

**Revision Application file No 22(22)/2010-RC-I**

**Smt. Indrani Patnaik .....Revisionist**

**Vs**

**State Govt. of Odisha.....Respondent**

**ORDER**

**[UNDER SECTION 30 OF THE MINES AND MINERALS (DEVELOPMENT & REGULATION) ACT, 1957 (MMDR ACT) AND RULES 55 OF THE MINERAL CONCESSION RULES, 1960 (MCR)]**

The Revisionist filed Revision Application dt. 27.12.10 against State Govt. of Odisha (briefly State Govt.) proceedings IV(AB) SM- 19/10/7574 dt. 25.11.10 (hereinafter Impugned Proceedings).

2. As per the Impugned Proceedings the Revisionist was noticed that she had committed certain irregularities thereby violating condition of mining lease over 106.127 hectares for Iron and Manganese in Unchabali, District Keonjhar under Rule 27 of MCR and was noticed under Rule 27 (5) of MCR as to why mining lease may not be determined. A demand of Rs. 11,31,72,22,470.00 was also made under Section 21 (5) of the MMDR Act. These are stated to be based on visit of a team comprising of experts and officials of various departments on 24.09.09 which also noticed shortages for which specified sum of royalty and sales tax was also demanded. Both shortages and demand related to the production and dispatch of Iron Ore from May 2008 to 24.09.09.

3. In the grounds of Revision the Revisionist has stated that genesis of the passing of Impugned Proceedings is FIR dt. 02.09.10 (Annexure D) and Charge Sheet dt. 22.11.2010. Revisionist submits:

(A) That on 24.09.2009 a team of Vigilance Directorate accompanied by Engineers, Surveyors, Revenue Officers, Mining Inspector, Deputy Director of Mines, Joda and Forest Officials, as set out in the F.I.R. dated 02.12.2009 (Annexure D) visited the lease hold area and made some survey and investigation. It appears thereafter they visited the office of the Deputy Director of Mines, Joda and collected figures of production and dispatch of the Revisionist as available in his office.

(B) That notwithstanding the fact that as per the Impugned Proceedings Revisionist has been given sixty days time to meet the demand raised therein, the Dy. Director Mines, Joda, has stopped issuing Transit Permits for dispatch for reasons best known to him. As a result, mining operation has almost come to a grinding halt, leading to idling of hundreds of working personnel (both regular and contract) and mining machinery. As a result not only Revisionist has been put to extra ordinary financial hardship but also it has created major industrial unrest in the neighboring areas due to the fact that most of the workmen are tribal from local area.

(C) That the Impugned Proceedings has been passed in gross violation of the principles of natural justice. The Revisionist was not issued a show cause notice, it was not provided with an opportunity to make its representation, nor was it provided an opportunity of hearing. The Impugned Proceedings is therefore void and liable to be set aside.

(D) That the Impugned Proceedings is also wholly without jurisdiction in as much as preconditions for exercise of power under Sub-section (5) of Section 21 and Sub-rule (5) of Rule 27 are wholly absent in the facts of the present case. Consequently the Impugned Proceedings is nullity. The Impugned Proceedings is also confiscatory and therefore liable to be set aside. That penalty to the tune of Rs. 1131.73 crores has been imposed on the Revisionist under sub-Section (5) of Section 21 of the MMDR Act. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.

(E) That the finding, that the Revisionist has violated Rule 27 of the MCR is clearly incorrect, based on no evidence and therefore perverse. The further finding that the Revisionist had produced and dispatched iron ore of all grades for the period from May 2008 to 24.09.2009 as would appear from the records of the Deputy Director of Mines, Joda and that of the Revisionist and the Raising Contractor is 29,18,431.00 MT and 24,31,225,130 MT also suffers from factual infirmity.

Firstly, it is submitted that the Raising Contractor does not maintain any records. Secondly, the statutory records as envisaged under Rule 27 of MCR and Rule 45 of the MCDR Rules, 1988 are maintained by the Revisionist, the Deputy Director of Mines and Indian Bureau of Mines (IBM) completely tally with each other. From the aforesaid records, it would be noted that the production and dispatch during the period from May, 2008 to 24.09.2009 was 26,57,031 MT and 24,42,196.86 MT respectively. A comparative statement was also annexed as Annexure E.

The Revisionist stated that there are discrepancies in production and dispatch figures in the months of February, 09, March, 09, June,09, July 09 and Sep.,09 in the Impugned Proceedings vis a vis statutory returns filed (Annexure F to I). Revisionist gave detailed account how Department misread figures and wrongly taken transfers for processing/crushing from the existing stock to other as fresh production and got inflated figures of production for these months. These figures on comparison with figures obtained through RTI from Mining Officer, Joda as Public Information Officer (Annex J) are same and tally with each other. Revisionist submitted detailed account of discrepancies and comparison. Thus there is no discrepancy in production and figures in their records and statutory reports and records of DDM Joda. The very basis of the Impugned Proceedings is wrong.

(F) On the issue that Revisionist may have raised 20,68,841.44 MT from the area other than the mining leasehold area, Revisionist submits:

That admittedly the volume of pit excavated in the mining lease hold area of the Revisionist is 12,19,798.370 Cubic Meters. The State Govt. has held that from the said volume of pit only 8,49,589.560 MT of iron ore could have been produced. It is submitted that the said finding is wholly arbitrary, *mala fide* and directly contrary to the statutory mining plans duly approved by the IBM and the survey report given by the IBM in respect of Tonnage Conversation Factor (TCF) and recovery percentage

As per the mining plan duly approved by the IBM (Annexure K) the TCF for the insitu iron ore is considered as 3.5 MT/Cu.M and ore incidence factor (i.e. recovery percentage) has been taken as 70%. Against this categorical norms approved by the IBM, it appears that the State Govt. has the TCF at 1.99 and recovery percentage 35% are wholly arbitrary, *mala fide* and liable to be rejected being contrary to the norms approved by the IBM. Apart from that the IBM had surveyed the entire region of Joda and Barbil and it had concluded after thorough scientific analysis that TCF in the mines located in the subject areas is to be considered between 3.5 to 4.8T/Cu.M (Annexure L).

Besides the above allegation that the Revisionist could not have produced entire ore more than 8,49,589.560 MT is directly contrary to the annual inspection report prepared by the IBM while conducting the statutory inspection under MCD Rules, wherein IBM has held that the cumulative production from May 2008 up to November 2009 was 30,86,776 MT.

It is submitted that the said allegation in the Impugned Proceedings has been made without giving any reference to the inspection report dated 08.12.2008 (Annexure M) wherein the IBM after thorough inspection found that the Revisionist had produced 7,84,950 MT of iron ore between May 2008 to November 2008 i.e. within a period of seven months itself. It is further submitted that the State Govt. has not even referred or considered in any manner the said report of IBM which is a statutory documents prepared by the apex expert body of the country on the subject.

It is submitted that the said allegation in the Impugned Proceedings has been made by the State Govt. on the basis of mere surmises and conjectures in as much as the State Govt. has not identified any other area from where such a huge quantity of iron ore (about 20 Lakhs MT) could have been excavated.

Copy of the flow chart indicating the details of production of Revisionist as per the approved IBM plan and the quantum of production shown in the Impugned Proceedings is enclosed herewith and marked as Annexure-N.

(G) In view of the aforesaid facts the allegation that the Revisionist could not have produced more than 8, 49,589.560 MT is totally arbitrary, erroneous and contrary to the inspection report of the IBM and other statutory documents, hence is liable to be rejected.

(H) That it is submitted as per the statutory filed with the Deputy Director of Mines, Joda and the IBM the production figure of the mine of the Revisionist for the period may 2008 to 24.09.2009 is 26,57,031 MT and the quantity of Iron ore dispatched is 24,42,196.860 MT. The closing stock calculated on the basis of the returns filed as stated above comes to 214834.140 (26,57,031 MT - 24,42,196.860 MT), whereas the estimated physical stock assessed by Vigilance team on 24.09.2009 came to 1,82,637.695 MT.

While estimating the physical stock on 24.09.2009, a stock of 24,700 MT of 10-80mm size Blue Dust contaminated Iron ore was overlooked / ignored, presumably because of the fact that this material was stacked in a non operational area. It may be stated that the stock was duly reflected in the stock register. Had this stock been taken into account, the physical stock would have been 2,07,337.695 MT. In such as event the difference between the book stock and physical measured stock would have been only 7,496.445 MT ( i.e 2124834.140-207337.695).

Even without taking into account the overlooked stock of 24,700 MT, the difference between the calculated book stock and estimated physical stock as on 24/09/2009 comes to only 32,196.445 MT which is quite negligible as compared to total quantity of Iron Ore handled but in the Impugned Proceedings the difference is alleged to be 3,04,568 MT based on erroneous and arbitrary figures of production and dispatch.

Without prejudice to aforesaid, it is submitted that even the alleged calculated difference of 32,196 MT is only 1.2% of the total production quantity (2657031 MT). Such difference may have arisen for combination of factors as follows:-

- (i) Actual weighing of stock has not been carried out, but only has been assessed through tape measurement.
- (ii) Tape measurement is neither scientific nor accurate. For accurate assessment of stock instruments like Total Station, Theodolite etc are used.

- (iii) Besides the above, the following factors are equally relevant and influence the degree of shortages between the actual book stock and the physical stock on ground:-
- (a) Ground loss
  - (b) Handling loss
  - (c) Compaction factors of the iron ore stack
  - (d) Irregular Geometrical Shape of the iron Ore stack
  - (e) Uneven ground level on which iron has been stacked.

(I) That as regards the highly inflated differential stock of 3,04,568 MT as alleged in the Impugned Proceedings dated 25.11.2010, it is hereby clarified that the same is on account of gross mistakes/errors committed while considering the monthly production/dispatch figures from relevant records in prescribed form A and A1 noticed, for the month of February, March & July 2009, the quantity transferred for processing/crushing from the existing stock has been accounted twice towards production leading to highly inflated production figures. Such fallacies have been covered in detail in this RA and enclosures have been provided for greater clarity.

That the Impugned Proceedings dated 25.11.2010 therefore proceeds on the erroneous assumptions regarding production and dispatch figures and balance physical stock available at the mine and consequently the findings based on such erroneous are incorrect based on no evidence and/or contrary to the statutory records.

That the finding in the Impugned Proceedings that the closing stock as on 24.09.2009 ought to have been 4,87,205.870 MT is incorrect, perverse, in as much as it is based upon wrong figures of production and dispatch. The alleged shortage of 3,04,568.175 MT is also erroneous and incorrect, since it is based on erroneous assumptions of closing stock of 4,87,205.870 MT, in as much as the closing stock figure as been arrived at basing upon the erroneous determination of production and dispatch.

(J) That the Revisionist enclosed a chart (Annexure-O) supported by statement demonstrating how the production figures have been inflated.

That the further finding that the Revisionist has violated sub-Rule (1) (i) of Rule 27 of the MCR is based on the aforesaid erroneous finding. Since the aforesaid findings regarding production and dispatch are incorrect and fallacious, the finding regarding contravention of Sub Rule (1) (i) of Rule 27 of the MCR has no legs to stand. It is submitted that the Revisionist has meticulously maintained proper records and complied with all the statutory requirements set out under rule 27 of the MCR and there is not even a solitary instance of violation of any of the lease conditions set out under rule 27 of the MCR.

(K) That the further finding that the Revisionist has clandestinely sold 3,04,568.170 MT of iron ore and evaded payment of royalty to the tune of Rs.82.23 Lakhs and Rs.7.31 Cr towards sales tax in also without any basis, since the Revisionist has demonstrated hereinabove the shortage of 3,04,568.170 MT of iron ore has been erroneously determined and are based on no records. Hence the finding that the Revisionist has evaded payment of royalty to the tune of Rs.82,23,340.59 and Rs7,30,96,360.80 towards sales tax is factually incorrect and devoid of merit.

(L) Copy of the F.I.R dated 02.12.2009 filed by the Vigilance Team after visiting the mines of the Revisionist on 24.09.2009 is enclosed herewith which would indicate that the vigilance team on the date of joint verification found that the production of iron ore was 26,38,831 MT (and not 29,18,431 MT) that the record of the Vigilance Department has been tampered for inflating the production figures collateral purposes.

It is pertinent to mention here that the joint verification of the pits were carried out on 24.09.2009 by Vigilance team and the volume of the pits was arrived at 12,19,798 Cubic Meters. As per the mining plan duly approved by the IBM, the ratio of the TCF is to be taken at 3.5 MT. in order to arrive at the excavated quantity of iron ore, the total volume of pits excavated is to be multiplied with TCF factor i.e. 3.5 MT. in such an eventuality the total quantity of iron ore excavated would be about 42,69,293 MT(1219798.378 x 3.5MT). Out of this quantity of iron ore excavated, the recovery of saleable product has been about 26,57,031 MT which amounts to about 62% of recovery against 70%. The mining plan as approved by the IBM provides at para 4.2.6 that up to 70%of the ore can be recovered from the total excavation of the ore zone.

(M) Further, the IBM on 09.12.2009 inspected the mining lease of the Revisionist and has certified that is has produced 30,86,776 MT of iron ore of all grades for the period from May 2008 upto November 2009 which is binding on both.

(N) This allegation is based on the premise that the Revisionist has produced iron ore more than it could have excavated from its existing pit within the lease hold area. This finding is again based upon no material. In fact the IBM in its report dated 09.12.2009 referred to hereinabove and enclosed as Annexure-P has clearly certified that the Revisionist for the period for May 2008 till November 2009 has excavated more than 30 lakhs tones of iron ore. In the premises there can not be any iota of doubt regarding the Revisionist having excavated 26,57,031 MT or iron ore between May 2008 to 24.09.2009.

(O) That since the Revisionist has not clandestinely dispatched iron ore, nor it has indulged in carrying our mining operation outside the leasehold area, the demand amount of Rs.1131.72 Cr is illegal, arbitrary, contrary to the provisions of the MMDR Act and is in contravention of the principles of natural justice and therefore liable to be set aside.

(P) Further the figure of Rs.6000/- per MT is clearly imagination and not based on material whatsoever. In so far as Revisionist is concerned the average sale price of iron ore of all grades during the said period was about Rs.2000/- per MT. Furthermore the IBM under the Govt. of India, Ministry, of Mines publishes Monthly Statistic of Mineral Production which contains state wise total value of Mineral produced during a month in a state. The statewide average value for different individual Mineral as published by IBM in the Monthly Statistic of Mineral Production has been taken as the bench mark for computation of Royalty by the concerned State Govt. in respect of any mineral produced anytime during a month in any mine in that state. For the purpose of computation of Royalty the State Govt. is required to add 20% to this bench mark value.

Even under this criterion the maximum average sale price of iron ore will be about Rs.1750/- for the period 2009-10. Hence the said of price of Rs. 6000/- per tone is not only arbitrary but purely imaginary. Necessary therefore the amount of Rs. 6000/- cannot be basis for raising any demand.

4. The Stay Application was heard on 17.01.11 by the then Revision Authority. After hearing the arguments orders were reserved with liberty to file submission by 24.01.11.

5. At the time of hearing State Govt. filed comments dt. 14.01.11 and through Sh. Shibashish Mishra, AOR submitted written arguments dt. 24.07.11 on application for stay. In these written arguments it was stated that comments filed during hearing on 17.01.11 vide letter dated 14.01.11 were filed erroneously. These were mere instructions given to their advocate and this letter was not required to be filed before Revision Authority. Therefore shall not be taken into account.

It was contended the Revisionist was found to have indulged in illegal mining and has clandestinely dispatched illegal raised ore worth Rs. 11,31,72,22,470 and the same is required to be recovered from the Revisionist as per the provisions of Section 21(5) of MMDR Act for which she was noticed vide Impugned Proceedings as to why the aforesaid amount will not be recovered from her. The State Government has no intention to recover the said amount without receiving the reply to the notice dated 25.11.2010 (Impugned Proceedings) from the Revisionist, within 60 days to receipt of the notice and without giving an opportunity of hearing to the Revisionist.

That the Revision Application filed by the Revisionist is premature in view of the fact that the Impugned Proceedings are a 'Notice' to show cause within a stipulated period. The said period has

not expired and the Revisionist has not filed any reply thereon. Hence the RA is not maintainable under Rule-54 of MCR.

That the State Govt. has not violated the principles of natural justice and before any order of determination is passed, the Revisionist has been issued notice to show cause within a period of sixty days from the date of receipt of the said notice which is impugned in the present Revision Application.

That during the period from May, 2008 to 24.09.09 as worked out from the record of Deputy Director of Mines, Joda and that of the Revisionist and raising contractor the Revisionist has raised 29,18,431MT of iron ore without lawful authority. During physical verification, it was found that the total production of iron ore from the excavated pits would be only 8,49,589,560MT. It is evident that the Revisionist had produced a quantity of 20,68,841 MT (29,18,431.00MT-8,49,589.560MT) beyond his mining leasehold area. The same has, thus been raised by the Revisionist without any lawful authority. Thus, the Revisionist has, in gross violation of the terms and conditions of the Mining Lease Agreement, indulged in illegal mining. It is a case of blatant violation of the provision of Section 4(1) of MMDR Act.

That during investigation and physical verification conducted by the Vigilance Directorate, it was found that the Revisionist has excavated iron ore outside the leasehold area and dispatched the said quantity of 15,81,631.57MT for which she has been chargesheeted U/s of MMDR Act, in BLS vig. P.S. Case No.59/2009.

That the State Govt. had ordered for vigilance investigation and the State Vigilance conducted enquiry and found that the Revisionist has indulged in illegal mining by violating the lease covenants and by clandestinely selling of 3,04,568.170MT of iron ore, thereby evading payment of royalty to the tune of Rs.8213340.59/- and Rs.7,30,96.360/- of Sales Tax. Accordingly, the Vigilance Department has chargesheeted the Revisionist.

That the State Vigilance Directorate during investigation has found that the Revisionist has violated lease covenants which was executed on 5.2.99.

That due to violation of the covenants of lease deed in from-K by the Revisionist show cause notice dt. 25.11.10 has been served calling upon the Revisionist to explain as to why the lease shall not be determined. It may further be noted here that the State Vigilance has already filed Charge Sheet in Balasore Vigilance P.S. case No.59/2009 on 22.11.10 against the Revisionist and 6 Govt. officials as well as private persons.

With regard to the contentions of the Revisionist that her mining operations have been stopped, it is respectfully submitted hereunder.

a. Govt. of Odisha in Home Department vide Notification No.128/C dt. 14.1.2010 (Revisionist R/2) has empowered the Vigilance organization to take up enquiry/ investigation in to the alleged mining activities.



b. The Govt. of Odisha in the Department of Steel & Mines vide notification No.307/SM dt. 27.1.2010 (Annexure R/3) has authorized the Inquiring Officers of and above rank of Inspector of Police, Vigilance Department to exercise the power to detect, seize and search etc. as applicable and prescribed under the relevant provisions of the aforementioned Act & Rules in connection with illegal mining activities in the State of Odisha.

c. Govt. has approved the proposal of the Director-cum-Director General & IG of Police Vigilance (Annexure R/4) for initiation of appropriate action to rescind the orders of granting mining lease in favour of Revisionist.

d. The Vigilance has registered 16 cases, (details Annexure-R/5) pertaining to illegal mining. That in view of serious and grave irregularities committed and gross violation of the conditions of Mining lease U/R 27 of MCR Rules, the State Government has issued notice (Impugned Proceedings) to take action for determination of lease. The reply to the show cause notice is awaited.

Apart from that the criminal prosecution initiated against the Revisionist after satisfaction of the ingredients of Section 22 of the MMDR Act cannot be faulted with and any Interim Order would thwart and defeat the legitimate criminal prosecution initiated against the Revisionist. The suspension of the mining activities by the Revisionist is a necessary consequence to the Vigilance enquiry report and subsequent Charge Sheet against the Revisionist by the Vigilance Department. The intention of the Revisionist is to scuttle and defeat the investigation/criminal prosecution by obtaining an Interim Order from this learned Revision Authority. Therefore Revision Authority reject the Application for Stay since any Interim Order passed in the Revision Application would directly affect not only the outcome of the criminal proceedings but also the Impugned Proceedings calling upon the Revisionist to show cause within 60 days of receipt of the notice.

The State Govt. vide affidavit dt. 24.01.11 had also filed reply to the stay application reiterating what has been mentioned in the above written argument.

6. The then Revision Authority after going through the RA, Stay application, argument and subsequent submissions made had vide Interim Order dt. 01.02.11 stayed the Impugned Proceedings stating therein:

*“ The Impugned Proceedings have been worded in such a way that it cannot be construed as notice as the State Govt. has concluded in their findings that the Revisionist is guilty under sub section 5 of MMDR Act and to make payment of Rs. 11,31,72,22,470.00 and under provisions of rule 27(5) of MCR to make good as remedy the breach of conditions as*

*the case may be within 60 days from the receipt of the notice (Impugned Proceedings), failing which the ML will be determined and the whole of security deposit forfeited.”*

The then Revision Authority while granting an interim stay against Impugned Proceedings directed that:-

*“No coercive action i.e. stopping transit permit or mining operations or acting upon on or giving effort to the Impugned order(Proceedings) or demand raised therein be taken during pendency of Revision Application or till further orders whichever is earlier.”*

7. Vide application dt. 25.04.11 the Revisionist requested the Revision Authority for appropriate direction for compliance of the above Interim Order dt. 01.02.11. The Revisionist stated that the State Govt. has not granted any transit permit after 25.11.10 i.e. date of passing of Impugned Proceedings. As per rules the State Govt. is bound to issue transit permits within 14 days of making application. They had made application on 11.11.10 and 20.11.10 and deposited Rs. 1.5 Cr. as advance royalty. Despite specific directions vide above order dt. 01.02.11. the State Govt. is taking coercive action by withholding transit permits and thereby also creating hindrance in mining operations. The Revisionist has been continuously requesting the State Govt. vide letters dt. 05.02.11, 23.02.11 and 21.04.11 (Annexure B) to comply Order dt. 01.02.11 but by continuously denial of transit permits the State Govt. has not only violated the statutory terms of lease but also the specific directions of the Revision Authority.

8. On 03.05.11 when listed 25 cases of Odisha state were being heard, the Revisionist represented by advocate Shri Naveen Kumar appeared and requested for early intervention in the matter for which he had filed above stated application dt. 25.04.11. It was decided to take up this application after hearing the cases listed. The application was taken up at 3.30 PM. Shri Mihir Kumar Senapati, Deputy Director, Mines who was present to plead for the above 25 cases requested for short adjournment to seek directions from his seniors officer. At 5.30 PM he submitted a letter with a copy to Revisionist stating that he had consulted the Secretary, State & Mine Department and they are in process of withdrawing the Impugned reserving the right to issue a fresh notice strictly in terms of the Acts and Ruled in view of the advice given by law department. Accordingly he requested for two weeks time to file the letter withdrawing the Impugned Proceedings reserving its right to issue a fresh notice in view of the advice given by law department. Revisionist advocate on being asked stated that he will submit a revised application.

9. On 04.05.11 the Revisionist filed submission stating that the State Govt. is bound to obey Order dt. 01.02.11 unless vacated or varied by any higher forum. Citing various judgment stated that State Govt. by not issuing transit permits, is continuously defying Revision Authority's direction dt. 01.02.11. Further as the then Revision Authority has vide this order has held that the Impugned Proceedings is an adjudication order and accordingly its validity has to be adjudicated by the Revision Authority and State Govt. does not have power to withdraw the same. She pressed for his aforesaid application dt. 25.04.11 for issuing appropriate direction ensuring compliance of order dt. 01.02.11 in a specified period of time, and to direct the State Govt. not to withhold the transit permits or obstruct mining operation, in any manner as directed vide aforesaid order dt. 01.02.11.

10. Vide Interim Order dt. 03.05.11 observing that for the 3-1/2 months' time, the Interim Order dt. 01.12.11 is awaiting implementation the Revision Authority cautioned the State Govt. to observe judicial discipline, as this order has not been challenged and State Government; rather does not intend to challenge the same and instead is proposing to withdraw the Impugned Proceedings. It was directed for forthwith compliance of Order dt. 01.02.11, and in any case not later than 48 hours of receipt of that Order. The State Govt. was also asked to file written submission explaining the circumstances under which there had been continued non-compliance of the Order dt. 01.02.11 when there had been no intention to challenge the same.

11. Vide application dt. Nil received on 12.07.11 the Revisionist requested that IBM, a subordinate office of the Ministry of Mines may be issued appropriate direction to give a report, or be made a party to the Revision, as deemed fit to give considered opinion on the tonnage conversion factor (TCF), recovery percentage and Indian & International standards thereto on the ground that these issues are imperative for proper adjudication of the matter.

During the hearing fixed on 26/7/11 the Revisionist represented by advocate Sh. Naveen Kumar pressed for this application. State Govt. represented by Shri Shibashish, AOR opposed to entertain such an application stating that this case has arisen out of vigilance inquiry and further requested for granting some time to file the reply on the application. Request was acceded and the case was adjourned to be taken up on 25/08/11.

State Govt. vide reply dt. 09.08.11 stated that the Revisionist's application is misconceived as notice has been challenged in the RA. It is yet to be adjudicated and occasion to interfere by the Revision Authority would arise only after adjudication. It would not only be premature to go into this question but also the Revision Authority would be usurping the powers of the State Govt. vested in it by the Parliament and it would also be an attempt to enlarge the jurisdiction of Revision Authority.

The case was listed on 25.08.11 and the arguments on the above application were heard and orders were reserved. Vide Interim Order dt. 12.09.11 observing that whether the Impugned Proceedings is a 'Notice' as contended by the State Govt. or an Order as contended by Revisionist, it is clear that the investigation in this case is already over. By entertaining such an application, it would tantamount to reopening of investigation that too at Revision Authority level, and also prejudging the main issue. The request was thus not acceded.

12. The State Govt. submitted reply dt. 22.07.11 stating that:

(i) At the outset, it is submitted that the Revision application is not maintainable under Section 30 of the MMDR Act as she is not aggrieved by any order of the Government. Therefore, is to be rejected.

(ii) By filing the Revision Application she has made attempt to avoid submission of reply to a statutory notice issued by the Competent Authority for serious irregularities committed by her in violation of provisions of the relevant Act and Rules in the matter and to stall appropriate legal action in the case following due procedure of law.

(iii) While reiterating what has been mentioned in the Impugned Proceedings stated that earlier physical verification of Unchabali Iron & Manganese Mines of the Revisionist over 106.1127 hecta in Keonjhar district was conducted by a joint verification team on 24.09.2009. At the time of joint verification, from the records of the Dy. Director of Mines, Joda, the records of the Revisionist and the raising contractor, it was noticed that the production of iron ore during the period from May 2008 to Sept. 2009 (upto 29.09.2009), was 29,18,431 MT.

(iv) That the Revision Authority inspite of being aware of the serious nature of illegalities and violations committed by the Revisionist and the fact that the State Govt. had issued only a 'Notice' and the Revisionist would be given an opportunity for hearing, vide its Interim Order dated 1.02.2011 passed the stay order.

(v) That the conducting Ld. AOR in the circumstance advised the State Government to challenge the Interim Order passed by the Ld. Revision Authority before the Hon'ble High Court of Odisha. Accordingly, the concurrence of law Deptt. on the proposal for filing of writ petition against the aforesaid order of the Revision authority was sought for.

(vi) Law Department in the mater observed as follows:

*"It is advisable in the circumstances to press the revision for final disposal by clearly making a submission there in either in writing or by oral submission to dispose of the revision so as to proceed afresh in accordance with Law"*

Accordingly Govt. order was obtained on the views of Law Department. That as regards compliance of the Interim Order it is submitted that the Director of Mines as well as the DDM Joda have been intimated vide Steel and Mines Deptt. letter No. 3742 dtd. 21.05.11 to make compliance of the said

Interim Order dtd. 1.02.11 passed by R.A subject to the Revisionist adhering to the provisions of OMPTS Rules 2007 read with Section 23 C(3) of the MMDR Act.

(vii) That the State Govt.'s representative Sh. Mihir Kumar Senapati present on the day, was neither acquainted with the facts of the case nor prepared to defend the case. However for compliance of the verbal instruction of the Ld. Revision Authorities, the State Representative filed a written submission on the same day towards compliance of the orders of the R.A. But while filing the submission, he has inadvertently mentioned that "pursuant to the views of the Law Department, the Steel & Mines Department is taking steps to withdraw the notice reserving its right to issue fresh notice strictly in terms of the Act and Rules".

(viii) That the above submission made by the State Representative is not based on the facts and was submitted hurriedly by him, without rightly understanding the development of the case. When the wrong submission made by the State Representative came to notice of the Government, the AOR was immediately appraised of the same and was requested vide Steel and Mines Deptt. letter No. 4301. Dt. 3.06.2011 to take steps for filing of a RA explaining the facts before the Ld. R.A with a prayer to withdraw the same and to modify the same on the basis of instruction given to her vide SA&M Deptt. No. 2957 dt. 25.04.11.

(ix) That in the Interim Order dt. 13.5.2011, the State Govt. has been directed to file a written submission explaining the circumstances under which there had been continued non compliance of the order dt. 1.2.2011. It is stated that:

Law Department advised to move the Learned Revision Authority to dispose of the RA application so as to enable the Govt. to proceed afresh in accordance with law.

On the advice of the Law Department as above in the matter, orders of the Govt. was obtained in the matter and the advocate on the record was requested in this Department letter No. 2957 dt. 25.04.2011 to move accordingly before the Learned Revision Authority. It is therefore be seen that there is no intention for not complying with the Interim Orders dt. 1.2.11 or disobeying the orders of the Revision Authority. It is submitted that the State Govt. has the highest regards for the Judicial Courts and Tribunals including the Revision Authority.

(x) That Ld. Revision Authority in Para 6 of their Interim Order dtd. 13.05.2011 has observed as follows:

*"From the letter dt. 03.06.2011, it is clear that the State Govt. is not intending to challenge the Interim Order dt. 01.02.2011 and prima facie illegality of the Impugned Proceedings has appeared to have sunk in the State Administration as it has been proposed to withdraw the Impugned Proceedings".*

That the State Govt. has decided to approach the Ld. Revision Authority, and to press the revision for final disposal so as to proceed afresh in accordance to Law. The Law Department has not

advised to withdraw the letter under challenge. Thus the observations as cited above are misconceived.

(xi) That it is clarified that the State Govt. is committed to take appropriate action against cases of violations and illegalities committed under the provisions of the Act and Rules following due process of Law, and any case of illegality, comes to the notice of the Govt. the issue will be taken to a logical conclusion. The State Govt. is determined to take action against any illegal mining activities which are in violation of the provisions of the statutes.

(xii) That the State Government had ordered for vigilance investigation and the State Vigilance conducted enquiry and found that the Revisionist had indulged in illegal mining by violating the lease covenants and by clandestinely selling of 3,04,568.170 MT of iron ore, thereby evading payment of royalty to the tune of Rs. 8213340.59 and Rs. 7,30,96,360 of Sales Tax. Accordingly, the Vigilance Department has chargesheeted the Revisionist.

(xiii) That in view of serious and grave irregularities committed and gross violation of the conditions of Mining Lease U/R 27 of MCR, the State Government has issued notice to take action for determination of lease. The reply to the show cause notice is awaited. Apart from that, the criminal prosecution initiated against the Revisionist after satisfaction of the ingredients of Section 22 of the M&M (D&R) Act, 1957 cannot be faulted with and the Revisionist by way of the present Revision Application is attempting to thwart and defeat the legitimate criminal prosecution initiated against her. The suspension of the mining activities by the Revisionist is a necessary consequence to the Vigilance enquiry report and subsequent Charge Sheet against the Revisionist by the Vigilance Department. The intention of the Revisionist is to scuttle and defeat the investigation/criminal prosecution, Therefore, this learned Revision Authority should reject the Revision application taking into account the fact that if the Revision application is allowed it would affect not only the outcome of the criminal proceedings but also the notice dated 25.11.2010 calling upon the Revisionist to show cause within 60 days of receipt of the notice.

(xiv) While reiterating what has been stated earlier the State Govt. stated that there is no intention to take any action or pass any order without considering the reply to the Impugned Proceedings. The Revisionist Mining operations have however been stopped in view of submissions made by State Govt. on 24.01.11 which were reiterated by State Govt.

State Govt. further stated that in the light of the foregoing facts, it will kindly be found that

- (a) The Impugned Proceedings is not an order but a notice only. This has been clearly mentioned in its opening line. Also submitted in the affidavit filed on behalf of the State Govt. and also reiterated by the AOR engaged on behalf of the State Government. Therefore, no action needs to be taken under section 30 of the MMDR Act read with Rule 54 & 55 of MCR.
- (b) That the State Government has complied with the Interim Order dtd. 01/02/2011.

- (c) That the observation of the Ld. Revision Authority vide Interim Order dt. 13.05.11 is based on the incorrect submissions made by the State Representative hurriedly on 03/05/2011.

Lastly State Govt. prayed to allow the following.

*"1 The provision of Subsection 5 of Section 21 of the M&M(D&R) Act does not mandate for issuance of show cause before passing an order to recover the price of ore raised without any lawful authority and disposed of. There fore in the notice the Revisionist was not directly asked to file a reply in the matter, though the State Govt. has no intention to recover the same without considering the reply if any, of the Revisionist on the above, and this has been already submitted by the State. The notice itself provided 60 days for making good and remedying the breach of conditions as the case may be for the violations indicated in the notice. The Revisionist could have replied to the notice within 60 days stating her case. Therefore the notice ought not to be construed as an order because of the wordings only. However if the Ld. Revisional Tribunal will feel and consider that clear intimation to submit reply as to why recovery will not be made, needs to be indicated in the letter, in that case, the State Govt. is willing to abide by the orders of the Ld. Tribunal, to revise the wordings of the letter, if so ordered.*

*2. In view of the facts stated herein above, the Respondent State therefore prays that the interim order, dt. 01.02.2011 may kindly be vacated and the Revision Application be dismissed being devoid of merit, to enable the State Government of proceed in accordance with law."*

13. In the rejoinder dt. Nil received on 12.09.11 the Revisionist while reiterating what has already been stated that the State Govt. has accepted the findings of Revision Authority as the Order dt. 01.02.11 stating that Impugned Proceedings is an Order against which Revision lies, and is not a notice. It has not been challenged before any higher forum. Thus the same issue cannot be agitated again; the same has already attained finality. Citing SC judgment in Commissioner of Police, Bombay Vs. Goardhandas Das Bhanji AIR (952 SC 16) that order passed by a statutory authority must be construed objectively with reference to the language used in the order itself. The same cannot be continued in light of explanation subsequently given by the officer making the order of what he meant or what was in his mind or what he intended to do so. The Revisionist strongly pleaded that the 'case would not be remanded over in support has stated that

A. That the remand of the case by this Revision Authority will result in miscarriage of justice and a serious prejudice would be caused to the Revisionist, apart from that it will unduly prolong the issue further resulting into multiplicity of litigation e.g:-

(a) That State Govt. has already decided the matter against the Revisionist. The adjudication process is completed and findings against the Revisionist have been reached

and demand has been raised. In such circumstances it is not unlikely that the same authorities will make endeavor to sustain their own order. The Supreme Court has taken note of such tendencies of authorities in such cases and held “a post-decisional hearing was not called for as the concerned authority had already make up its mind before giving an opportunity of hearing. Such a post-decisional hearing in a case of this nature is not contemplated in law. The result of such hearing was a foregone conclusion. The court further observed “ It is common experiences that once a decision has been taken, there is a tendency to uphold it and a ( post-decisional) representation (before the same authority) may not really yield any fruitful purpose (to para Shekhar Ghosh vs. Union of India (2007) 1 SCC 331, at page 335).”

(b) That this being the sole Revision Authority over the State Govt. has same power as available to the State Govt. thus this Revision Authority may adjudicate the matter on merit. The Revisionist seeks to refer and rely upon the principles of law enunciated by the Hon'ble Supreme Court where the apex court held

“ ... under Rule 54 of the Mineral Concession Rules, 1960, the Central Government acts as a Revision Tribunal against any order passed by the State Government and has obviously, therefore, the same powers as the State Government”

(See Dharam Chand Jain Vs. State of Bihar (1976) 4 SCC 427, at page 429) Thus this Revision Authority is duly competent to adjudicate the matter on merit.

(c) That the series of facts shows beyond any doubt that the State Govt. Authorities are biased against the Revisionist and in such circumstances the Revisionist has no hope to get justice from the State Govt. Authorities. Following amongst other undisputable facts and circumstances show that the State Govt. Authorities are completely biased against the Revisionist:-

(i) That the Impugned Proceedings was passed with undue haste and huge penalty of Rs. 1131.7 Cr. has been imposed even without complying basic principles of fairness and objectivity. A bare perusal of order and manner it is passed shows arbitrariness, *mala fide* and bias on the part of the concerned officials of the State Govt.

(ii) State Govt. are seeking remand solely with a view to improve their case as State Govt. have no answer to the contentions of the Revisionist hence they want to improve upon their story and to find out some other new grounds against the Revisionist in order to further harass the Revisionist.

(iii) The bias on the part of the State Govt. is also apparent from the fact that the order dated 1.2.2011 passed by Revision Authority having a binding force on the State Govt. was not complied for almost six (6) months and State Govt. continue to harass the Revisionist on one pretext or the other. It is pertinent to mention that State Govt. continued to deny the transit permits and mining operations despite specific order from this Revision Authority despite the fact that they have not challenged the order dated 1.2.2011.



(iv) It is submitted that the Hon'ble Supreme Court in number of cases have held that the Revision Authority has ample power under section 30 of the MMDR Act to decide the revision petitions on merit and it should not lightly remand the matters. A reference may be made to the Judgment of the Hon'ble Apex Court in *Indian Metals and Ferro Alloys Ltd. v. Union of India*, 1992 Supp (1) SCC 91, at page 126 where the Court expressed its anguish against the normal practice of the Central Govt. (the Revision Authority) to remand the matters to the stat Govt. and the court after referring to the provisions of MMDR Act MCR observed

*“ Having regard to the wide powers thus conferred, one would expect the C.G. to dispose of the application on merits, either granting the lease in whole or in part or rejecting it. But curiously, in most of the cases which come up before courts as also in this case, the C.G. seems reluctant to pass any order except to set aside the “deemed refusal” and direct the S.G to dispose of the application afresh within a specified period..... It puzzles us why the C.G., even in the first instance, could not dispose of the application on merits in the light of the report received from the S.G. and after hearing concerned parties”*

(v) It is therefore submitted that it is imperative in the interest of justice that this Revision Authority may reject the request of State Govt. to remand the matter for reconsideration afresh and to decide the matter on merits.

B. While submitting rejoinder on merit the Revisionist reiterated his stand submitted in the RA referring to various Annexures therein. She further stated that despite having been given number of opportunities and adjournments State Govt. could not file any reply to the contention raised by the Revisionist in the Revision Petition. State Govt. has not filed any material to contest the report of IBM or the chart (showing production and dispatches) provided by the DDM thus the contentions raised in the Revision Application stands admitted or at least uncontested. The Revisionist finally concluded that:

(i) She has already demonstrated that the Impugned Proceedings is not a 'Notice' and therefore the present Revision Application is maintainable.

(ii) All the allegations made in the Impugned Proceedings has been demonstrated to be without any basis and contrary to the report of the Deputy Director of Mines, which is annexed at page 57 & 58 and the report of the IBM which s annexed at page 75&76.

14. The Revision Application was listed on 13.09.11 and argued in detail. Mr. A.K. Parija, Sr. advocate and Mr. Naveen Kumar advocate appeared for Revisionist and Mr. Shibashish Misra, advocate and Sh. N. Nayak appeared for State Govt. The Revisionist citing various provisions of MMDR Act and MCR has stated that it is IBM which is mandated to prescribe, approve and certify the quantity of mined quantity and State Govt. has no jurisdiction in such matters. State Govt.

reiterated its contention that Impugned Proceedings is a 'Notice' which has been issued after investigation by Vigilance Department which has detected extensive illegal mining and have also filed criminal complaint against the Revisionist. Revisionist shall reply to them and that recovery will not be made till reply is filed and after giving opportunity of hearing. Revisionist stated that the adjudication is completed and stated that filing reply to the State Govt. no purpose will be served. Revisionist further insisted that they are not expecting any justice from State Govt. and the case shall not be remanded. After hearing the arguments Orders were reserved.

15. Revisionist submitted written arguments dt. Nil received on 26.09.11. Here while reiterating has stated that

a. At the outset is submitted that order dated 25.11.2010 is absolutely clear on its own terms and it shows that State Govt. has already completed the adjudication and held that the Revisionist is guilty of having indulged into illegal mining and the Revisionist has violated the terms of the ML Deed.

b. State Govt. based on the said findings has imposed huge penalty of Rs.1131.7 Crore (approx) and called upon the Revisionist to pay the penalty amount within a period of sixty days. Thus it is absolutely clear that the order dated 25.11.2010 is not a 'Notice' it is a final order-cum-demand notice.

(i) That vide Impugned Proceedings the Revisionist was directed to pay the penalty amount within sixty (60) days and to rectify the breach which according to the State Govt. the Revisionist have committed there is not even a single sentence to show that the Revisionist has been asked to furnish its explanation in respect of any alleged contravention or any proposed action nor any date of hearing has been fixed. Nor State Govt. intended to give the Revisionist any opportunity for filing any reply or to provide any opportunity of hearing. The aforesaid facts clearly demonstrate that vide the Impugned Proceedings, the adjudication process has already been concluded, and a demand of Rs.1131,72,22,470.00 had been raised. In the circumstances, the said order is revisable under section 30 of MMDR Act, read with rule 54 of the MCR.

(ii) It is submitted that during course of hearing 17.1.2011 it was contended by the counsel for the State that the Impugned Proceedings herein, is merely a 'Notice' and not a final order against which no revision lies. He further contended that the Revisionist instead of filing its reply to the notice has approached Revision Authority for setting aside the order. The aforesaid submission of the State Govt. has been rejected by Revision Authority vide its order dated 1.2.2011 and it has admitted the Revision Application.

That from the findings recorded in the Impugned Proceedings, by no stretch of imagination can it be construed that it is not a final order but a notice, and therefore against the said order a

revision lies under the provisions of the MMDR Act and thus the present revision is maintainable and this Revision Authority is competent to entertain the revision and decide the matter of merit in accordance with law.

It may be clarified the expression "notice" has been used in the Impugned Proceedings at two places. Reliance is being placed on the said expression by the State Govt. to mislead this revision Authority by contending that the order dated 25.11.2010 is only a 'Notice' and not an order. A perusal of the two sentences, in which the expression 'notice' has been used, would clearly indicate that the Revisionist has been put to notice of the adjudication already made against it and the Revisionist was called upon and noticed to pay the demand raised therein. There is not a single sentence in the Impugned Proceedings 25.11.2010 from which it can be inferred that the Revisionist has been called upon to furnish its explanation in respect of any alleged contravention or any proposed action nor there any date of hearing was been fixed.

In the circumstances, the explanations given by State Govt.in its para wise reply cannot substitute the express language used in the order dated 25.11.2010. The contention of State Govt. that the Impugned Proceedings is a 'Notice' and not an order is thus devoid of any merit and liable to be rejected.

(iii) That State Govt. is running away from adjudication on merit solely because State Govt. do not have any answer to the contentions raised by the Revisionist on merit which are duly substantiated by the information given the Deputy Director of Mines under RTI Act {which filed at page 57-58 of the Revision Application paper book as ANNEXURE-J} and inspection reports prepared by IBM {which filed at page 68 to 70 ANNEXURE-M and at page 74-77 ANNEXURE-P to the Revision Application paper book}.

(iv) That your Honor has again held vide order dated 13.05.2011 that the adjudication is already complete and the order has been passed. It is this order which has been impugned.

(v) In the issue bias and thus case may not be remanded while reiterating what has been stated earlier has added following:

a. It is therefore apparent that the State Govt. has all along tried to harass the Revisionist on one pretext or the other. The request for remand is again an attempt on the part of the State Govt. to harass the Revisionist by adding new/additional allegations or charges against the Revisionist.

b. It is further submitted that the in a bid to harass and create prejudice against the Revisionist serious allegations have been made not only against the Revisionist but aspersions have also been made against the Revisionist Authority.

c. The *mala fide* and biased intent of the State Govt. is also apparent from the fact that the State Govt. is seeking remand in order improve their case as they do not have any want to

improve their case and to find out some other new grounds against the Revisionist order to further harass the Revisionist.

d. It is therefore absolutely clear from the series of facts that the State Govt. Authorities are completely biased against the Revisionist and in such circumstances the Revisionist has no hope to get justice from the State Govt. Authorities. Hence any remand would cause grave injustice and prejudice to the Revisionist.

e. On the ground that the case shall not be remanded while reiterating what has been held by Hon'ble Supreme Court in this regard in the Indian Metals and Ferro Alloys Ltd. V.Union of India, 1992 Supp (1) SCC 91, Revisionist added that ordinarily a case for remand arises only when disputed factual issues are involved which require investigation/inquiry. In the present case there is no dispute on the facts in as much as the issue can be resolved simply on the basis of the admitted documents namely the letter issued by the office of the Deputy Director of Mines, Joda under RTI Act {which is filed at page 57-58 of the Revision Application paper book as annexure-J} and inspection reports prepared by IBM ( which filed at page 68 to 70 annexure M and at page 74-77 (annexure-P to the Revision Application paper book. It is submitted that these documents/ reports were issued by the Statutory and regulating authorities /Govt. Authorities which are expert on the subject of mining and in no manner the same have been denied by State Govt. despite having taken numerous opportunity for filing reply. Thus no remand is required.

It is therefore submitted that it is imperative in the interest of justice that this Revision Authority may reject the contention of State Govt. that the order dated 25.11.2010 is merely a 'Notice' and to decide the matter on merit.

#### Rejoinder on Merit:

It is submitted that despite having been given number of opportunities and adjournments State Govt. could not file any reply to the contentions raised by the Revisionist in the Revision Application. The State Govt. has not filed any material to contest the report of IBM or the chart (showing production and dispatches) provided by the DDM thus the contentions raised in the Revision Applications stands admitted or at least uncontested.

16. I have gone through the case records and heard the arguments. I observe that State Govt. is against the case to be decided on merit by Revision Authority. My brother colleague Sh. A K Patni, predecessor Revision Authority has admitted this RA and further vide Interim Order dtd. 01.02.11 while stating that no coercive action may be taken has held that Impugned Proceedings has been so worded that it cannot be construed as Notice. Despite this and despite that vide subsequent Interim Order dt. 13.05.11 directing state Govt. to exercise judicial discipline and implement the order dt. 01.02.11 forthwith, as the same has not been challenged, the State Govt.

has persistently being against Revision Authority deciding the case on merit and insisting to dispose it of directing Revisionist to reply to State Govt. Its contentions are:

- a) That the Revision is premature as the Revisionist is not aggrieved of Impugned Proceedings,
- b) That Revision may be rejected and stay vacated and Revisionist may be directed to reply to the Impugned Proceedings as it is a 'Notice' and State Govt. is yet to pass the Order on determination of lease,
- c) That for recovery of amount though Section 21(5) of MMDR Act does not require the issue of notice, yet it has assured that recovery will not be made until Revisionist replies and is heard,
- d) That merely because of wording Impugned Proceedings may not be termed as order, and
- e) That if the Revision Authority so advises, State Govt., is willing to amend the wordings of Impugned proceedings.

The state Govt. also contends

- f) That Revisionist by filing Revision Application is basically intending to scuttle and defeat the criminal prosecution launched by Vigilance Directorate,
- g) That any intervention by Revision Authority would affect the outcome of the criminal proceedings also, and
- h) That in view of serious illegal mining detected by Vigilance Directorate, which is duly empowered for such matters, suspension of mining operations by refusing transit permits was necessity; Revisionist has already been chargesheeted for the same.

17. I observe that the State Govt. through its replies/submissions/arguments during various occasions including hearings of Interim/final arguments etc. has not submitted anything towards the parawise comments or accepted/rebutted the Revisionist's any of contentions. It has not given any argument on merit of the case. Its total emphasis is that the Impugned Proceedings is a 'Notice' and Revisionist has prematurely filed this RA and she will have a chance to file RA once 'adjudication' is over at State Govt. level. Even for this contention/prayer the State Govt. has not given any explanation/evidence or legal argument or rebuttal of Revisionist's contention. Their entire pleading is based on that the case has been initiated by Vigilance Directorate who has found her engaged in serious illegal mining and has also filed Charge Sheet and presently it is at notice stage.

Revisionist's contention is opposite to above. Revisionist states that she is aggrieved of the Impugned Proceedings which is an adjudication order and Revision thus lie against it under Section

30 of MMDR Act r/w Rule 54 of MCR. Further the Impugned Proceedings which is an order has been passed despite departments own records tallying with the statutory returns filed and periodic inspections conducted by IBM and thus has been passed without any basis. Revisionist further contends that when the then Revision authority has not only admitted the RA but also further vide order dt. 01.02.11 has held that Impugned proceedings is not a 'Notice' but an order and State Govt. and has chosen not to challenge the same, it is not now open to State Govt. to now oppose it. She has instead made counter allegations that the State Govt. is biased and prejudice against her and that due to this State Govt. is trying to harass her, as despite there being no case on merit and her production and dispatch figures tallying with those of department obtained under RTI, the State Govt. has passed this Proceedings and is now shying away from decision by Revision Authority and against which it has also caused aspirations. Furthermore State Govt. is biased and prejudiced against her to the extent that she was not allowed transit permits since passing of the Impugned Proceedings, despite stay by the Interim Order dt. 01.02.11 and continued to deny permits till July' 2011. She thus does not expect any justice from State govt. and despite there being no case at all against her and all these actions taken are basically to harass her due to bias & prejudice against her. She thus opposes remand and requested for decision on merit by Revision Authority and for this also contends that the sufficient material is available on record for Revision Authority to decide the RA on merit, for which Revision authority is also competent rather mandated and under obligation to do so as also held by Apex Court in the decision cited *ibid*.

18. Thus before going into details of merit of the case, the main issue to be decided in this case is whether the Impugned Proceedings is a 'Notice' and not the 'Order' within the meaning of Section 30 of MMDR Act r/w Rule 54 of MCR, and the Revisionist is not yet aggrieved of and accordingly RA is premature. Thus, as contended by the State Govt. Revision must not be entertained and summarily rejected without going into the merit of the case. OR it is an 'Order' of which Revisionist is aggrieved of and thus against which Revision lies, as contended by the Revisionist.

If it is Order, then there is equally important issue is whether the State Govt. is biased against the Revisionist to the extent that no justice is expected from it, if remanded as contended by the Revisionist, and thus Revision Authority therefore shall necessarily be decided on merit OR the case may be remanded for which State Govt. has been insisting so.

19. On the main issue that it is 'Notice' the State Govt. has not given detail basis or legal argument. However from reply/submission it may be stated that contention is on the following basis.

- (i) The Impugned proceedings starts with word "Take notice".

(ii) In its last paragraph the Revisionist has been given sixty days notice to make good or remedy the breach of condition as the case may be. This paragraph also starts with “*I am directed to hereby notice you.....*”

(iii) In its last paragraph, though the Revisionist has been asked to make payment of Rs. 1131.72 Cr yet there is no intention to recover the same before the Revisionist submits reply and is given opportunity of hearing within time given at (ii) above. This recovery has been suspended despite there being no provisions to give notice for the same under section 21(5) of MMDR Act.

(iv) The State Govt. further submits that vigilance department of State Govt. has filed Charge Sheet against the Revisionist for illegal mining. The Revisionist is involved in serious illegal mining which was detected during joint physical verification conducted. Vigilance department has also found that the Revisionist has violated the lease covenant. By filing premature Revision Application the Revisionist is attempting to thwart and defeat the above legitimate criminal prosecution initiated against her and suspended mining activities which is a necessary consequence to the vigilance inquiry report and the Charge Sheet filed by vigilance department. In the above background the Revisionist has been noticed as stated above for deciding determination of lease and the recovery was demanded. The above legitimate process started at State Govt. level may allowed to be continued for which State Govt. by law is authorized and competent. Revision Authority may thus dispose of the Revision Application by dismissing the same or it is feels with any suitable advice/direction to State Govt. to modify the wording so as indicate clear intention in the Impugned proceedings that the recovery will not be made.

20. The Impugned proceedings is reproduced as under:

*“Sub: Illegal mining in Unchaball Iron & Manganese Mines of M/s Indrani Pattnaik over 106.1127 hect. in Keonjhar District.*

*Take Notice that you have committed the following irregularities which are in violation of the conditions of mining lease provided under Rue 27 of MC Rules, 1960 and other provisions of the M&M(D&R) Act, 1957 and the said rules.*

*2. That the captioned Iron and Manganese Mines was physically verified on 24.09.2009 by a joint verification team of Technical Officers, Engineers, Surveyor and Geologist, Revenue, Forest and Mining Officials. The quantities of production and dispatch of iron ore of different grades for the period from May 08 to 24.9.09 as worked out from the records of DDM, Joda and that of the lessee and the raising contractor is 29,18,431.00 MT and 24,31,225.130 MT respectively. The month-wise production and dispatch is given below.”*

After the table production and dispatch it states as:

"3 There should be closing stock (Book balance) of 4,87,205.870 MT (29,18,431.00 - 24,31,225.130) as on 24.9.2009, the date of joint physical verification. The physical stock of iron ore was, however, found to be 1,82,637.695 MT only. Thus there is a shortage of 3,04,568.175 MT of iron ore as on 24.9.2009 as mentioned below:

Book Balance	4,87,205.870 MT
Physical Stock (-)	1,82,637.695 MT
Shortage	3,04,568.175 MT

You have not maintained proper records as required under sub-rule (1) (i) of rule 27 of MC Rules, 1960. You have also violated lease covenants by clandestinely selling Off 3,04,568.170 MT of iron ore thus evading payment of royalty to the tune of Rs. 82,23,340.59 and thus Rs. 7,30,96,360.80 of Sales Tax.

4. The quantity of production, at the of joint verification was 29,18,431 MT of iron ore. During physical verification, it is found that the total production of iron ore from the excavated pits would be only 8,49,589.560 MT. Thus, it is evident that you have produced a quantity of 20,68,841.44 MT (29.18,431.00 MT – 8,49,589.560 MT) which has not been excavated from your mining leasehold area. The same has been raised by you without lawful authority from area outside the leasehold. Thus, you have indulged in illegal mining by violating the Terms & Conditions of the Mining Lease Agreement and in contravention of the provisions of Sec. 4(1) of MMDR Act. On the date of physical stock 24,31,225.130 MT was shown as dispatched and 3,04,568.175 MT has been dispatched clandestinely. The cost of such illegally mined and dispatched ore come to Rs. 11,31,72,22,470.00 @ Rs. 6000 per MT. This amount is recoverable from you under sub section (5) of Section 21 of M&M (D&R) Act, 1957.

5. I am directed to hereby notice you under the provisions of Sub Section (5) of Section 21 of M&M ( D&R) Act, 1957 to make payment of the aforesaid amount of Rs. 11,31,72,22,440.00 and under the provisions of rule 27(5) of MC Rules, 1960 to make good or remedy the breach of conditions as the case may be within sixty days from the date of receipt of the notice, failing which the mining lease will be determined and the whole of security deposit forfeited."

21 From scrutiny of Impugned proceedings, I observe following.

(i) The Impugned Proceedings is a just two and half pages crisp proceedings in five paragraphs.



(ii) The first paragraph starts with words 'Take notice'. The words 'Notice' has been used twice in the Proceedings. The other one in the last paragraph.

(iii) From scrutiny of first paragraph, I observe that the phrase 'Take notice' is used for communicating the contents of the State Govt. at the following para (2) to (4). Its meaning is more akin (rather curt) to 'Be intimated' or 'Be informed' and cannot be inferred to be calling for any explanation of Revisionist as contended by the State Govt.

(iv) Paragraph 2 is a statement of fact of visit of the above team of experts/officials and month-wise statement of production and dispatch details of Revisionist's firm.

(v) Paragraph 3 is findings on shortage of 3,04,568.170 MT of mineral and findings of clandestinely selling thereof and evasion of specified sum of Royalty and Sales Tax and findings on non-maintenance of account.

(vi) Paragraph 4 is findings on illegal mining by excavation of 20,68,841.44 MT mineral outside leasehold area and that Rs 11,31,72,22,440.00 is recoverable from her.

(vii) Paragraph 5 is asking for making payment of above amount under the provisions of Sub-section (5) of Section 21 of MMDR Act. For such recovery admittedly no notice has been given, as the same, as contended by State Govt., is not required under law.

(viii) In this paragraph word 'Notice' has been used for two purposes. One for intimating the payment of above sum, and other for to make good or remedy the breach of conditions, as the case may be under rule 27(5) of MCR within sixty days from the date of receipt of the notice, failing which the mining lease will be determined and the whole of security deposit forfeited. Conditions of Mining Lease breached have not been specified in the Impugned Proceedings. Nor the remedial actions required on the part of Revisionist have been specified/suggested.

The observation at (i) to (vii) above infer neither allegations have been leveled nor explanations been called. These all are the findings and communication of findings. From perusal of observation at (viii) above also, it cannot be inferred that it is a 'Notice'. Thus from mere perusal of Impugned Proceedings neither the wording of the Impugned Proceedings nor the content or intent thereof it can be construed that it is a 'Notice'. It rather appears to be an order cum demand notice.

22 The essential condition of any 'Notice' is that there shall be some clear cut allegations (and not findings) and there shall also be relevant relied upon documents on which such allegations leveled are based which are also clearly specified in the notice itself. If the allegations are based on inconsistency between certain set of information/documents in possession of the Revisionist and those not in his possession, the notice shall also give detailed reasons for reposing more reliance on them. Further if such documents are not in possession of the noticee, the same necessarily have to be provided to the noticee normally along with the notice. Also time limit to reply shall reckon

from the date of providing these documents. All the aforesaid requirements are *sine quo none* to enable the noticee to frame its defense.

From scrutiny of Impugned Proceedings, I observe that the proceedings appear to be entirely based on visit of joint team of experts/officials from various fields/depts. on 24.09.09 to the Revisionist's mine. Their report has not been mentioned in the proceedings or discussed. No other document appears to have been relied upon or has been mentioned or enclosed with the proceedings. It is also not annexed or referred to the FIR.

Further when any demand is proposed to be made or penalty is proposed to be imposed, their quantum and nexus with the allegations are required to be mentioned in the notice. Also in the notice itself it is also generally asked from the noticee whether he would like to be heard. None of these conditions appears to have been satisfied. From this angle as well it cannot be said to be a Notice.

23.1 In the last paragraph State Govt. has called for reply from Revisionist to make good or remedy the breach of conditions, as the case may be under rule 27(5) of MCR within sixty days from the date of receipt of the notice, failing which the mining lease will be determined and the whole of security deposit forfeited.

23.2 From scrutiny of the Impugned Proceedings, I observe that for recovery of amount Rs. 11,31,72,22,440.00 has been demanded under the provisions of Section 21(5) of MMDR Act. The Rule 27 (5) of MCR has been invoked only in respect of making good or remedy the breach of conditions. Neither recovery has been demanded under this Sub-Rule nor has Revisionist been asked to explain for this under the Rule. From plain reading of Rule 27 it is seen it deals with conditions of Mining Lease and breach thereof which the lessee can be asked to remedy under this Sub-Rule within 60 days. For which inbuilt provisions of Sixty days' notice have been provided in the Sub Rule. As discussed above that in the Impugned Proceedings conditions of Mining Lease breached neither have been specified nor there is any discussions thereof or relied upon document/evidence adduced in/along with Impugned Proceedings. Nor the remedial actions required on the part of Revisionist have been specified/ suggested.

As stated above, for the alleged illegal mining and demand for the same relevant Section 21(5) of MMDR Act has been invoked. Neither for such demand this Sub-Rule 27(5) deals into nor has been invoked by State Govt. in the Impugned Proceedings or has been contended during revision. As briefly discussed above, it has been contention of the State Govt. that no notice is required for such recovery probably because unlike in Rule 27(5) of MCR; there are no express provisions provided therefor in Sub-Section 21(5) of MMDR Act. Thus Revisionist has been asked to explain only breach of condition of Mining Lease and remedial thereof and not the demand of Rs.1131.7Cr.

23.3 State Govt. has all along been insisting that Revisionist may be asked to submit reply to the Impugned Proceedings before it and Revision is thus premature. In the absence of specifying the lease conditions breached and suggestions of remedial action thereof, how the Revisionist is expected to base his defense and what is required from her to explain have not been specified in the Impugned Proceedings. It has also been not done so by the State govt. in the reply to the RA or at any point of time including arguments.

23.4 I further observe that the State Govt. has suspended the grant of transit permits from the date of passing of the Impugned Proceedings. Reasons given during revision cited are:

*“That in view of serious and grave irregularities committed and gross violation of the conditions of Mining Lease U/R 27 of MCR, the State Government has issued notice to take action for determination of lease. The reply to the show cause notice is awaited. Apart from that, the criminal prosecution initiated against the Revisionist after satisfaction of the ingredients of Section 22 of the M&M (D&R) Act, 1957 cannot be faulted with and the Revisionist by way of the present Revision Application is attempting to thwart and defeat the legitimate criminal prosecution initiated against her. The suspension of the mining activities by the Revisionist is a necessary consequence to the Vigilance enquiry report and subsequent Charge Sheet against the Revisionist by the Vigilance Department.”*

I observe that the Impugned Proceedings do not order for suspension of Transit passes. I further observe for this State Govt. has also not passed any separate Order. Revisionist has contended that she has not been issued Transit Permits since passing of the Impugned Proceedings. From above reply of State Govt., it is also clear that with the passing of the Impugned Proceedings transit permits have been suspended. The State Govt. admittedly has also been insisting that the same has become necessary. This stand is in contradiction with the contention that the Impugned Proceedings is a 60 days' Notice.

23.5 Furthermore neither the conditions breached have been specified nor has remedial action expected from Revisionist been specified. Any remedial action can only be for the prospective period. Breach, if any of past period can only be regularised with the condition that for further periods the same will not be committed by the Revisionist. There are no such circumstances appearing in the present case.

23.6 From above, I observe that the State Govt. has not only not left any scope for Revisionist to put forth his defense, but also does not intend to give any chance to Revisionist to run his mine pending reply. I hold that for practical purposes State Govt. neither expects Revisionist to explain on the huge demand/recovery or for determination of mining lease nor intends to do so. The words '60 days' or 'Notice' used in the Impugned Proceedings appear to have been used more as formality and procedural requirements under Rule 27 (5) of MCR and not in substantive terms. They do not mean to have much significance as for willingness on the part of State Govt.'s wrt openness or reconsideration of these issues. Thus it is not a 'Notice'

24.1 State Govt. in the reply to RA and at many other occasions has stated that though there is no requirement of issuing notice in recovering the Rs 11,31,72,22,440.00 (Rs. 1131.7 Cr. Approx) being price of mineral raised without lawful authority under Section 21(5) of MMDR Act, but assured that it would not be recovered until she submits reply within time stipulated in the Impugned Proceedings and that she is heard, if she so desires. From scrutiny of this offer made several times in various submissions/ replies/ arguments made during the revision, I observe that only the recovery has been deferred; the demand, however, continues to remain firm. Not only the demand itself but also the amount demanded also continues to remain firm. When for irregularities under Rule 27 a 60 days notice has been provided it is beyond anyone's comprehension to accept State Govt.'s contention that for such allegation of criminal act and for recovery of such a huge demand, no show cause/ hearing is necessary. Not only a proper notice for demand is required to be given but also it shall be covering culpability/ *mens rea* on the part of the Revisionist.

24.2 From scrutiny of the Impugned Proceedings, I also observe that this amount is based on the contention that only 8,49,589.560 MT Iron Ore only can be produced. No basis on this contention/quantum has been given. Revisionist's contention is that this is in contradiction with their approved mining plan, IBM's inspection reports and IBM's market survey of Iron Ore in the region. These documents instead support their production figures. The State Govt. as stated above has not commented anything on merit. Thus its view on these issues could not be ascertained. When the very basis of arriving at figures/findings has not been provided, it is impossible for any one to submit any reply. How addressee is expected to base the reply. Further State Govt has contended that no notice is required for such demand under Section 21(5) of MMDR Act. From this it appears that the State Govt. is not even open to discuss or argue on the very issue of demand or its quantum.

24.3 From scrutiny of the Paragraph 2 and 3 of the Impugned Proceedings, I observe that here as well there is no basis provided for arriving at the departmental figure for production/dispatch or shortages; no document has been provided with the proceedings. Revisionist has contended that department's figures as obtained by her under RTI tally with the Statutory Returns filed by her; thus

there is no basis of these figures/findings by State Govt.. As discussed above State Govt. has not filed any comments on merit. Thus the State Govt. is also not open in any manner.

24.4 From above it appears that State Govt. has closed all gates and has left no scope of reconsideration at its levels; as such the Impugned Proceedings cannot be termed as 'Notice' but a firm order cum confirmed demand.

From the discussions from para 20 to 24, I hold that the Impugned Proceeding from any of yardstick cannot be said to be a 'Notice'. The then Revision Authority in the Interim Order has stated that from mere perusal of wordings it can be termed it as Order and directed no coercive actions may be taken. From above, it is seen that not only from wording but also from intent and contents it is an order within the meaning of Section 30 of MMDR Act.

24.5 State Govt. also contends that the Revisionist is not aggrieved of the Impugned Proceedings. When Revisionist has been demanded huge sum of Rs. 1131.7 Cr and its running mine has been closed with a stroke of pen without giving her any notice or chance of hearing, it is beyond anyone's comprehension to agree with such a contention of the State Govt. Further as stated above the State Govt. is not open to reconsider at their level. It is also beyond anyone's comprehension to accept State Govt.'s contention that for such a proceedings revision cannot lie. State Govt. has already found her guilty; guilty of serious illegal mining. And has also awarded penalty. Thus has concluded adjudication for which Revisionist is aggrieved of. I thus hold that Impugned Proceedings is an order within the meaning of Section 30 of MMDR Act and against which revision shall lie and reject this contention of the State Govt.

25. On the other preliminary issue whether the State Govt. is biased and prejudiced against the Revisionist or not, and as contended by the Revisionist the same is to that extent that no justice is expected from State Govt. and the case shall not be remanded, I observe that it is expected from Revision Authority to decide case on merit and not routinely remand unless necessary. This is required to be done irrespective allegations of bias/prejudice. Hon'ble Supreme Court in Indian Metals and Ferro Alloys Ltd. v. Union of India, 1992 Supp (1) SCC 91 also has expressed similar expectations and chided such tendencies in exercise of powers under Section 30 of MMDR Act. As stated above, there is strong opposition from State Govt. on the issue of deciding the case on merit by Revision Authority. The opposition is to that extent that even parawise comments to the RA were not submitted and was prayed that as Impugned proceedings is ' Notice' and, if the Revision Authority so desires, to improve the wording of he Impugned Proceedings the State Govt. will abide so but the case must be remanded. I thus feel necessary to discuss issue of bias & prejudice here.

26. I observe that Revisionist contention of bias and prejudice is on the following basis:

(i) That the Impugned Proceedings was passed with undue haste and huge penalty of Rs. 1131.7 Cr. has been imposed even without complying with the basic principles of fairness and objectivity. A bare perusal of Impugned Proceedings and the manner in which it is passed shows arbitrariness, *mala fide* and bias on the part of the concerned officials of the State Govt.

(ii) The bias on the part of the State Govt. is also apparent from the fact that the order dated 1.2.2011 passed by Revision Authority having a binding force on the State Govt. was not complied with for almost six months and State Govt. continued to harass the Revisionist on one pretext or the other. It is pertinent to mention that State Govt. continued to deny the transit permits and mining operations despite specific order from this Revision Authority despite the fact that they have not challenged the Revisionist Authority's order dated 1.2.2011.

(iii) It is further submitted that in a bid to harass and create prejudice against the Revisionist serious allegations have been made not only against the Revisionist but aspersions have also been caused against the Revisionist Authority and would also continue to harass her, if the case is remanded. The very intention of behind asking for remand is to harass her.

27. State Govt. has not submitted any comments on any of the above counter allegations of biases/ prejudices or on their basis but has all along being insisting that the Revisionist must be directed to submit the reply to the Impugned Proceedings and State Govt. has suspended recovery of Rs. 1131.7 Cr. until she submits reply and is heard. The State Govt. has also alleged that the Revisionist by going into Revision is basically attempting to scuttle and thwart not only the impugned proceedings but also criminal proceedings launched by Vigilance Directorate, which has filed Charge Sheet against her. She is one of the 16 illegal miners against which Vigilance Directorate was specifically directed to take action in the current drive of taking action against illegal miners for which the Directorate has been suitably empowered by various Gazette Notifications.

28.1 On the Revisionist contention at 26 (i) above that the Impugned Proceeding was passed with undue haste and huge penalty of Rs. 1131.7 crore has been imposed without observance of

basic principles of fairness and objectivity I observe that admittedly no reference or cross check with the Revisionist was not done beforehand. The chronology of events is as under:

S.No.	Date	Event
1.	24.09.09	Visit of team of experts/officials.
2.	02.12.09	Filing of FIR
3.	14.09.10	Submission of detailed note by Director-cum-Director General and I.G. of Police, Vigilance and Ex-officio Special Secretary to Government Administration (Vigilance) to Chief Secretary with the following request in the end: <i>“Hence orders may kindly be passed for initiating appropriate action to rescind the orders of granting mining lease in favor of Smt. Indrani Patnaik”</i>
4.	14.09.10	Chief Secretary marking this note to the Hon’ble Chief Minister.
5.	15.09.10	Chief Minister had made following order: <i>“Steel &amp; Mines Department may initiate appropriate action and put up for orders”</i>
6.	22.11.10	Filing of Chargesheet.

From above chronology, I observe that within 3 days of filing of Charge Sheet and little over two months of approval of Chief Minister Impugned Proceedings was passed. I also observe that it is a normal practice that a very high level secrecy is maintained in Vigilance matters. From scrutiny of the aforesaid note dt. 14.09.10 I observe that four officers from Steel & Mine department including Ex-Joint Secretary and DDM Joda have also been proposed to be prosecuted in this case. State Govt. in the reply has stated that in the complaint proposes prosecution of six other Govt officials and private persons. Thus these developments must not have been shared with Steel & Mine department which must have known details of case only after approval from Chief Minister i.e. on 15.09.10. Admittedly no reference was made/show cause notice issued or hearing granted to

Revisionist. From the above and observations, findings etc made at para 20 to 24 as well I observe that the above apprehension of Revisionist is not without any basis.

28.2 On the Revisionist contention at 26 (ii) above i.e. continued harassment by denial of granting of Transit passes by State Govt. despite Revision Authority passing the Interim Order dt. 01.02.11, the Revisionist has stated to have requested the State Govt. vide letters dt. 05.02.11, 23.02.11 and 21.04.11 (Annexure B to the application dt. 25.04.11) to comply with the above Order but State Govt. continued to deny transit permits. I observe that State Govt. by subsequent Interim Order dt. 13.05.11 was also asked to observe judicial discipline and to implement the Interim Orders dt. 01.02.11 within 48 hours, as the same have not been challenged or intended to be challenged. State Govt. was also asked to file written submission explaining the circumstances under which there had been continued non-compliance of the Order dt. 01.02.11, when there had been no intention to challenge the same. Revisionist contends that harassment by denial of issue of Transit passes continued till July'2011. In the reply, the State Govt. has given following justification:

*“Apart from that, the criminal prosecution initiated against the Revisionist after satisfaction of the ingredients of Section 22 of the M&M (D&R) Act, 1957 cannot be faulted with and the Revisionist by way of the present Revision Application is attempting to thwart and defeat the legitimate criminal prosecution initiated against her. The suspension of the mining activities by the Revisionist is a necessary consequence to the Vigilance enquiry report and subsequent Charge Sheet against the Revisionist by the Vigilance Department. The intention of the Revisionist is to scuttle and defeat the investigation/criminal prosecution, therefore, this learned Revision Authority should reject the Revision application taking into account the fact that if the Revision application is allowed it would affect not only the outcome of the criminal proceedings but also the notice dated 25.11.2010 calling upon the Revisionist to show cause within 60 days of receipt of the notice.”*

By grant of mining lease certain rights accrue to the Revisionist; the same get reinforced over passage of time by carrying out mining operation and investments made therein. Suspension of Mining lease is basically temporary denial of exercise such rights or to deprive benefits out of such rights, thus should be done by issue of an Order explaining the reasons for doing so. If the circumstances warrant immediate suspension the same may be explained so in the order. From scrutiny of the Impugned Proceedings, I observe that it cannot be inferred that transit permits are suspended. It also does not contain words ‘Suspend’ or ‘Suspension’ or ‘withholding’ of transit permit’. No separate orders for suspension were also issued. Neither suspension was done by passing any order nor it was done in a straight forward way. Instead indirect approach was



adopted. Transit permits were not issued in order to withhold the dispatches and consequently mining operations remain suspended.

As discussed above vide Interim Order dt. 01.02.11 the then Revision Authority directed that no coercive action may be taken. In the reply State Govt. has stated that vide letter dt 21.05.11 DDM Joda was directed to implement this order, but the same was not implemented immediately thereafter or challenged to High Court. Vide subsequent Interim Order dt. 13.05.11 Revision Authority directed State Govt. to implement it forthwith and in any case not later than 48 hrs. It had also asked to explain circumstances leading to continued delay in implementation when there was no intention to challenge the same. The State Govt. did not appear to implement till July despite above stated sternly direction. The reply/explanation of State Govt. in the reply at para 12 (ix) also appears to be an eyewash; there has been no cogent reasons given for continued denial of implementation of the Interim Order dt. 01.02.11. As mentioned in the reply dt. 22.07.11 that their AOR was informed to file submission before Revision Authority. No such submission, as well was filed by the Advocate on Record.. Thus No reason was given for continued denial compliance of Revision Authorities. From above I observe that the apprehension of Revisionist on this account is also not without any basis.

28.3 On the Revisionist contention at 26 (iii) above i.e. State govt. in order to harass her and create prejudice against her has made serious allegations against her as well as has caused aspirations against Revision Authority. I observe that State Govt. has time and again alleged that Revisionist is engaged in serious illegal mining and for which Charge Sheet has also been issued. Thus it has become necessary to stop issuing Transit Permits in order to suspend her mining activities, Revisionist by way of filing RA is basically attempting to thwart, defeat and scuttle such legitimate proceedings initiated by Vigilance Department.

In the written arguments for hearing of stay application on 17.01.11 before the then Revision Authority the state Govt. submitted:

*“The intention of the Revisionist is to scuttle and defeat the investigation/criminal prosecution by obtaining an Interim Order from this learned Revision Authority. Therefore Revision Authority reject the Application for Stay since any Interim Order passed in the Revision Application would directly affect not only the outcome of the criminal proceedings but also the Impugned Proceedings calling upon the Revisionist to show cause within 60 days of receipt of the notice”*

Here State govt. also states:

*"...criminal prosecution initiated against the Revisionist after satisfaction of the ingredients of Section 22 of the MMDR Act cannot be faulted with and any Interim Order would thwart and defeat the legitimate criminal prosecution initiated against the Revisionist."*

As discussed above the then Revision Authority passed Interim Order dt 01.02.11 directing no coercive action during pendency of Revision Application, which as discussed above the State Govt. did not implement and Revision Authority vide subsequent Interim Order dt. 13.05.11 also cautioned the State Govt. to exercise judicial discipline and also to explain the circumstances for not implementing the Order. As stated above such explanation is an eyewash. The State Govt. has also not shown how these Interim Orders have affected the criminal case filed. In the reply dt 22.07.11 State Govt. also states:

*"That the Revision Authority inspite of being aware of the serious nature of illegalities and violations committed by the Revisionist and the fact that the State had issued only a notice and the Revisionist would be given an opportunity for hearing, vide its order dated 1.02.2011 passed the following Interim Order."*

As stated above the State Govt has not submitted any reply on merit or on these contentions of bias/prejudice. The State Govt. has also not filed copy of charge sheet filed t. State Govt. has also does not appear to explain to the then Revision authority about details of the case or filed any documents to show about seriousness of such allegation. It also appears that all these allegations are made by the vigilance department. How State Govt. (Competent Authority deciding the case) has also come to the above conclusion has not been explained or demonstrated. From above and as mentioned in para 28.2 above use for phrase *"therefore, this learned Revision Authority should reject the Revision application"*, I observe that State Govt.'s contention that it has due regards for higher Judicial Forums is a lip service. The apprehension of Revisionist on these twin accounts as well thus is not without any basis.

29.1 From close scrutiny of events as mentioned in the chronology of events and their contents it appears that the decision to impose huge penalty and recover amount as well as determination of lease was taken by the State Govt. on 15.09.10 on the basis of the above stated note dt. 14.09.10 of Director-cum-Director General and I.G. of Police, Vigilance and Ex-officio Special Secretary to Government Administration (Vigilance) dt. 14.09.10. This note has been filed twice by the State Govt. Once enclosed to letter dt. 14.01.11 of State Govt. and again along with the reply to stay application dt. 24.01.11. State Govt.'s defense for opposing stay application was also entirely based on this note. The figures of shortages and quantity of ore alleged illegal mined as well as

production/dispatch figures mentioned in this note also exactly tally with the impugned Proceedings. Time and again State Govt. during various hearings / replies /submissions have been emphasizing that Vigilance Directorate has found that Revisionist is engaged in illegal mining and has also filed charge sheet. State Govt. in the written arguments dt. 24.01.11 to the stay application while explaining that Vigilance department is empowered and competent to take such actions and enclosing the aforesaid note dt. 14.09.10 has mentioned:

*“Govt. has approved the proposal of the Director-cum-Director General & IG of Police Vigilance (Annexure R/4) for initiation of appropriate action to rescind the orders of granting mining lease in favour of Revisionist.”*

From above, it appears that it is the Vigilance Department which has initiated and decided these matters beforehand and the same has been approved by State Govt. and the Steel & Mines Department is simply implementing the above decision taken by passing Impugned Proceedings. Thus officer competent to sign the Impugned Proceedings does not appear to have any option except to endorse the *fait accompli*. He also appeared to be under compulsion to do so urgently. Same compulsion is appearing to rule while defending the Revision Application.

Various events like not issuing show cause notice/granting opportunity for personal hearing, State Govt. being not open to reconsider either quantum of shortages or to discuss the very issue of shortages etc, immediate suspension of mining operations by refusing to grant transit permits transit grants and that too without passing of any order, vehement opposition of State Govt. to get report from IBM or to make it party to the RA, retraction of documents/letters filed and submissions made before Revision Authority, delay in compliance of Interim Order on the part of State Govt. and continued denial of Transit Permits and also being against Revision authority deciding the case and for not submitting comments on merit also lead to such a conclusion.

From above, it also appears that the competent authority is working under the shadow of Vigilance Department and Impugned Proceedings is solely based on its findings. Competent Authority appears to toe their line that too urgently Indian jurisprudence is based on the principal that everyone is innocent unless proved guilty. Even this basic principle does not appear to have been put on shelf while passing the Impugned Proceedings. Nor does it recognizes principles of natural justice.

Thus I also find merit in the contention of Revisionist and reject the State Govt.'s request for remand. Further in absence of parawise comments of State Govt. on merit, I proceed to decide the case on the basis of available records; it has been given adequate opportunities to file the same.

30. There are following two findings in the Impugned Proceedings.

i) Shortage of 3,04,568.175 MT of iron ore as on 24.9.2009 thereby Revisionist has evaded Rs. 82,23,340.59 royalty and Rs. 7,30,96,360.80 Sales Tax.

ii) As on above date Revisionist has produced 29,18,431 MT of iron ore whereas only 8,49,589.56 MT can be produced from the excavated pits. Thus difference quantity of 20,68,841.44 MT has been illegally raised from some area outside the leasehold; thereby liable for payment of cost of mineral Rs. 11,31,72,22,470.00 @ Rs. 6000 per MT under Section 21(5) of MMDR Act.

As discussed above except for what is stated in the Impugned Proceedings no evidence / document has been given by State Govt. to the Revisionist or produced before the Revision Authority. The note dt. 14.09.10 of Vigilance department states that this inquiry was taken up by them on the basis of information from Secretary, Steel and Mines. No such information as well has been shared with the Revisionist or filed before Revision Authority. She is stated to one of the 16 illegal miners against which Vigilance Directorate was specifically requested to take action in the current drive. No such authorization letter to Vigilance department has been filed.

31.1 On (i) above Revisionist contends that as per the month wise details received under RTI from Mining Officer Joda vide letter dt. 23.12.10 shown at Annex J to the RA, from May' 08 to Sep' 10 their production comes to 27,17,082 MT. and dispatches 24,81,022 MT. According book balance as on 30.09.11 comes to 2,36,059.53 MT. These figures including closing balance exactly tally with figures in their statutory returns. There has been production of 60,051 MT and dispatch of 38.826 MT during 24.09.10 to 30.09.10.

Revisionist further contends that during verifying Physical Balance the team ignored stock pile of 24,700 MT of BD contaminated 10-80 mm ore presumably because it was stacked in non-operational area but duly reflected in stock. The physical stock of iron ore was found to be 1,82,637.695 MT only. If this is added the Physical Balance would be 2,07,337.695 (rounded 2,07,338) against 1,82,637.695 MT.

Accordingly as per the Revisionist as on 24.09.11 production and dispatches will be as under:

Production	26, 57,031	(27, 17,082-60,051)
Dispatches	24, 42,196	(24, 82,022-38,826)
Closing Balance	2,14,835	(26,57,031-24,42,196)
Physical balance	-2,07,338	

Shortages                      7,497 MT as against alleged/found 3,04,568.175 MT

Revisionist also contends that F.I.R dated 02.12.2009 also mentions that on 24.09.09 visiting Vigilance Team had found production 26,38,831 MT (and not 29,18,431 MT as mentioned in the Impugned Proceedings). Thus alleges that in the Impugned Proceedings record of the Vigilance Department have been tampered by inflating the production figures. Revisionist also contends that IBM on inspection on 09.12.09 certified that production from lease hold area from May' 2008 to Nov' 2009, had been 30,86,776 MT. With backward computations Revisionist correct production as on 24.09.2009 was 26,57,031 and not 29,18,431 MT.

Revisionist finally contends that these shortages are miniscule as compared to the overall scenario and the fact the stocks were tape measured, which is a crude method, instead of taking help of some instrument like using Total Station, Theodolite etc and thus must be ignored. Besides above, the following factors are equally relevant and influence the degree of shortages between the actual book stock and the physical stock on ground:-

- (a)                      Ground loss
- (b)                      Handling loss
- (c)                      Compaction factors of the iron ore stack
- (d)                      Irregular Geometrical Shape of the iron Ore stack
- (e)                      Uneven ground level on which iron has been stacked.

Thus there are no mentionable or cognizable shortages.

31.2 From scrutiny of Annex J to the RA, I observe that the this information provided under RTI Act is issued from office of Deputy Director, Joda and both the forwarding letter and the information are signed by Mining Officer Joda, Keonjhar on 23.12.10 with official stamp. It gives month-wise production and dispatch figures from May' 08 (i.e. from start of production) to Oct' 09. On comparing with the figures given in the Impugned Proceedings, I observe that the figures for the months Feb, March, June and July 2009 do not tally. Whereas the same tally with the figures in statutory returns, copies whereof filed at Annex F, G, H and I of the RA. The Impugned Proceedings state that these figures mentioned therein were found from records of DDM Joda. But these departmental figures are different from the departmental figures provided under RTI. How these figures in Impugned Proceedings were arrived at or their genesis fare not explained. Why the same are also not as per FIR is also not explained. One of these two sets of departmental figures have to be true and authentic departmental figures. As information received under RTI Act generally has to be true and authentic and as State Govt. has not commented on the origin and veracity of

the departmental figures of the Impugned , thus allegations/findings of shortages are not substantiated.

31.3 As discussed above information received under RTI Act has to be true and authentic. Further as the same has been received from the same source as mentioned in the Impugned Proceedings and that the dispatch date of information under RTI is after passing of the Impugned Proceedings, I consider that the figures mentioned in the Impugned Proceedings (para2) are not authentic; the State Govt.'s own department contradicts the same. Revisionist had also submitted detailed account of discrepancies along with errors which State Govt. appears to have committed in these figures during months of Feb, March, June and July, 2009. She has also given detailed comparison. From above, I observe that there is no discrepancy in production and figures in their records and statutory reports, IBM reports and records of DDM Joda given under RTI. These all tally with each other. Thus the very basis of the Impugned Proceedings is wrong.

31.4 Further as discussed above the origin or genesis of figures given in the Impugned Proceedings has not been explained. Whether they are it is computed on the basis of transit passes, or on the basis of physical periodical departmental inspections or on the basis of the very statutory returns filed by Revisionist? In the absence of clarity and authenticity of these figures the very basis of Impugned Proceedings is shaky.

31.5 Thus I hold that shortages 3,04,568.175 MT as alleged/found in the Impugned Proceedings are not only unsubstantiated but also have been found to be alleged in contradiction to state Govt.'s own records. When the figures of three sources viz Revisionist, IBM and departmental tally with each other, allegations of shortages based on these figures cannot sustain. Revisionist's contention that in the Impugned Proceedings quantity transferred for processing/crushing from the existing stock has been accounted twice by the Department for Feb, Mar, June, July and Sept months of year 2009 and which she has also explained with statutory returns (Annex F to I). Thus she has successfully demonstrated and explained where department has erred. It has added to the merit in her contention. I thus hold shortages are not as alleged but only are 7,497 MT which are too miniscule in comparison to the overall production. Even if stock pile of 24,700 MT of BD contaminated 10-80 mm ore is ignored the shortages would be 32196.445MT which continues to be miniscule as compared to the overall production/dispatch and ignored due to non-accounting of factors mentioned at para 31.1 above. In the circumstances stated above, I do not find any merit in the finding of State Govt. and reject the same.

32.1 On findings at para 30 (ii) above that Revisionist has produced 29,18,431 MT of iron ore, whereas only 8,49,589.56 MT can be produced from the excavated pits, as stated above there is no basis given in the Impugned Proceedings or in the reply. Nor any document / evidence in support has been given to the Revisionist or filed before Revision Authority.

32.2 Revisionist contends that this finding is again based upon no material evidence. This is also against the following arrived at from the reports of IBM. Being statutory and independent body its report is binding on both the parties.

i) That IBM on inspection on 09.12.09 certified that production from lease hold area from May' 2008 to Nov' 2009, had been 30,86,776 MT. With backward computations Revisionist's correct production as on 24.09.2009 would be 26, 57,031 and not 29, 18,431 MT.

ii) That further IBM on inspection on 08.12.2008 (Annexure M) certified that production from lease hold area from May' 2008 to November 2008 i.e. within a period of seven months of the start of production Revisionist's had produced 7,84,950 MT. Thus approximate 92% of this production has been produced by Nov' 2008 i.e. 10 months before the visit.

iii) Revisionist contends that admittedly the volume of pit excavated in the mining lease hold area of the Revisionist is 12,19,798.370 Cubic Meters. As per the mining plan duly approved by the IBM the Tonnage Conversation Factor (TCF) is 3.5 MT/Cu.M for the iron ore and the Ore Incidence Factor (i.e. recovery percentage) is 70%. Against this that the State Govt. has considered TCF 1.99 and recovery percentage 35% which is wholly arbitrary, *mala fide* and liable to be rejected being contrary to the norms approved by the IBM. This is also against the general TCF in the area found in survey report of IBM. The IBM had surveyed the entire region of Joda and Barbil has given report and it had concluded after thorough scientific analysis that general TCF in the mines located in the subject areas is to be considered between 3.5 to 4.8T/Cu.M (Annexure L to RA).

Revisionist also contends that there is no allegation/evidence of clandestinely dispatch of iron ore. No area from where such ore has been alleged to have been mined has been identified. Thus these allegations/findings have no basis. It is merely surmises and conjectures.

32.3 From scrutiny of Impugned Proceedings I observe that this is a bald allegation/finding. Neither any basis has been given nor has any reference point been mentioned. It is required on the part of party leveling allegations not only to substantiate the allegations but also provide its basis and provide evidence. All these are lacking in this case.

32.4 The allegation leveled is that Revisionist has produced and dispatched roughly two and half times what the excavated pit of Revisionist's mine can produce. Revisionist states it is admitted by the visiting team that volume of pit is 12,19,798.370 Cubic Meters (12.2 lakh cum). As per allegations it can produce only 8,49,589.56 MT ore. Accordingly allegation is Revisionist must have dug pit of volume 30 Lack cum approx outside lease area. If average depth of 10 mtrs is assumed then the area of illegally mine pit(s) would be 3 lakh sq mtrs. (30 hectares/75 acres) i.e size of 1 km by 300 mtrs or so. Over and above there must have also been constructed commensurate roads, machinery sheds, labour colony, administrative shed etc to dig, sort, dispatch, transport and sell.

32.5 Revisionist's mine has been in operation since May' 2008 and the visit was made on 24.09.09 i.e. within one and half years. As Revisionist's trend of production/dispatch remains same from start of mining operation. The allegation thus is that within this period the Revisionist has done both legal and alleged illegal mining. Impugned proceedings states that the visiting team consisted of Technical Officers, Engineers, Surveyors and Geologist, Revenue, Forest and Mining Officials. But no investigation appears to have been done either by Vigilance Directorate, or by the Steel & Mines Department or Forest Department or by any of other for almost one year to locate such a huge size pit or above stated other paraphernalia, machineries and trucks. If it exists, the same must not be far away from existing lease area. Further admittedly area is stated to be falling in forest. No case has been stated to have booked for violation of Forest (Conservation) Act, 1980. There is also no allegation of tampering of boundary pillars. Not a single dispatch has been seized. No one has also appears to have seen Revisionist doing alleged illegal mining to such a huge scale.

32.6 Entire case of State Govt. is based only on the above stated visit on 24.09.09 and the demand is made upto this date. Impugned Proceedings is also silent about production/dispatch and also demand for the period subsequent to the visit. Whether the Revisionist suddenly stopped illegal mining from outside lease area after the visit or continued to do so. Impugned Proceedings and State Govt.'s reply/submissions are silent on this issue. Trend and scale of production/dispatch of Revisionist after this visit appears to continue to be the same as it was before. Accordingly pit size must have increased and roads widened over the period. Alternately another area taken for illegal mining. From records it is not clear whether any effort was made to catch the Revisionist red handed and to effect seizures of trucks/stocks or machineries etc. Whether there is any proposal also to raise demand for period beyond 24.09.09. The Impugned Proceedings and State Govt.'s reply/submissions are silent on this aspect as well.



32.7 In its report dt 09.12.09 IBM has made observations that production has been rather lower (than mining plan). This contradicts the allegation/findings of State Govt. It observes:

*“Production is lower side than proposed due to lack of forest clearance”*

Revisionist contends that recovery of saleable ore is 26,57,031 MT which amounts to 62% of recovery. It is lower than the norm 70% fixed in the approved mining plan. From scrutiny of report of IBM on the recent general survey of the iron Ore titled ‘IRON ORE A MARKET SURVEY’ issued on Oct. 2007 (Annex L to RA) I observe that Revisionist mining production is as per TCF and recovery percentage norms found in general survey for the local region. It is also as per the approved Mining Plan of the Revisionist.

In view of above and when an independent statutory and specialized Agency IBM mandated by MMDR Act in its routine annual inspections on two occasions (08.12.2008 and 09.12.09) oblivious of these developments has found Revisionist’s production figures tallying with both the statutory returns and with the departments figures obtained under RTI, I do not see any reason why the same shall not be accepted especially when the State Govt. has not adduced any evidence/document in support of the allegation/findings in the proceedings that the mine cannot produce that much and Revisionist has illegally mined from outside.

32.8 Further the figure of evasion of Rs.1131,72,22,470.00 have been arrived at taking price of Iron Ore Rs.6000/- per MT. Revisionist contends that it is clearly imagination and not based on material whatsoever. In so far as Revisionist is concerned the average sale price of iron ore of all grades during the said period was about Rs.2000/- per MT. Furthermore the IBM under the Govt. of India, Ministry, of Mines publishes Monthly Statistic of Mineral Production which contains state wise total value of Mineral produced during a month in a state. The state wise average value for different individual Mineral as published by IBM in the Monthly Statistic of Mineral Production has been taken as the bench mark for computation of Royalty by the concerned State Govt. in respect of any mineral produced anytime during a month in any mine in that state. For the purpose of computation of Royalty the State Govt. is required to add 20% to this bench mark value. Revisionist contends that with under this criterion the maximum average sale price of iron ore will be about Rs.1750/- for the period 2009-10. Hence the said of price of Rs. 6000/- per tone in not only arbitrary but purely imaginary. Necessary therefore the amount of Rs. 6000/- cannot be basis for raising any demand.

I observe that State Govt. has not given any basis for taking @ Rs. 6000/ as price of ore which comes out to be \$120 per ton @\$ = Rs.50/- . Export price which includes royalty and

transportation charges hovers around \$50-70 per ton. Bench mark price of IBM is an established practice & legal basis of charging Royalty and is thus acceptable. I thus reject such a price as purely imaginary and inflated.

In view of above and in the absence of any of above stated evidences, I do not find any merit in these allegation/findings of the State Govt. and hold it to be made without any basis.

33.1 If illegal mining is happening to the extent as alleged, it is necessary on the part of the investing agency to investigate fully and gather evidences to make out a fool proof case. More than one year has passed since visit to the Revisionist's mine on 24.09.09 till passing of the Impugned Proceedings, but there had been no details given about any investigation carried out after the visit. Entire case of State Govt. is based only on this visit. Even the report of the visit was also not made available to the Revisionist. The same has also not been filed before Revision Authority. Whether the same was at all prepared or not? Impugned Proceedings and State Govt. is silent on this. They are also silent about production/dispatch and illegal mining subsequent to the visit; their trend and scale of production/dispatch being same. Whether the Revisionist has suddenly stopped illegal mining from outside lease area after the visit or continued to do so. On these aspects no indication has been given by State Govt. There are enough evidences to infer that the Revisionist's activities continued to remain same after the visit and also after filing of FIR.

33.2 As discussed above State Govt. has been maintaining that immediate suspension of mining operations was necessary in view of seriousness of the offence. As discussed above entire case is based on the visit of experts/officials from various departments on 24.09.09 and that there had been no investigation conducted thereafter. Thus the situation continued to remain same from the day of visit to the passing of the Impugned Proceedings; so must be the level of seriousness. Rather it would have been more serious.

It is not clear why the prompt action was not taken by the State Govt. immediately after the visit. No submission/ clarification in this regard has been adduced/ given. This is a matter of serious contradiction on the part of entire State Machinery; whether the same can be left unanswered. If illegal mining to such an extent was going on, then State machinery should not have slept for more than one year and allowing her to continue.

34 From above, I observe that there has been no shred of evidence adduced in any of allegations/findings. No order based on the findings of other department can sustain. I also observe that entire exercise of the State Govt. has been handled in an unprofessional manner. No iota of investigation has been done; it has not gone beyond capacity basis. Principles of natural justice and established law and procedures have not been followed. Impugned Proceedings and

subsequent handling of affairs have even been in contradiction to the basic principles of Indian Jurisprudence i.e. everyone is innocent unless proved guilty. Principles of natural justice have been put on shelf. Hit and run approach like in this case will lead to real illegal miners getting emboldened. Menace of illegal mining cannot be curbed in this way. Justice, fair play and due process has to be followed. In all cases Justice not only should be done but shall also appear to be done. None of these are existing in this case.

In view the circumstances stated above, I pass the following order.

### **ORDER**

I set aside the Impugned Proceedings dt. 25.11.10 of State Govt. of Odisha. Revision succeeds with consequential benefits.

**(Suresh Kishnani)**  
**Director**

