

ODISHA MINERALS (PREVENTION OF THEFT, SMUGGLING AND OTHER UNLAWFUL ACTIVITIES) ACT, 1989

The Odisha . Gazette Shmeltle, exlent and com.rnencc- ment. Definitions. Act not to appiy. to certain I matters. EXTRAORDINARY PUBLISHED BY AUTHORITY ORISSA ACT 23 OF 1989 I(THE ORISSA MINERALS (PREVENTION OF THEFT, SMUGGLING AND OTHER UNLAWFUL ACTIVITIES) ACT, 1988] [Received the assent of the President on the 6th Novenber, 1989 first published in an Extraordinary issue ofl:ie Orissa Gazttc dated lhe 29th November 1989] AN ACT ro PROVIDE FOR 11-{E PREVENTION OF THEFT, SMUGGLING AND OTHER UNLAWFUL ACTIVITIES IN RELATION To MINERALS IN THE STATB 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.. (1) This Act may be ailed the Orissa Minerals (Prevention of Theft' Smuggling and other Unlawful Activities) Act, 1989. (2) It shall extcnd to the whole of the State of Orissa. (3) It shau come into force on such date as the State Government, may by b in the omcial Gazette, appoint

2. 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 Miucs and Minerals Regulation and Development) Act, 1957 and includes pccious, semi- 67 of 1957 precious and uncut stones and does not include minor minerals as defined under cluse (e) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 ; (e) " Permit " means a permit granted under section S (f) " Prescribed" mnns presciibed by rules , (g) "Rules " means rules made by the Government under this Act

3. 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. I. For Select Commllttec report see, Orrbsa Gazeue Extraordinary, dated the 4th March, 1989 (No. 364). 2, Cane into, wich tbc 20th May, 1990 vide Orissa Gazeue Extraordinal* deted the 15th May 1990 (No. 636), 346 THE (PREVEN.TOVN OF THEFT, SMUGGLING AND RaleiLioa on possession. stocøge. etc.' of mlnet?lo Appointment Of Comætcnt Authprjty. Grant of Licence

4. OTHER (UNLAWFUL ACTIVITIES) ACT, 1988 Act' .23 . of t9.89E•, (Secs.410) No person shall— t (i) possess, store. sell, trage in or otherwise d*.Ll . with any mineral, excep üader and iii acc•Jfdance with 'the terms dnd conditiöhé of a licence ; or (ii)-tränsport Or remöye . any mineral, from cxécpt under and in acCOrdance r with r the! terms -and .conäi.tio•nS 6T a - pcrmit

5. The Government may, by notification— (i) appoint as many' offccrs of •tbc - Mining & Geology as may be required, to be the Compctent Autorities ; and (ii) define the limits within which the Competent Authöritics shay exercise their jurisdiction ; for the „pucposes of. this Act. 6. (1) Any person who wishes to possess, store, sell, trade in or otherwise deal .with any mineral shan make an application to the Competent Authörily for a licence. (2) Every äpptialion undec sub-secLioo (1) shall be made in such form and accompanied by such fee as may bc prescribed. (3) On receipt of an appli«rtion under sub-section (1) the Competent Authority within -thy prescribed time may grant in such form,- for such period and subject to such terms aud conditions as may be prescribed or may refuse to grant the in which «zse he shall communicate the reason of such refusal to the person concernpd

7. The Competent Authority may, at any time during the currency of a licence Rescission of and after •giving an opportunity of being heard .to the •rescind the licence Liccncc. by an order' in writing to the licenscc foi bréach of any of lhe terms and conditions of the licence. (I) -Any person who wishes"to transport ot carry away any mineral from Grant •of any place shall make •an applietion•to the Competent Authority for a permit. (2) Every application under Gub*•ectidn (13'; shall be made in such form and accompanied by such fee as may be prescribed. (3) On receipt of an under sub-section the Competent Authority within the prescribed *time - -may gfant a permit in such form; for such period and subject to

[illegible]

committed in respect thereof, he may order 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 thing 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 (3) of any tool, vehicle or other conveyance shall be made if the owner thereof proves to the satisfaction of the 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 in committing the offence and that of them had taken all reasonable and precautions against such use. The seized under this section shall be kept in the custody of the authorised officer or with any third party until the compensation for compensating 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 may, within thirty days from the date of the order 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 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. 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 bond of the owner 'thereof for the production of the property so released, if and when so required» before the Magistrate having jurisdiction to try the offence on which such seizure has been made. 349 THE ORISSA MINERALS (PREVENTION OF THEFT, SMUGGLING AND OTHER-UNLAWFUL ACTIVITIES) ACT; 1988 Act 23 of 1989] (Secs;) Powers of 18. The Competent Authority or any other officers authorised by the State Government in this behalf may with such assistance, if any, as he thinks fit,— (a) search any person if— (i) he has reason to believe that such person is carrying minerals in contravention of the provisions of the Act or rules made thereunder , (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 thereunder 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 or 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 or of the conditions of any licence or permit issued thereunder has been, is being or is about to be committed , (d) seize any documents or take possession of, 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 thereunder and thereafter take or authorise the taking of all measures necessary for securing the production of such minerals and the animals, vehicles, vessels or other conveyances so seized in a court, and for their safe custody pending such production. Action seizure. Minerals, tools, etc. liable to confiscation by Courts. Disposal of minerals on conclusion of trial. Procedure when offender is not known 19. Upon receipt of, any report under sub-section (2) of section 16. The Magistrate shall, except where the offence has been compounded, with all convenient despatch, take such measures as for the arrest and trial of the offender and the disposal of the property according to law

20. The mineral which is 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. 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. Where the Magistrate is of the opinion that an offence was committed. but the offender is not known or be found, he may on an application made in this behalf, order the property in respect of which the offence was committed and or cannot be 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 seizure with properly. or without hearing the person, if any, claiming any right thereto; and the evidence, if any, which he produces in support of his claim. 350 THE ORISSA MINERALS (PREVENTION OF, THEFT, SMUGGLING AND OTHER UNLAWFUL ACTIVITIES) ACT, [Orissa Act 23 of 1989] (Secs. 23—30) Appeal from orders under 23. The Officer, who made the seizure under section 16 or any person claiming Sections 20, 21 or 22. Property when vested in Government. Saving of power to release properly seized. Confiscation to be interested in 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 order made by such Magistrate are ordinarily appealable and the order passed on such appeal shall be final. 24. (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 has 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. 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 provisions of section 321 of the Code of Criminal Procedure, 1973 : Provided that where a report has been made to the Magistrate of the 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. An order 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 to impose or the Rules. Powers to arrest and detain. Power to release a person on Authorised Persons to be public servants. Revision 27. (1) Any Police Officer not below the rank of a Sub-Inspector or the Competent Officer specially empowered in this behalf by the Authority or any 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 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. 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. 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. 30. (1) The Government may, on an application by any party aggrieved by an order passed in appeal under section 10 or an order passed in revision under sub-section 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 propriety of such proceeding or the correctness, legality or propriety of such decision or order and if it appears to the Government that any such order ought to be modified, annulled, remitted or it may pass such orders accordingly. 351 ORISSA MINERALS (PREVENTION

OF, THBPTiSMUOGLING AND OTHER UNLAWFUL ACTIVITIES) ACT. 1988 [Orissa Act 23 1989] (Sees. (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 OE order ; and without giving the concerned an opportunity of being heard in the matter

31. When, in any proceedings taken under this Act, or in consequence of Preumpton that mloeralg anything done under this Act, a question arises as to whether any mineral is the belong to property of Government, such mineral shall be presumed to be the property of Government .until thy contrary is --ptoved. of actiontøken 32. (1) No suit or other legal proceedings shall lie against any omxr of the under Government for anything which is in good faith done or intended to be:done in pursuance of this Act the rules ot any order made. thereunder. (2) No suit Or 0th" legal shall lie agäiååi the •Government for any damage caused or likely to be caused by anything which is in good faith done or intended to bé done in pursuance ot Ihis Act or the rules or any order made thereunder. Operation of 33. Nothing in this Act shall be deemed to bar the prosecution of any person other haws not barred.. Under any other law for any act or omission which constitutes an offence ox from being liable under such other law to any higher punishment or than that provided under this Act or the rules: Provided that no person shall be prosecuted and pu nished ror the same offence more than once

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

35. All money, except fines imposed by Judicial Courts, due under this Act or Recovery of money due.the rules may, if not paid when due, be recovered as if it were an arrear of public to Govern- demand. Dent. ervlce of 36. All notiaes issued under this Act or the rules shall be deemed to have ben ootlce. 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 farni9 refuses to receive, by afixing copy of the notice on some conspicuous part of "le residence or place of business ot the addressee or by advertisement in the news- papers. 37. (1) The Government may, by notification, make rules Power to * for carrying out make rula 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 rutters, namely:— (a) the form of for to be made under sub-section (1} of section 6 including the fee to be accompanied therewith and the manne.c of payment thereof . (b) the torm and the terms and conditions of licence to be granted sub-section (3) of setcion 6 ; *For RUIZ See Or'sso Guene, Extraordinary dated the 18th May, 1990 (NO. 646) 352 THE ORISSA MINERALS (PREVENf10N OF THEFT, SMUGGLiNG AND OTHER UNLAWFUL ACTiViTiES) ACT,' 1988 (Orissa Act 23 of 1989] sec. 37) (c) the form of application for permit to be made under sub-section (1) of section 8 including the fee to be aixompanied 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 IO ; (f) the manner of placing mark on seized property under sub-séction (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 requited to be, or may be, prescribed.