

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P.(C) No. 3599 of 2019**

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Anil Kumar Agrawala, aged about 64 years, son of Late Bishambhar Lal Agarwala, resident of Balajee Tower, 3C, Barganda Power House, P.O., P.S. & District Giridih, Jharkhand.

... .. Petitioner

**Versus**

1. The State of Jharkhand through Secretary, Department of Mines and Geology, Government of Jharkhand at Yojna Bhawan, Doranda, P.O. & P.S. Doranda, District Ranchi.
2. The Director (Mines), Directorate of Mines, Department of Mines and Geology, Government of Jharkhand at Yojna Bhawan, Doranda, P.O. & P.S. Doranda, District-Ranchi.
3. The District Mining Officer, Giridih, P.O., P.S. & District Giridih.

... .. Respondents

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**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD  
HON'BLE MR. JUSTICE ARUN KUMAR RAI**

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For the Petitioner : Mr. Ajit Kumar Sinha, Sr. Advocate  
Mr. Sumeet Gadodia, Advocate  
Mr. Navin Kumar, Advocate  
Mr. Prakhar Harit, Advocate  
Mr. Anish Lal, Advocate  
Ms. Nidhi Lall, Advocate  
For the Respondents : Mr. Rajiv Ranjan, Advocate General  
Mr. Shray Mishra, AC to AG  
Mr. Manish Mishra, GP-V  
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**CAV/Reserved on 12.12.2025**

**Pronounced on : 15/01/2026**

**Per Sujit Narayan Prasad, J.**

**Prayer:**

1. The instant writ petitioner has been filed under Article 226 of the Constitution of India for the following relief(s):

*“A. For the issuance of appropriate writ(s)/ order(s)/direction(s) in the nature of certiorari for quashing the order contained in letter No. 1043*

*dated 07.05.2019 (Annexure-9) issued under the signature of Respondent- Director, Mines whereby and whereunder the application of the petitioner for grant of Mining Lease over an area of 11.21 Hect. at village Charghara and Khedawara in the District of Giridih for granite which had been discovered under the prospecting license/area of the petitioner has been cancelled.*

*B. For the issuance of appropriate writ(s)/ order(s)/direction(s) in the nature of Mandamus for a direction upon the Respondent authorities to take a decision on the application of the petitioner for mining lease of Granite, a minor mineral with reject stone etc. dated 25.8.2016 while considering the fact that in terms of letter No.9 dated 03.01.2018 issued under the signature of the then Director, Mines, the petitioner has deemed prospecting licence of Granite in terms of Rule-14(1)(5) of the Mineral Concessions Rules, 1960 and under section 25 of the M.M.D.R. Amendment Act 2015 and hence, the provisions of 11 (Gha) of J.M.M.C. Rules, 2004 is not applicable with respect to the petitioner.*

*C. For the issuance of appropriate writ(s)/ order(s)/direction(s) upon the Respondents showing them cause as to how and under what circumstances and authority, they had appointed private consultants to recommend for grant of Mining Lease which amounts to interference in the discharge of statutory proceeding under MMDR Act, 1957/JMMC Rules, 2004 and to further spell out the reasons as to how and under what circumstances a deemed prospecting license shall be held to be time barred.*

*And/or*

*The petitioner prays for any other or further order/orders which Your Lordships may deem fit and proper in the interest of justice.”*

**Facts:**

2. The brief facts of the case, as per the pleadings in the writ petition which requires to be enumerated herein, read as under:

An application for prospecting licence under Mineral Concession Rules, 1960 for Magnetite dated 16.2.1993 was filed by Smt. Karuna Devi Agrawala over 138.650 hectares in village Charghara and Khedwara, P.S. Birni, District Giridih.

The then State of Bihar examined and processed the application as per law and recommended the same before Ministry of Mines, Government of India, who in turn granted approval of Central Government under Section 5(1) of Mines and Minerals (Development and Regulation) Act, 1957 for grant of prospecting licence of Magnetite over corrected and revised area of 147.66 Acres for a period of three years in favour of Smt. Karuna Devi Agrawala.

The State of Bihar granted prospecting licence for Magnetite in favour of Smt. Karuna Devi Agrawala over 147.66 Acres for a period of three years vide order contained in Memo No.3977 dated 13.11.2000 and accordingly the Deputy Commissioner, Giridih executed the prospecting licence in favour of Smt. Karuna Devi Agrawala over 147.66 Acres for a period of three years with effect from 20.12.2000. The said prospecting licence was registered on 21.12.2000 before District Sub Registrar Giridih.

Thereafter, the Licensee filed an application for renewal of said prospecting licence for a period of two years on 16.09.2003 which eventually was deemed to be extended under Rule 11(2)(b) of Mineral Concession Rules, 1960.

The Licensee, after having conducted prospecting operations in consultation with Indian Bureau of Mines, filed application for grant of Mining lease for Magnetite, Quartz and Felspar over entire 147.66 Acres area on 19.12.2005 within prescribed time along with geological report as per law.

The Deputy Commissioner, Giridih forwarded the mining lease application to Director, Mines, Jharkhand vide Memo No. 1700/M dated 10.09.2008 wherein the Department of Mines and Geology belatedly directed the mining lease applicant to submit geological report confirming to United Nations Framework Classification (UNFC in short) as late as 23.02.2012 due to amendment in Rules and Guidelines in between.

By virtue of aforesaid deemed extension, the licensee once again conducted prospecting operations over the area by drilling bore holes as mandated under United Nations Framework Classification (UNFC) in consultation with Indian Bureau of Mines, wherein the licensee encountered and discovered a new mineral Granite, which is a minor mineral and accordingly informed the Assistant Mining Officer, Giridih vide communication dated 10.08.2012.

In the meanwhile, upon death of licensee and mining lease applicant Smt. Karuna Devi Agrawala, allowed mutation in favour of her son namely Anil Kumar Agarwala in the pending mining lease application under Rule 25A(1) of Mineral Concession Rules, 1960 applicable then vide order No.600/M dated 02.03.2016.

On 04.03.2016, the new Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016 was notified along with a specific Repeal and Saving Rule 55 thereby operating the deemed extension of prospecting licence of petitioner in terms with Part IV Clause (4) of Model Form of prospecting licence.

Thereafter, the licensee submitted prospecting report as per United Nations Framework Classification (UNFC) including borehole report and accordingly applied for mining lease of Granite minor mineral over revised 27.70 Acres of area along with map and land schedule on 25.08.2016 as mining of Magnetite was not feasible due to scanty reserves. The reserves of Granite and reject stones/stone dust were quantified in United Nations Framework Classification (UNFC) geological report.

Accordingly, the Director, Mines acknowledged the occurrence of new mineral Granite as per Rule 14(v) of Mineral Concession Rules 1960 and wrote to Director Geology vide letter contained in Memo No 09/M dated 03.01.2018 acknowledging the fact that the information was given by licensee on 10.08.2012 itself. In the aforesaid backdrop, the Director, Mines, Jharkhand had duly acknowledged the continuation of deemed prospecting licence of Granite, a minor mineral by the operation of law.

Thereafter, the Director, Geology also examined the geological report/prospecting report submitted by the petitioner and forwarded her comments accepting occurrence of Granite minor mineral in the 27.70 Acres revised area which does not require United Nations Framework Classification (UNFC) categorisation being minor mineral vide reply contained in Memo No. 728/M dated 04.06.2018 addressed to Director, Mines. In the meanwhile, the mining lease applicant submitted a detailed representation dated 08.10.2018/14.01.2019 to the Director, Mines for grant of mining lease of Granite minor mineral with reject stone at the earliest as per law.

The Respondent Director, Mines without providing any opportunity of hearing to the applicant/petitioner or considering the deemed prospecting licence issued in favour of the petitioner by the predecessor-in-office was pleased to cancel the application for grant of mining lease of Granite over an area of 11.21 hectare vide order No, 1043 dated 07.05.2019 on account of following three reasons-

- (i) There is discrepancy in the geological report/prospecting report submitted by the licensee.
- (ii) That with effect from 14<sup>th</sup> March, 2019, Prospecting Licence and Mining Lease for Granite will be granted as per the provisions of JMMC Rules, 2004 through method of electronic auction as per procedures defined in Jharkhand Minor Mineral (Auction) Rules, 2017.
- (iii) As per rule 11 (Gha) of JMMC Rules, 2004, in case the Letter of Intent (LoI) is not issued even after 120 days from the date of application for grant of mining lease, then the application for grant of mining lease stands cancelled.

The petitioner has obtained RTI copies of the decision making process wherein it transpires that the decision to cancel the mining lease application has been taken on the advice of a private consultant M/s KPMG India who has not at all been empowered under Section 26(2) of the Mines and Minerals (Development and Regulation) Act, 1957 by any Gazette notification of State Government to address on the issue and moreover, a private entity can never be delegated with any powers exercisable by the State Government in any capacity be it advisory or

regulatory without the authority of law even if State Government wishes to do so under MMDR Act, 1957 and/or JMMC Rules, 2004 or rules made thereunder.

3. It is evident from the factual aspect as narrated hereinabove that an application for prospecting licence under Mineral Concession Rules, 1960 for Magnetite dated 16.2.1993 was filed by Smt. Karuna Devi Agrawala over 138.650 hectares in village Charghara and Khedwara, P.S. Birni, District Giridih.

The then State of Bihar recommended the same before Ministry of Mines, Government of India, who in turn granted approval of Central Government under Section 5(1) of Mines and Minerals (Development and Regulation) Act, 1957 for grant of prospecting licence of Magnetite for a period of three years in favour of Smt. Karuna Devi Agrawala vide order contained in Memo No.3977 dated 13.11.2000 and accordingly the Deputy Commissioner, Giridih executed the prospecting licence in favour of Smt. Karuna Devi Agrawala over 147.66 Acres with effect from 20.12.2000.

Thereafter, the Licensee filed an application for renewal of said prospecting licence for a period of two years on 16.09.2003. The Licensee, after having conducted prospecting operations in consultation with Indian Bureau of Mines, filed application for grant of Mining lease for Magnetite, Quartz and Felspar over entire 147.66 Acres area on 19.12.2005 within prescribed time along with geological report as per law.

The Deputy Commissioner, Giridih forwarded the mining lease application to Director, Mines, Jharkhand vide Memo No. 1700/M dated 10.09.2008 wherein the Department of Mines and Geology directed the mining lease applicant to submit geological report confirming to United Nations Framework Classification (UNFC in short) as late as 23.02.2012.

By virtue of aforesaid extension, the licensee once again conducted prospecting operations over the area by drilling bore holes as mandated under United Nations Framework Classification (UNFC) in consultation with Indian Bureau of Mines, wherein the licensee discovered a new mineral Granite, which is a minor mineral and accordingly informed the Assistant Mining Officer, Giridih vide communication dated 10.08.2012.

In the meanwhile, upon death of licensee and mining lease applicant Smt. Karuna Devi Agrawala, allowed mutation in favour of her son namely Anil Kumar Agarwala in the pending mining lease application under Rule 25A(1) of Mineral Concession Rules, 1960 applicable then vide order No.600/M dated 02.03.2016.

Thereafter, the licensee submitted prospecting report as per United Nations Framework Classification (UNFC) including borehole report and accordingly applied for mining lease of Granite minor mineral over revised 27.70 Acres of area along with map and land schedule on 25.08.2016. Accordingly, the Director, Mines acknowledged the occurrence of new mineral Granite as per Rule 14(v) of Mineral Concession Rules 1960 and wrote to Director Geology vide letter contained in Memo No 09/M dated 03.01.2018 acknowledging the fact

that the information was given by licensee on 10.08.2012 itself. In the aforesaid backdrop, the Director, Mines, Jharkhand had duly acknowledged the continuation of deemed prospecting licence of Granite, a minor mineral by the operation of law.

Thereafter, the Director, Geology also examined the geological report/prospecting report submitted by the petitioner and forwarded her comments accepting occurrence of Granite minor mineral in the 27.70 Acres revised area which does not require United Nations Framework Classification (UNFC) categorisation being minor mineral vide reply contained in Memo No. 728/M dated 04.06.2018 addressed to Director, Mines. In the meanwhile, the mining lease applicant submitted a detailed representation dated 08.10.2018/14.01.2019 to the Director, Mines for grant of mining lease of Granite minor mineral with reject stone at the earliest as per law.

The Respondent Director, Mines cancelled the application for grant of mining lease of Granite over an area of 11.21 hectare vide order No, 1043 dated 07.05.2019 which is under challenge in this writ petition.

**Argument on behalf of the Petitioner:**

4. Mr. Ajit Kumar Sinha, learned senior counsel for the petitioner has taken the following grounds:
  - (i) It has been submitted that although the license was granted for carrying out mining operation for 'Magnetite' but in course of mining operation, 'Granite' was found which was duly reported to the concerned competent authority and, therefore, in view of the provision of Rule 14(v) of the Mineral Concession Rules, 1960,

prospecting licence which has been granted for carrying out mining operation for 'Magnetite' will be deemed to have been granted for carrying out mining operation of 'Granite'.

(ii) Further, ground has been taken that in view of the provision of Section 10A(2)(B) of the Mines & Mineral (Development & Regulation) Amendment Act, 2015, vested and accrued right in favour of petitioner exists for grant of mining lease of Granite in its favour.

(iii) It has also been contended that Granite Conservation and Development Rules, 1999 would apply with respect to grant of mining lease of minor mineral 'Granite' and the provisions of Jharkhand Minor Mineral Concession Rules, 2004, including its amendment have no applicability in the case of petitioner.

5. The learned counsel for the petitioner, based upon the aforesaid grounds, has submitted that the impugned order, therefore, suffers from error and hence, is not sustainable in the eyes of law.

**Argument on behalf of the Respondents:**

6. Learned counsel appearing for the respondent-State has submitted while defending the order passed by the Director, Mines that the petitioner had filed an application for grant of mining lease of Minor Mineral 'Granite' over revised area of 27.70 acres along with map and land schedule on 25.08.2016 but the said mineral had not been included in the prospecting licence granted in favour of Smt. Karuna Devi Agarwala, as such, the order dated 07.05.2019 rejecting the application of the petitioner for grant

- of lease for 'Granite' over an area of 11.21 hectares cannot be said to suffer from an error.
7. It has been contended that since granite come under the fold of minor mineral therefore JMMC Rule 2004 as amended will be applicable herein.
  8. The application / rights that is covered under Section 10A(2)(B) can be processed for mining lease under Jharkhand Minor Mineral Concession Rules, 2004 as amended for the mineral which were classified as minor mineral from major mineral. (The mineral Granite is in the minor mineral list at serial no.-17 of Schedule-2 of Jharkhand Minor Mineral Concession (Amendment) Rules, 2015).
  9. It has been contended that the provision which is applicable to process the application for mining leases of application / rights covered under Section 10A(2)(B) is Rule-11 (ga) of the Jharkhand Minor Mineral Concession (Amendment) Rules, 2014. The said Rule provides the process for issuance of the letter of intent (Lol) that is saving clause to the application of prescribed format to proceed further for getting environmental clearance that is mandatory under Rule-11 (kha) of JMMC Amendments Rule 2014 for grant of the application and in case of not having letter of intent (Lol), the application is deemed to have lapsed as per Rule-11 (ga) of the Jharkhand Minor Mineral Concession (Amendment) Rules, 2014 and further as per Rule 9 (kha) of the JMMC Amendment Rules 2019 , the grant of mining lease shall be done through electronic e-auction by the Director mines.

10. It has further been submitted that as per provisions of Section- 10A(2)(B) of the Mines & Mineral (Development & Regulation) Amendment Act, 2015 the application was considered but it is pertinent to mention that when lessee got the knowledge of the finding of new mineral Granite, that is a minor mineral, after the exploration, the application for the minor mineral should have been filed in the prescribed format, that is Form-A of the JMMC Rules, 2004 and in the present case, application was in the form of a letter. The order impugned has been passed by the Director Mines was on the basis of the provisions available at the time of taking the decision.
11. The learned State counsel, based upon the aforesaid ground, has submitted that, therefore, the impugned order cannot be said to suffer from error.

**Analysis:**

12. We have heard learned counsel for the parties and gone through the pleadings made in the writ petition as also the material available on record and the order passed by the Director, Mines.
13. This Court on appreciation of the argument and material available on record is required to answer the following issues:
  - (i) Whether after granting the prospecting licence, in the facts and circumstances of the present case, any right has been accrued in favour of the writ petitioner said to be vested one in a situation of admitted fact that due application was not made under the requisite form, i.e., Form-A.

- (ii) Whether non-submission of application in due form, i.e., Form-A, if has not been filed, is it available for the writ petitioner to claim the accrued right merely on the basis of the issuance of prospecting licence after exploration of Granite in place of Magnetite.
- (iii) Whether in such an admitted fact where application was not submitted in Form-A prior to amendment in the MMDR Act, 2015 even though the same has not been taken note in the order passed by the Director, Mines as has been stated in the counter affidavit filed on behalf of the State, merely on the aforesaid ground, will it be proper for this Court in such an admitted position of amendment in the MMDR Act, 1957 in the year 2015 to interfere with the order passed by the Director, Mines merely on the ground that prior to coming into effect of the amendment in the MMDR Act due to issuance of prospecting licence, the right has been accrued even though the application was not submitted in the due format as provided under the statute.
- (iv) Whether the fact which has been brought to the notice of the Court by filing counter affidavit on behalf of the State even though it was not considered by the Director, Mines and as such, applying the principle as laid down in the case of *Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others, (1978) 1 SCC 405* will it be proper for this Court to remand the matter to pass order afresh in such a situation where the form in due format was not submitted and will it not lead to allowing space to the writ petitioner to fill up the lacuna of submission of form in

due format to take the ground of accrued right said to be accrued prior to amendment in the MMDR Act, 1957.

14. All the issues since are interlinked, as such, the same are being taken up together.
15. But before answering the said issues, the admitted facts need to be referred herein that an application for prospecting licence under Mineral Concession Rules, 1960 for Magnetite dated 16.02.1993 was filed by Smt. Karuna Devi Agrawala over 138.650 hectares in village Charghara and Khedwara, P.S. Birni, District Giridih.
16. The then State of Bihar recommended the same before Ministry of Mines, Government of India, who in turn granted approval of Central Government under Section 5(1) of Mines and Minerals (Development and Regulation) Act, 1957 for grant of prospecting licence of Magnetite for a period of three years in favour of Smt. Karuna Devi Agrawala vide order contained in Memo No.3977 dated 13.11.2000 and accordingly the Deputy Commissioner, Giridih executed the prospecting licence in favour of Smt. Karuna Devi Agrawala over 147.66 Acres with effect from 20.12.2000.
17. Thereafter, the Licensee filed an application for renewal of said prospecting licence for a period of two years on 16.09.2003. The Licensee, after having conducted prospecting operations in consultation with Indian Bureau of Mines, filed application for grant of Mining lease for Magnetite, Quartz and Felspar over entire 147.66 Acres area on 19.12.2005 within prescribed time along with geological report as per law.

18. The Deputy Commissioner, Giridih forwarded the mining lease application to Director, Mines, Jharkhand vide Memo No. 1700/M dated 10.09.2008 wherein the Department of Mines and Geology directed the mining lease applicant to submit geological report confirming to United Nations Framework Classification (UNFC in short) as late as 23.02.2012.
19. By virtue of aforesaid extension, the licensee once again conducted prospecting operations over the area by drilling bore holes as mandated under United Nations Framework Classification (UNFC) in consultation with Indian Bureau of Mines, wherein the licensee discovered a new mineral Granite, which is a minor mineral and accordingly informed the Assistant Mining Officer, Giridih vide communication dated 10.08.2012.
20. In the meanwhile, upon death of licensee and mining lease applicant Smt. Karuna Devi Agrawala, allowed mutation in favour of her son namely Anil Kumar Agarwala in the pending mining lease application under Rule 25A(1) of Mineral Concession Rules, 1960 applicable then vide order No.600/M dated 02.03.2016.
21. Thereafter, the licensee submitted prospecting report as per United Nations Framework Classification (UNFC) including borehole report and accordingly applied for mining lease of Granite minor mineral over revised 27.70 Acres of area along with map and land schedule on 25.08.2016.
22. Accordingly, the Director, Mines acknowledged the occurrence of new mineral Granite as per Rule 14(v) of Mineral Concession Rules 1960 and wrote to Director Geology vide letter contained in Memo No 09/M dated

- 03.01.2018 acknowledging the fact that the information was given by licensee on 10.08.2012 itself.
23. Thereafter, the Director, Geology also examined the geological report/prospecting report submitted by the petitioner and forwarded her comments accepting occurrence of Granite minor mineral in the 27.70 Acres revised area which does not require United Nations Framework Classification (UNFC) categorisation being minor mineral vide reply contained in Memo No. 728/M dated 04.06.2018 addressed to Director, Mines. In the meanwhile, the mining lease applicant submitted a detailed representation dated 08.10.2018/14.01.2019 to the Director, Mines for grant of mining lease of Granite minor mineral with reject stone at the earliest as per law.
24. The Respondent Director, Mines cancelled the application for grant of mining lease of Granite over an area of 11.21 hectare vide order No, 1043 dated 07.05.2019.
25. Further admitted fact is required to be taken from the counter affidavit filed on behalf of the State wherein the State Government in the said affidavit has come out with the ground that the competent authority of the State Government has not been approached by filing application under due format, i.e., Form-A, however, the same was not the subject matter of consideration before the Director, Mines.
26. Learned counsel for the petitioner, in the aforesaid pretext, has taken the ground that since the stand inter alia has been taken in the counter affidavit was not placed before the Director, Mines and as such, the same

cannot be allowed to be inserted in the order passed by the Director, Mines for the purpose of improving the same.

27. This Court is not in dispute regarding the principle as has been laid down by the Hon'ble Apex Court in the case of *Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others* (supra) where the proposition has been laid down that the order which has been passed by the authority or quasi-judicial functionary cannot be allowed to be improved by way of stand taken in the affidavit.
28. Further, the law in this regard is well settled that the applicability of judgment is to be tested on the facts and circumstances of each and every case individually. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in *Dr. Subramanian Swamy vs. State of Tamil Nadu and Others, (2014) 5 SCC 75*, paragraph 47 of which reads as under:

*“47. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. “The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.””*

29. This Court before considering the said argument needs to refer the decision so taken by the Director, Mines in the order dated 07.05.2019 as has been impugned wherein the following reasons have been taken for rejection of the application for grant of mining lease of Granite:
- (i) There is discrepancy in geological report/prospecting report submitted by the licensee.

- (ii) That with effect from 14<sup>th</sup> March, 2019, Prospecting Licence and Mining Lease for Granite will be granted as per provisions of JMMC Rules, 2004 through method of electronic auction as per procedures defined in Jharkhand Minor Mineral (Auction) Rules, 2017.
- (iii) As per Rule 11 (Gha) of JMMC Rules, 2004, in case the Letter of Intent (LOI) is not issued even after 120 days from the date of application for grant of mining lease, then the application for grant of mining lease stands cancelled.
30. Thus, it is evident that the ground which has been taken on behalf of the State in the counter affidavit was not brought before the Director, Mines. Therefore, the question which requires consideration as to whether merely because the fact which has been stated by the State in the counter affidavit if was not brought to the notice of the Director, Mines, can by applying the ratio laid down by the Hon'ble Apex Court in *Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others* (supra), the matter be remitted in case of admitted position where the application was not submitted in due format as per the statement made in the counter affidavit at paragraph no 16. For ready reference the statement so made in the counter affidavit is being reproduced as under:

*“16. That it is humbly stated and submitted that as per provisions of Section-10A(2) (B) of the Mines & Mineral (Development Amendment Act, 2015 the application was considered. It is pertinent to mention that when lessee got the knowledge of the finding of new mineral Granite that is minor mineral after the exploration, the application for the minor mineral should have been Filed in the prescribed*

*format, that is form-A of the JMMC rules, 2004, but in the present case application was in the form of a letter. Further it is humbly submitted that the application /rights that is covered under Section 10A (2) (B) can be processed for mining lease under Jharkhand Minor Mineral Concession Rules, 2004 as amended for the mineral which were classified as minor mineral from major mineral.”*

31. Such consideration is to be made in the background of the fact that the prospecting licence was granted in favour of the writ petitioner for the purpose of exploring Magnetite. The petitioner, in course of mining exploration, has found that there was Granite and the same was reported to the State Government vide communication dated 10.08.2012 which was acknowledged but in the meanwhile, the MMDR Act has been amended in the year 2015 by making departure from the earlier provision the day when the prospecting licence was granted and after amendment in the MMDR Act, 1957, granite has been brought into the category of minor mineral.
32. The ground has been taken regarding the accrual of right in favour of the writ petitioner and in a situation where the Act was not same as was available on the day when the prospecting licence was issued rather there is departure and as such, this Court is to consider the background of the departure made by virtue of the amendment in the MMDR Act as to whether any right will be said to be accrued by issuance of prospecting licence in a situation where the application was not submitted under form, i.e., Form-A.
33. The matter would have been different if there was no amendment in the MMDR Act, then, what is being submitted on behalf of the petitioner, there would have been no dispute to the same but the case is otherwise herein due to amendment in the MMDR Act in the year 2015.

34. The question of accrual of right said to be vested in a party is to be taken into consideration on the basis of the applicability of the law. Since the accrued right can only be said to be accrual if based upon the vested right under the statutory provision in vogue. The accrued right can also have been said to be accrued to a person if there is no laches lying on the part of a party concerned rather all the applications have been made in order but in the meanwhile, the law has been amended then, in such a circumstance, the right will be said to be in favour of a party concerned.
35. But, herein, it is the admitted fact as has been admitted by the learned counsel for the petitioner that the application was not submitted in due format.
36. The law in the meanwhile has changed, as such, the question of accrual of right is to be tested on the basis of the amended law since prior to amendment in the MMDR Act, 1957 the application was not filled in due format, therefore, the right will not be said to be accrued in favour of the petitioner said to be carried over after the departure from the old Act through the new Act by virtue of the fact of amendment.
37. The moment the Act has been amendment, then, all the processes is to be taken into consideration on the basis of the provision of amended law and not on the basis of the repealed statutory provision. But, as per the settled position if the right has been accrued said to be vested on the basis of the repealed Act and in the meanwhile, if the amended Act came into being, then, as per the provision of Clause 6 of the General Clauses Act saving clause will be operative and in that view of the matter, the person concerned will be said to get the accrued right by virtue of impliedly

saving the right which was created during the enactment of the old Act. But, herein, the new Act has come into being and in such a situation where the application was not made in Form-A, which contains the following conditions to be followed. For ready reference, the reference of the details of Form-A showing the requirement to be fulfilled by one or the other applicants are as under:

**“अनुसूची-4**

**प्रपत्र 'ए' (देखें नियम 9(2))**

निम्नांकित खनन प्लान में सम्मिलित होंगे -

- (i) आवेदक का नाम
- (ii) पता  
शहर  
जिला  
पिन कोड  
फोन नं.  
ई-मेल
- (iii) आवेदक की स्थिति
- (iv) खनन प्लान बनाने वाले मान्य योग्य व्यक्ति का नाम  
पता  
शहर  
जिला  
पिन कोड  
फोन नंबर  
ई-मेल
- (v) मान्य योग्य व्यक्ति (RQP) का पंजीकरण क्रमांक अथवा राज्य सरकार का प्राधिकार स्वीकृत एवं नवीनीकरण की तारीख ..... तक वैध
- (vi) पूर्वक्षण एजेन्सी का नाम एवं विवरणी
- (vii) पता  
शहर  
जिला  
पिन कोड  
फोन नंबर  
ई-मेल

- (viii) क्या क्षेत्र का पूर्वक्षण, भूतत्व निदेशालय अथवा किसी अन्य प्राधिकृत भूतात्विक अन्वेषण एजेंसी द्वारा किया गया है, यदि हां तो पूर्वक्षण प्रतिवेदन की सत्यापित प्रति संलग्न करें
- (ix) अवस्थिति तथा अभीगम्यता  
जिला, थाना, अंचल हल्का नंबर, ग्राम,  
खसरा क्रमांक/कक्ष क्रमांक पट्टा क्षेत्र  
हेक्टेयर में स्वामिस्व  
यदि पास में कोई सावर्जनिक सडक/रेलवे लाइन होने पर उसकी लगभग  
दूरी/अक्षांश-देक्षांश सहित टोपोशीट क्रमांक  
आरक्षित वन संरक्षित वन के अतर्गत क्षेत्र को  
वन मानचित्र पर चिह्नांकित किया जाए
- (x) खनिज निकाय की प्रकृति और विस्तार  
दर्शित करने वाले क्षेत्र
- (xi) स्थल अथवा स्थलों, जहां खनन  
कार्य प्रस्तावित हो तथा उत्खनन  
संक्रियाओं की प्रस्तावित अधिकतम गहराई
- (xii) भू-गर्भीय जल अध्ययन रिपोर्ट
- (xiii) अंतिम खनन प्लान, खनन का  
वार्षिक कार्यक्रम तथा पांच वर्षों के लिए वर्षवार उत्खनन हेतु प्लान
- (xiv) मानवीय खनन या मशीनरी और  
यांत्रिक युक्तियों के उपयोग द्वारा खनन की सीमा
- (xv) पर्यावरण की सुरक्षा, विशेषकर खनन  
कार्य के कारण वायु एवं जल प्रदूषण के उपाय
- (xvi) भूमि के पुनरुद्धार के उपाय
- (xvii) खनन बंद करने के प्लान

38. The said Form-A is the requisite form and any further process is to be undertaken if filed under Form-A. The question, therefore, is that in such an admitted case that the application was not submitted in form-A then, can it be said that, as has been argued on behalf of the learned counsel for the petitioner, that right has been accrued. The answer of this Court would be in negative reason being that the right would have been said to be accrued in his favour if the application could have been filed in Form-A but that is not the case herein.

39. Although the said fact has not been brought to the notice of the Director, Mines rather the Director, Mines had travelled towards different direction but that cannot be a ground to remit the matter before the Director, Mines in such a situation where the application was not submitted in Form-A and if the matter would be remitted before the Director, Mines, then, the irregularity which has been committed by the petitioner in not submitting the application in Form-A, would be allowed to be fulfilled which according to our considered view, will not be just and proper and it is due to the reason that if the irregularity has been committed then the same cannot be allowed to be regularized other wise it will be in derogation of the required procedure.
40. Further question which has been raised that the stand which has been taken in the counter affidavit has not been considered by the Director, Mines and as such, the same cannot be allowed to be improved by way of affidavit.
41. As we have already referred hereinabove that by way of affidavit, the ground cannot be allowed to be improved if not considered by the administrative authority or quasi-judicial functionary but the same is also to be tested on the facts and circumstances of each and every case individually.
42. It is admitted case herein that as per the provisions of Section-10A(2) (B) of the Mines & Mineral (Development Amendment Act, 2015 the said application was considered. But when lessee got the knowledge of the finding of new mineral Granite that is minor mineral after the exploration, the application for the minor mineral should have been filed

in the prescribed format, that is form-A of the JMMC rules, 2004, but in the present case application was in the form of a letter.

43. It is well settled that if a particular procedure in filling up the application form is prescribed, the application form should be filled up following that procedure alone. This was enunciated by Privy Council in the *Nazir Ahmad v. King- Emperor* wherein it was held that “that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

44. A three Judge Bench of the Hon’ble Apex Court in a judgment reported as *Chandra Kishore Jha v. Mahavir Prasad & Ors* held as under:

*“17.....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. King Emperor [(1935-36) 63 IA 372 : AIR 1936 PC 253 (II)]*

45. The said principle has been followed by this Court in *Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh & Ors.* wherein this Court held as under:

*“14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.....”*

46. The admitted fact herein is that the application was not submitted in Form-A and even if it would be remitted before the Director, Mines, as has been argued on behalf of the learned counsel for the petitioner, then no purpose will be served in a case of admitted situation where it is admitted that the petitioner has not submitted application in due format

rather this Court, is of the view that if such opportunity will be given then the Court will give premium to the petitioner by giving space to regularize the irregularity which has already been committed the day when the old Act was there and on the day the new Act has come.

47. The stand *inter alia* taken by the State in the counter affidavit as would be evident from the statement made at paragraph- 16 wherein it has been stated that the case of the petitioner has been considered in the light of the provision of Section 10A(2)(B) in order to assess the case of the exception to come under the eligibility criteria but even then, the petitioner has failed to make out a case by not complying the requirement as required as per the Rule 2004 and further after the discovery of minor mineral Granite in the year 2016, the application should have been in the format of applicable JMMC Rule 2004 but the same has not been filed in the required format. The said fact has not been rebutted by filing any rejoinder affidavit to that effect.
48. As such the question is that even though the said aspect of the matter has not been taken into consideration by the authority in the order impugned and the stand which has been taken by the State in counter affidavit which even has not been disputed then for what purpose it is to be remitted before the authority concerned. Will it not be futile exercise and empty formality as per the ratio laid down by the Hon'ble Apex Court in the case of *Escorts Farms Ltd. Vs. Commissioner, Kumaon Division, Nainital, U.P. & others, (2004) 4 SCC 281*, wherein at paragraph no.64 it has been held which reads as under:

*“64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without*

*permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India.”*

49. In ***Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati and Ors., (2015) 8 SCC 519***, their Lordships have held at paragraph-39 which is being reproduced as under:

*“39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason- perhaps because the evidence against the individual is thought to be utterly compelling- it is felt that a fair hearing “would make no difference”- meaning that a hearing would not change the ultimate conclusion reached by the decision maker.”*

50. This Court, therefore, is of the view that it is not the case for remitting the matter before the authority rather it will lead to empty formality and futile exercise.
51. Further, this Court is of the view that since this Court is exercising the power conferred under Article 226 of the Constitution of India and as per the discussion made hereinabove, in a situation of admitted fact of non-submission of application in due format, i.e., Form-A, no premium can be given to the petitioner by showing interference with the order passed by the Director, Mines.
52. This Court, in the entirety of facts and circumstances of the case, is of the view that the present writ petition is fit to be dismissed.
53. Accordingly, the instant writ petition fails and stands dismissed.

54. Pending interlocutory application(s), if any, also stands disposed of.

**I agree**

**(Sujit Narayan Prasad, J.)**

**(Arun Kumar Rai, J.)**

**(Arun Kumar Rai, J.)**

15<sup>th</sup> January, 2026

*Saurabh/A.F.R.*

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