

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE RAVI MALIMATH,  
CHIEF JUSTICE**

**&**

**HON'BLE SHRI JUSTICE VISHAL MISHRA**

**ON THE 26<sup>th</sup> OF SEPTEMBER, 2022**

**WRIT PETITION No. 10192 of 2021**

**BETWEEN:-**

**JAYKAYCEM (CENTRAL) LIMITED, A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT KAMLA TOWER, KANPUR, UTTAR PRADESH, 208 001, THROUGH SHRI ANIL BADGOTRI, AGED ABOUT 54 YEARS, S/O SHRI G.L. BADGOTRI, RESIDNET OF BASANT VIHAR, OPPOSITE PIYUSH SCHOOL KHIRHINI ROAD, KATNI (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI NAMAN NAGRATH - SENIOR ADVOCATE WITH SHRI SAHIL BALAIK, SHRI TUSHAR GIRI AND SHRI ARVIND RAY - ADVOCATES)***

**AND**

- 1. UNION OF INDIA, THROUGH THE ADDITIONAL SECRETARY, THE ADDITIONAL SECRETARY, MINISTRY OF MINES, INDIAN BUREAU OF MINES, 2ND FLOOR, INDIRA BHAWAN, CIVIL LINES, NAGPUR (MAHARASHTRA)**
- 2. THE REGIONAL CONTROLLER OF MINES, OFFICE OF THE REGIONAL CONTROLLER OF MINES, INDIAN BUREAU OF MINES, SCHEME NO.11, KAMLA NEHRU NAGAR, JABALPUR (MADHYA PRADESH)**

3. **THE STATE OF MADHYA PRADESH, THROUGH DIRECTOR, DIRECTORATE OF GEOLOGY AND MINING, 29-A, KHANJI BHAWAN, ARERA HILLS, JAIL ROAD, BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI VIKRAM SINGH - ADVOCATE FOR RESPONDENTS NO.1 AND 2 AND SHRI AMIT SETH - DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.3)***

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*This petition coming on for admission this day, **Hon'ble Shri Justice Ravi Malimath, Chief Justice** passed the following:*

**ORDER**

The case of the petitioner is that it was a Public Limited Company incorporated under the Companies Act, 1956. It is engaged in the business of manufacturing of cement. It is in the process of setting up an integrated cement plant in Panna District, Madhya Pradesh. On 21.08.2008, the petitioner submitted an application under Section 10 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the MMDR Act") for grant of Prospecting Licence for Limestone mining in an area admeasuring 3703.00 Hectares in Village Kamtana, Kakra, Saptai, Judi, Devri, Purohit, Devri Tahsil, Amanganj (Kakra Mining Block). On 15.03.2010, the State of Madhya Pradesh passed an order granting a Prospecting Licence to the petitioner to an extent of 3513.75 Hectares, for a period of two years subject to the various conditions. On completion of the various requirements of the said order, by the order dated 28.06.2010 a Prospecting Licence Deed for the areas mentioned therein was executed with a validity up to 14.06.2012.

2. Thereafter, the petitioner undertook the prospecting operations over the area in question. On completion of the prospecting operations, the petitioner submitted an application for grant of mining lease. Thereafter, the State of Madhya Pradesh accepted the petitioner's application and directed the

petitioner to submit a duly approved mining plan within a period of six months from 10.07.2014. Extension of time was granted. Thereafter, the mining plan was submitted, which was approved by the State on 03.08.2015. The petitioner, vide order dated 17.03.2016, was called upon to execute the mining lease for the area in question within a period of six months after complying with the various conditions. The said order was modified by the Government of Madhya Pradesh in view of Rule of 7 of Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 (for short “ the MCR Rules, 2016”) where the mining lease was to be executed within a period of 90 days on fulfilling of various conditions. Thereafter a bank guarantee was submitted for a sum of about 0.5% of the value of the estimated resources at about Rs.53 Crores. A sum of Rs.86,30,000/- was deposited. A mine development and production agreement was executed with the State Government. Environmental Clearance was obtained. Thereafter, on 09.09.2020 the State of Madhya Pradesh executed a mining lease for Kakra Mining Block i.e the land in question. Thereafter, there were various communications between the Central Government and the State Government. Ultimately, the respondent No.2 passed the impugned order revoking the approval of the abovesaid mining plan. Questioning the same, the instant petition was filed.

**3.** An interim order of status quo was granted by this Court by the order dated 28.06.2021. Thereafter, an application was filed seeking to proceed in the mining activities. By the order dated 10.08.2021, it was held that no clarification is required as there is no ambiguity in the said order. The same was challenged before the Hon’ble Supreme Court in Special Leave Petition (Civil) No.20103 of 2021 [Jaykaycem (Central) Ltd vs. Union of India and others]. Vide order dated 07.01.2022 the Special Leave Petition was disposed off with a request to the High Court to dispose off the petition within a period

of four months from the said order. Thereafter, the matter was listed for consideration before this Court. The matter was adjourned at the request of the counsel for the petitioner on 16.03.2022. On 16.06.2022 learned counsel for the petitioner was absent. Vide order dated 21.06.2022, the matter was adjourned in view of the adjustment note. On 23.08.2022, counsel for the petitioner was absent. Thereafter, the matter has been taken up for final hearing.

4. Shri Naman Nagrath, learned senior counsel appearing for the petitioner's counsel contends that the impugned order passed by the respondents is bad on facts and in law, hence is liable to be set aside. That the respondents have no source or power to issue the impugned order. The respondents have exercised their powers under Section 5(2)(b) of the MMDR Act. The same is alien to the facts and circumstances involved. The respondents have no power to issue the same. Even otherwise, he contends that the petitioner is governed by the provision of Section 10A(2)(b) of the MMDR said Act. However, what is ostensibly being contended by the respondents is the applicability of Clause 10A(2)(c) of the Act. Hence, it is contended that the impugned order is liable to be set aside. He further contends that the said issue is no more *res integra* in view of the judgment of the Hon'ble Supreme Court in the case of Bhushan Power & Steel Ltd. Vs. State of Odisha, reported in (2017) 2 SCC 125.

5. The same is disputed by Shri Vikram Singh, learned counsel appearing for respondents No.1 and 2. He supports the impugned order and submits that there was no error committed by the respondents that calls for any interference. Contentions have been advanced on the merits of the matter.

6. Shri Amit Seth, learned Deputy Advocate General appeared for the respondent No.3/State. He has also filed his reply. He supports the case of the writ petitioner to the extent that the provision of law as contended by the



**10.** In absence of any source of power, the impugned order becomes unsustainable. However, it is orally contended by the learned counsel for the respondents No.1 and 2 that in terms of Section 21 of the General Clauses Act, 1897, the respondents have the power to issue the impugned order. Section 21 of the General Clauses Act, reads as follows:-

*“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws. – Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.”*

**11.** The Hon’ble Supreme Court in the case of Chintpurni Medical College and Hospital and Another vs. State of Punjab and others reported in (2018) 15 SCC 1 while considering the said contention held in paragraphs 26, 27 and 32 that when the statutory authority has to perform a particular duty under the statute, Section 21 of the General Clauses Act has no application and confers no powers to review such an act. That the powers to review/recall could be specifically provided under the particular section under which the power is sought to be exercised. Therefore, Section 21 of the General Clauses Act cannot be read to the power of respondents in passing the said order. Therefore, on this ground also, we are of the view that the contentions of the respondents of taking aid of Section 21 of the General Clauses Act, in our considered view, will not have any application to the facts of this case. Even though various contentions were advanced, so far as the merits of the matter is concerned, we do not think it appropriate to go into the same.

**12.** We are of the view that it is not a question that arises for consideration by this Court. The question of interpretation of the various provisions of law

that are being argued by each one of the counsels cannot form the subject matter of this petition. The impugned order only narrates the withdrawal of the mining plans in exercise of the power under Section 5(2)(b) of the MMDR Act. Since we have already come to the conclusion that the respondents had no power to issue the said impugned order under Section 5(2)(b) of the MMDR Act, we are of the view that the said order becomes unsustainable in law. Even otherwise, we are unable to get any satisfactory answer from respondents No.1 and 2 to sustain the impugned order under Section 5(2)(b) of the MMDR Act.

**13.** Consequently, the petition is allowed. The order dated 08.06.2021 passed by the respondent No.2 is quashed. However, we would like to clarify that the quashing of the said order will not come in the way of the respondents to pass any such order in accordance with law.

**(RAVI MALIMATH)**  
**CHIEF JUSTICE**

**(VISHAL MISHRA)**  
**JUDGE**

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