petitioner further submits that the petitioner has filed an appeal under Section 57 of Rules, 1996 and the said provision has not been repealed. Therefore, the appeal is very much maintainable and liable to be decided by the Director without the condition of pre-deposit. This submission is liable to be rejected for the simple reason that Rule 57 of Chapter XIII of Rules, 1996 only provides a forum of appeal before the Collector against any order passed under these Rules. The petitioner has filed an appeal against the order passed under Rule 53 of Rules, 1996, which has now stood repealed by new Rules, 2022 which also provides a penalty for unauthorised extraction and transportation and also the procedure for filing an appeal under Chapter -VI Rule 27 of Rules, 2022. Rule 27 also provides prescribed form-10 for filing of appeal, limitation and procedure for disposal of an appeal under the Civil Procedure Code, 1908. Therefore, all the appeals are liable to be filed and decided under Rule 27 of Rules, 2022.

[13] In our opinion Rule 57 of Rules, 1996 has not been repealed because there are other provisions in Rule, 1996 viz Chapter I, II, III, IV, V, VI, VII, VIII, IX and orders passed therein are liable to be challenged by way of appeal under Rule, 57 of Rules, 1996. Only for the purpose of imposition of penalty for unauthorised extraction, transportation and mining, separate Rules 2022 have been framed and under which the remedy of appeal or revision has also been

provided. Therefore in the matter where orders have been passed in respect of illegal mining, transportation and storage under repealed Rule or as well as under Rule, 2022 the appeal shall lie to the Divisional Commissioner under Rule 27 of Rule, 2022 and for the rest of the other matters the appeal shall lie under Rule 57 of Rules, 1996.

In view of the above, the Writ Petition being devoid of merit is hereby dismissed.

(VIVEK RUSIA)

JUDGE

(AMAR NATH (KESHARWANI))

JUDGE

praveen