

The Orissa Minerals (Prevention Of Theft, Smuggling And Other Unlawful Activities) Act, 1988

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Act 23 of 1989

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The Orissa Minerals (Prevention Of Theft, Smuggling And Other Unlawful Activities) Act, 1988[29th November 1989][ACT 23 OF 1989]An act to provide for the prevention of theft, smuggling and other unlawful activities in relation to minerals in the state and for matters connected therewith or ancillary or incidental thereto.Be it enacted by the Legislature of the State of Orissa in the Fortieth Year of the Republic of India, as follows:

1. Short title, extent and commencement

(1)This Act may be called the Orissa Minerals (Prevention of Theft, Smuggling and other Unlawful Activities) Act, 1989.(2)It shall extend to the whole of the State of Orissa.(3)It shall come into force on such date as the State Government may by notification in the Official Gazette appoint.

2. Definitions

In this Act, unless the context otherwise requires –(a)“Competent authority” means a competent authority appointed under Section 5;(b)“Government” means the State Government of Orissa;(c)“licence” means a licence granted under Section 6;(d)“minerals” means minerals as defined in the Mines and Minerals (Regulation and Development) Act, 1957 and includes precious semi-precious and uncut stones and does not include minor minerals as defined under Clause (a) of Section 5 of the Mines and Minerals (Regulation and Development Act, 1957. (67 of 1957);(e)“permit” means a permit granted under Section 8;(f)“prescribed” means prescribed by rules;(g)“rules” means rules made by the Government under this Act.

3. Act not to apply to certain matters

Nothing contained in this Act shall apply to –(i) Possession, storage, selling, trading in or otherwise dealing with any mineral; (ii) Transporting or removing of any mineral from one place to other where such possession, storage, selling, trading, transporting or removing of minerals is governed by any law made by the Parliament on the subject for the time being in force.

4. Restriction on possession, storage etc. of minerals

No person shall –(i) possess store, sell, trade in or otherwise deal with any mineral except under and in accordance with terms and conditions of a licence: or (ii) Transport or remove any mineral from any place except under and in accordance with the terms and conditions of a permit.

5. Appointment of Competent Authority

The Government may by notification (i) appoint as many officers of the Mining and Geology Department as maybe required, to be competent authorities; and (ii) define the local limits within which the competent authorities shall exercise their jurisdiction for the purpose of this Act.

6. Grant of licence

(1) Any person who wishes to possess, store, sell trade in or otherwise deal with any mineral shall make an application to the competent authority for a licence (2) Every applicant under Sub-section (1) shall be made in such form and accompanied by such fee as may be prescribed. (3) On receipt of an application under Sub-section (1) the competent authority within the prescribed time may grant a licence in such form, for such period and subject to such terms and conditions as may be prescribed or may refuse to grant the licence in such case he shall communicate the reasons of such refusal to the person concerned.

7. Rescission of licence

The competent authority may at any time during the currency of a licence and after giving an opportunity of being heard to the licensee, rescind the licence by an order in writing communicated to the licensee for breach of any of the terms and conditions of the licence.

8. Grant of permit

(1) Any person who wishes to transport or carry away any mineral from any place shall make an application to the competent authority for a permit. (2) Every application under Sub-section (1) shall be made in such form and accompanied by such fee as may be prescribed. (3) On receipt of an application under Sub-section (1), the competent authority within the prescribed time may grant a permit in such form, for such period and subject to such terms and conditions as may be prescribed or refuse to grant the permit in which case he shall communicate the reasons of such refusal to the

person concerned.(4)Notwithstanding anything contained in this section, the competent authority may by order in writing prohibit transportation of any or all minerals in any area during any particular period or hours of day and night.

9. Cancellation or suspension of permit

The competent authority may at any time during the currency of a permit and after giving an opportunity of being heard to the permit-holder, cancel or suspend the permit by an order in writing communicated to the permit-holder for breach of any of the terms and conditions of the permit.

10. Appeal

(1)Any person aggrieved by an order of the competent authority under Sub-section (3) of Section 6, Section 7, Sub-section (3) of Section 8 or Section 9 may within sixty days from the date of communication of the relevant order, prefer an appeal to an authority appointed by the Government (hereinafter referred to as the appellate authority) in the prescribed form and manner.(2)On receipt of an appeal under Sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard dispose of the appeal within such period as may be prescribed.(3)The appellate authority may entertain the appeal after expiry of the period of sixty days if the appellant satisfies the appellate authority that he was prevented by sufficient cause from filing the appeal in time.

11. Finality of orders

Except as provided in Section 29, an order passed by the competent authority under Sub-section (3) of Section 6, Section 7, Sub-section (3) of Section 8 or Section 9 shall, subject to the orders passed in appeal under Section 10, be final.

12. Penalty

(1)Whoever fails to comply with or contravenes any of the provisions of this Act or the-rules shall, on conviction, be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees or with both.(2)If the failure of contravention referred to in Sub-section (1) continues after the date of conviction, the offender shall be punishable with an additional fine of two hundred rupees for each day of such failure or contravention.(3)Offences under this Act shall be cognizable and non-available.

13. Offences by companies

(1)Where any offence under this section has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;Provided that nothing

contained in this section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such an offence;(2)Notwithstanding anything contained in Sub-section (1) where an offence under this Act has been committed and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.Explanation - For the purpose of this section –(a)“Company” means any body corporate and includes a firm or other association of individuals; and(b)“Director” in relation to a firm, means a partner in the firm.

14. Cognizance of offence

No Court shall take cognizance of any offence punishable under this Act except on a complaint in writing made by:(a)A Police Officer not below the rank of a Sub-Inspector; or(b)Any person authorized in this behalf by the Government.

15. Compounding of offence

Any offence punishable under this Act may, either before or after the institution of the prosecution be compounded by the competent authority on payment of such sum as such authority may determine and, on payment thereof –(a)no further proceedings shall be commenced against such person or property;(b)if any proceedings have already been commenced against such person such proceedings shall not be further proceeded with;(c)the accused person, if in custody, shall be discharged and the property seized shall, if it is not to be so retained, be released.

16. Seizure of property liable to confiscation

(1)When there is reason to believe that an offence has been committed in respect of any mineral such mineral, together with all tools, vehicles or other conveyances used in committing any such offence may be seized by an officer authorized by the Government in that behalf (hereinafter referred to as the authorized officer) or a Police Officer.(2)Every officer seizing any property under this section shall place on such property a mark in such manner as may be prescribed, indicating that the same has been so seized and shall as may be, except where the offender agrees in writing to get the offence compounded, either produce the property seized before the competent authority or make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.(3)Where any mineral seized under Sub-section (1) produced before the competent authority under Sub-section (2) and he is satisfied that an offence has been committed in respect thereof, he may order confiscation of the mineral so seized and produced, together with the tools vehicles or other conveyances used in committing such offence.(4)No order confiscating any property shall be made/under Sub-section (3) unless the person from whom the property is seized is given –(a)a notice in writing informing him of the grounds on which it is proposed to confiscate such property;(b)an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and(c)a

reasonable opportunity of being heard in the matter.(5)Without prejudice to the provisions of Sub-section (4) no order of confiscation under Sub-section (3) of any tool, vehicle or other conveyance shall be made if the owner thereof proves to the satisfaction of competent authority that it was used without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool, vehicle or other conveyance in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.(6)The property seized under this section shall be kept in the custody of the authorized officer or with any third party until the compensation for compounding the offence is paid or until an order of the Magistrate directing its disposal is received.(7)Any officer above the rank of the competent authority empowered by the Government in this behalf by notification, may, within thirty days from the date of the order of confiscation, by the competent authority under Sub-section (3), on an application, call for and examine the records of the case and may make such enquiry or cause such enquiry to be made and pass such order as he may think fit:Provided that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

17. Power to release property seized on bond

The competent authority, who has seized any tools, vehicles or other conveyances under Section 16 and where a report of such seizure has been made to the Magistrate under Sub-section (2) of that section, may release the same on the execution by the owner thereof a bond for this production of the property so released if and when so required before the Magistrate having jurisdiction to try the offence on account of such seizure has been made.

18. Powers of entry, search, seizure etc.

The competent authority or any other officers authorized by the State Government in this behalf may with such assistance, if any as he thinks fit:(a)search any person if he has the reason to believe that such person is carrying minerals in contravention of the provisions of the Act of rules made there under;(b)require the owner, occupier or any other person in-charge of any place, premises, vehicle or vessel or other conveyances in which he has reason to believe that any contravention of any of the provisions of this Act or of the conditions of any licence or permit issued there under has been, is being or is about to be committed to produce any books, accounts or other documents showing transactions relating to such contravention;(c)enter, inspect or break open and search any place of premises vehicles or vessels or other conveyances in which he has reason to believe that any contravention of any of the provisions of this Act of the conditions of any licence or permit issued there under has been is being or is about to be committed;(d)seize any documents or take or cause to be taken extracts from or copies of any documents showing transactions relating to such contraventions which are produced before him; and(e)search, seize and remove the stock minerals and the animals, vehicles, vessels or other conveyances used in carrying the said minerals in contravention of the provisions of this Act or of the conditions of the licence or permit issued there under and thereafter take or authorise the taking of all measures necessary for securing the production of stocks of minerals and the animals, vehicles, vessels or other conveyances so seized in a Court and for their safe custody pending such production.

19. Action after seizure

Upon receipt of any report under Subsection (2) of Section 16, the Magistrate shall except where the offence has been compounded, with all convenient dispatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

20. Minerals, tools, etc. liable to confiscation by Courts

The mineral which are the property of Government and in respect of which an offence has been committed and all tools, vehicles and other conveyances used in committing the offence, shall be liable to confiscation unless an order of confiscation has already been passed in respect thereof under Section 16.

21. Disposal of minerals on conclusion of trial

When the trial of any offence is concluded, the mineral in respect of which such offence has been committed, shall if it is the property of Government or has been confiscated, be taken in charge of by the competent authority and in any other case, may be disposed of in such manner as the Court may direct.

22. Procedure when offender is not known or cannot be found

Where the Magistrate is of the opinion that an offence was committed, but the offender is not known or cannot be found, he may on an application made in this behalf, order the property in respect of which the offence was committed and which was seized to be confiscated and taken possession of by or under the authority of the competent authority, or to be made over to any person, whom the Magistrate considers to be entitled to the same: Provided that before making any such order the Magistrate shall cause a notice of any application made under this section to be served upon any person who he has reason to believe, is interested in the property seized or shall publish such notice in such manner as he thinks fit: Provided further that no such order shall be made until the expiration of one month from the date of seizing such property or without hearing the person if any, claiming any right thereto and the evidence if any, which he may produce in support of his claim.

23. Appeal from orders under Section 20, 21 or 22

The officer, who made the seizure under Section 16 or any person claiming to be interested to the property so seized, may, within one month from the date of any order passed under Section 20, Section 21 or Section 22 prefer an appeal to the Court to which orders made by such Magistrate are ordinarily appealable and the order passed on such appeal shall be final.

24. Property when to vest in Government

(1)When an order for confiscation of any property has been passed under Section 20 or Section 22, as the case may be, and the period limited by Section 23 for filing an appeal from such order has elapsed, and no such appeal been preferred or when, on such an appeal being preferred, the appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all encumbrances.(2)When an order of confiscation of any property passed under Section 16 has become final under that section in respect of the whole or any portion of the property, such property or the portion thereof as the case may be, shall vest in the Government free from all encumbrances.

25. Saving of power to release property seized

Nothing in this Act shall be deemed to prevent the competent authority from directing at any time the immediate release of any property seized under Section 16 and the withdrawal of any charge made in respect of such property in accordance with the provisions of Section 321 of the Code of Criminal Procedure, 1973 (2 of 1974):Provided that where a report has been made to the Magistrate of property seized under Section 16, the competent authority shall not release the property without the consent in writing of such Magistrate if a case is pending before him, and in other cases without previous intimation to him.

26. Confiscation to be no bar to imposition of other penalty

An order of confiscation made under Section 16 shall not act, as a bar to the imposition of any other penalty to which the offender is liable under this Act or the rules.

27. Powers to arrest and detain

(1)Any Police Officer not below the rank of a Sub-Inspector or the competent authority or any other officer specially empowered in this behalf by the Government may, without orders from a Magistrate and without a warrant, arrest and detain in custody any person if such officer or authority knows or has reason to believe that such person is committing or is about to commit or has committed any offence under this Act.(2)Every person arrested or detained in custody under this section shall be informed, as soon as may be of the grounds for such arrest and detention and shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary, for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

28. Power to release a person on bond

The competent authority may release any person arrested under Section 27 on his executing a bond to appear if and when so required before the Magistrate having jurisdiction in the case.

29. Authorised persons to be public servants

The officers authorised by the Government under Section 16 shall be deemed to be public servants within the meaning of Section 21, of the Indian Penal Code (45 of 1860).

30. Revision

(1)The Government may, on an application by any party aggrieved by an order passed in appeal under Section 10 or and order passed in revision under Sub-section (7) of Section 16 filed within the prescribed period, revise such order.(2)The Government may on its own motion call for and examine the report of any proceeding in which any authority subordinate to it has made any decision or order under this Act, for the purpose of satisfying itself as to the regularity of such proceeding or the correctness legality or propriety of such decision or order and if in any case it appears to the Government that any such decision or order ought to be notified altered remitted or reversed it may pass such orders accordingly.(3)The Government shall not revise any decision or order under this section(i)after the expiry of one year from the date of such decision or order; and(ii)Without giving the parties concerned an opportunity of being heard in the matter.

31. Presumption that minerals belong to Government

When, in any proceedings taken under this Act, or in consequence of anything done under the act, a question arises as to whether any mineral is the property of Government; such mineral shall be presumed to be the property of Government until the contrary is proved.

32. Protection of action taken under this Act

(1)No suit or other legal proceedings shall lie against any officer of the Government for anything which is in good faith done or intended to be done in pursuance of this Act or the rules or any order made thereunder.(2)No suit or legal proceedings shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or the rules or any order made thereunder.

33. Operation of other laws not barred

Nothing in this Act shall be deemed to bar the prosecution of any person under any other law for any act or omission which constitutes an offence or from being liable under such other law to any higher punishment or penalty than that provided under this Act or the rules:Provided that no person shall be prosecuted and punished for the same offence more than once.

34. Exemption

The Government may, by notification, exempt any person or class of persons from the purview of this Act, provided the minerals/ores is stored/carried for a scientific test and research work only.

35. Recovery of money due to Government

All money, except fines imposed by judicial Courts due under this Act or the rules may, if not paid when due, be recovered as if it were an arrear of public demand.

36. Service of notice

All notices issued under this Act or the rules shall be deemed to have been duly served if delivered in person to the addressee or his agent or any adult member of his family or where the addressee or his agent or the adult member of his family refuses to receive, by affixing a copy of the notice on some conspicuous part of the residence or place of business of the addressee or by advertisement in the newspapers.

37. Power to make rules

(1)The Government may, by notification, make rules for carrying out the provisions of this Act.(2)In particular and without prejudice to the generality of the foregoing powers such rules may provide for all or any of the following matters, namely:(a)the form of application for licence to be made under Sub- section (1) of Section 6 including the fee to be accompanied therewith and the manner of payment thereof;(b)the form and the terms and conditions of licence to be granted under Sub-section (3) of Section 6;(c)the form of application for permit to be made under Sub-section (1) of Section 8 including the fee to be accompanied therewith and the manner of payment thereof;(d)the form and the terms and conditions of permit to be granted under Sub-section (3) of Section 8;(e)the form of appeal under Section 10;(f)the manner of placing mark on seized property under Sub- section (2) of Section 16;(g)maintenance of records on stock of minerals and furnishing of reports and information by the licensee to the competent authority; and(h)any other matter which is required to be or may be, prescribed.