

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 110(THC)/2012

Threat to life arising out of coal mining
in south garo hills district

Applicant(s)

Versus

State of Meghalaya & Ors.

Respondent(s)

Date of hearing: 22.08.2019

CORAM:

**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

Mr. Raj Panjwani, Sr. Advocate with Mr. Aagney
Sail, Advocate

For Respondent (s):

Mr. Ranjan Mukherjee, Mr. Avijit Mani Tripathi,
Mr. Shaurya Sahay, Kr. K.V Kaarlyngdoh,
Advocates for State of Meghalaya
Mr. AND Rao, Mr Amber Sachdeva, Advocate for
Star Cement & Meghalaya Power
Mr. P. Yobin, Advocate for State of Assam

ORDER

1. The matter pertains to remedial action against unscientific 'Rat Hole' Mining of coal in the State of Meghalaya. Proceedings commenced on the basis of a news item to the effect that on 06.07.2012, thirty coal labourers were trapped in a coal mine and fifteen of them died. After due consideration of the matter, on 17.04.2014, this Tribunal directed the State of Meghalaya to ensure that rat hole mining is stopped forthwith throughout the State and any illegal transport of coal shall not take place until further orders.

2. On 09.06.2014, to give effect to order dated 17.04.2014, a Committee was formed to quantify extracted coal and its location, assess its value and also to prescribe mode of its transportation. In the light of the report this Tribunal, on 07.10.2017, noted that 6.3 million tonnes of illegally mined coal valued at Rs. 307 Crores was lying in the State on which royalty of Rs. 400 Crores was assessed. Direction was issued for videography in the operation of the weigh bridges. The issue of quantum of coal to be permitted to be transported was to be gone into with the assistance of the Committee. Further, direction was issued to credit the amount of royalty in a separate account with 10% of the value of coal to be credited to Environment Protection Fund. On 31.03.2016, the Tribunal directed that except the coal already transported, the remaining will vest in the State.
3. Finally, on 31.08.2018, after reviewing the earlier proceedings, this Tribunal directed that rat hole mining will remain prohibited and so also the transportation of the mined material. The State will be the custodian of the available coal for which necessary inventory will be prepared. For restoration of the environment and rehabilitation of the victims, this Tribunal directed constitution of a Committee to be headed by a former High Court Judge. The Committee was at liberty to take up incidental issues.
4. The Committee gave its report on 02.01.2019 which was considered vide order dated 04.01.2019 with regard to the following questions framed by the Committee:-

“(A) Whether coal mining activities, including extraction of coal and the transportation of the same, are going on despite the order passed by

the Hon'ble NGT imposing ban on coal mining and transportation?

- (B) Quantity of extracted coal as on the date on which the ban was imposed by the Hon'ble NGT and left to be transported?*
- (C) Quantity of un-inventoried coal which has been extracted before imposition of ban by the Hon'ble NGT?*
- (D) Whether coal mining activities as well as dumping of coal results in adverse environmental effect, if so, the nature and extent thereof?*
- (E) What are the steps required to be taken by the Committee for restoration of the environment and rehabilitation of victims of coal mining?*
- (F) The extent of execution of the Action Plan prepared by the Committee?"*

5. The Tribunal noted that a further tragic incident took place on 13.12.2018 where 15 workers were trapped. The report was that the illegal mining was still continuing. The assessed quantity of such coal was 23,25,663.54 MT. The mining was resulting in adverse impact on the environment for which a study was required to be undertaken. Action plan was proposed for restoration of the environment. In view of the consistent failure of the State in enforcing the law, this Tribunal held the State to be liable to deposit a sum of Rs. 100 Crores with the Central Pollution Control Board (CPCB) to be spent for restoration of the environment. The Tribunal also observed that the Committee may consider seizure of equipments used for illegal mining or transportation, to be released only after payment of 50% of the showroom price of such equipments. The Tribunal suggested that the Committee may consider the following:

"36. The Committee may also consider the following:-

- 1. Any cranes and trucks found to be involved in illegal mining or transportation which have not yet been seized may also be seized. The seized vehicles or equipments be released by the*

concerned District Magistrates only after recovering damages to the extent of 50% of the showroom price of the vehicles or equipments. The said amount may also be credited to the restoration fund.

- 2. Efforts be expedited to identify victims who have suffered at least since 01.07.2012 and to assess loss to the environment and the manner of restoration.*
- 3. Disaster Management Plan for the whole of the area 'on site' as well as 'off site' needs to be prepared and put into operation.*
- 4. Appropriate technology to replace rat hole mining.*
- 5. Resource (coal) audit of Meghalaya Power Limited and Star Cement Limited to ascertain the legitimate procurement of coal and its source.*
- 6. The Committee may take services of NEERI Nagpur, Indian School of Mine, Dhanbad, FRI Dehradun, CPCB apart from any other agency for making assessment of the damages.*
- 7. Survey of health of the habitants may also be considered.*
- 8. Skill Development Programmes to provide alternative means of employment to the workers involved in rat hole mining may be considered.*
- 9. Mitigation/restoration of impacted areas due to AMD."*

6. Further report was considered on 11.04.2019. The Tribunal approved the recommendations including those for installation of digital display boards in respect of quality of water of the concerned areas and evolving mechanism for effective action against transportation of illegally mined coal such as electronic manifest system, audit of source of coal acquired by the power generation and cement plants.

7. Further report dated 02.08.2019 has been received from the Committee to be considered today. We may note that the Hon'ble Supreme Court, vide judgement dated 03.07.2019, in *Civil Appeal No. 10720 of 2018 (State of Meghalaya v. All Dimasa Students Union, Dima Hasao District Committee and Ors)* and other connected decided Appeals arising from orders of this Tribunal, directing, *inter alia*, as follows:

“Conclusions:-

191. From the foregoing discussions we arrived at following conclusions:-

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9) As per statutory regime brought in force by notification dated 15.01.2016 issued under Environment (Protection) Act, 1986, environmental clearance is required for a project of coal for mining of any extent of area. While implementing statutory regime for carrying mining operations in the Hills Districts of the State of Meghalaya, the State of Meghalaya has to ensure compliance of not only MMDR Act, 1957 but Mines Act, 1952 as well as Environment (Protection) Act, 1986.

10) In Hill District of State of Meghalaya for carrying coal mining operations in privately owned/community owned land it is not the State Government which shall grant the mining lease under Chapter V of Rules, 1960, but it is the private owner/community owner of the land, who is also the owner of the mineral, who shall grant lease for mining of coal as per provisions of Chapter V of Rules, 1960 after obtaining previous approval of the Central Government through the State Government.

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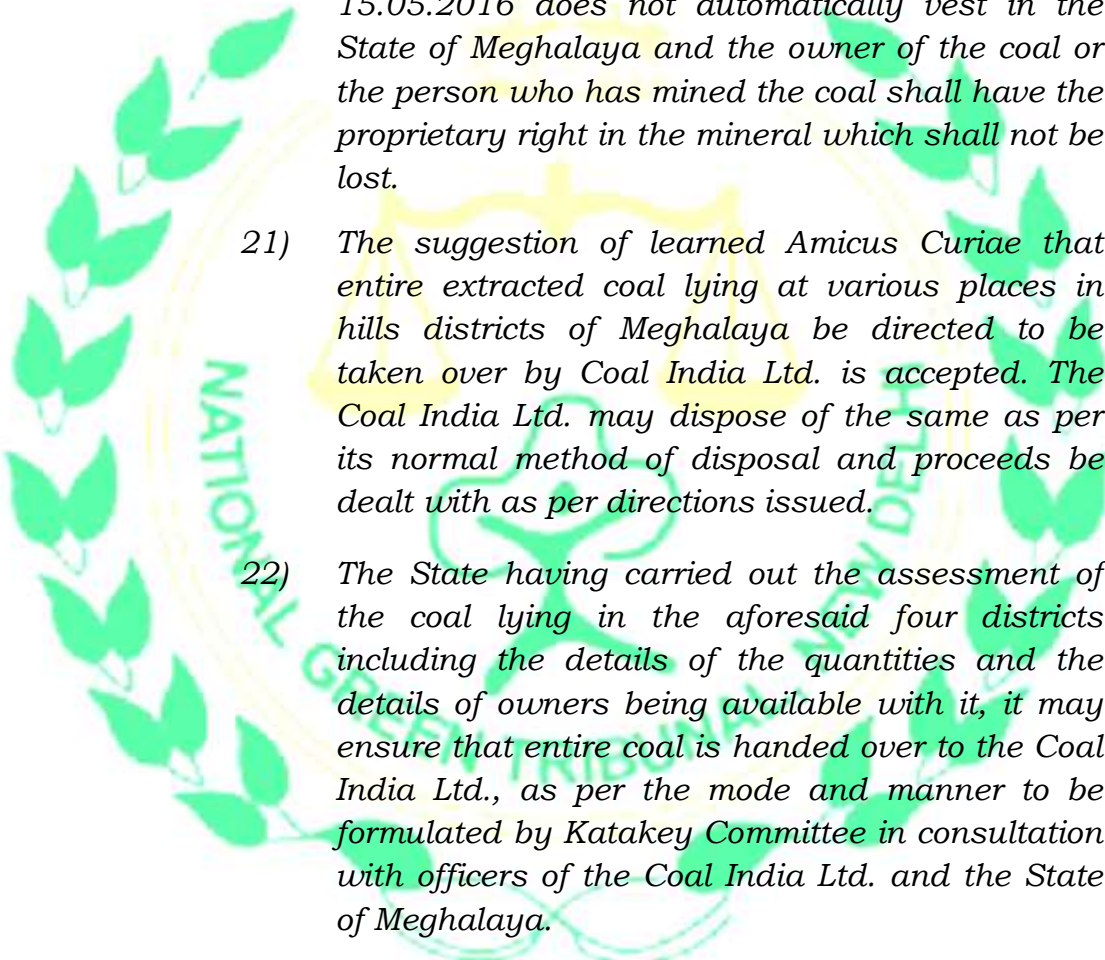
13) In event the mining is carried out by a mining lease holder as per the provisions of Act, 1957 and Rules, 1960 with an approved mining plan there can be no objections in carrying of such

mining operations under the regulation and control of the State of Meghalaya. We clarify that in event mining operations are undertaken in privately owned/community owned land in Hills Districts of Meghalaya in accordance with mining lease with approved mining plan as per Act, 1957 and Mineral Concessions Rule, 1960, the ban order dated 17.04.2014 of the tribunal of the NGT shall not come in way of carrying mining operations.

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- 20) The coal extracted and lying in open after 15.05.2016 does not automatically vest in the State of Meghalaya and the owner of the coal or the person who has mined the coal shall have the proprietary right in the mineral which shall not be lost.
- 21) The suggestion of learned Amicus Curiae that entire extracted coal lying at various places in hills districts of Meghalaya be directed to be taken over by Coal India Ltd. is accepted. The Coal India Ltd. may dispose of the same as per its normal method of disposal and proceeds be dealt with as per directions issued.
- 22) The State having carried out the assessment of the coal lying in the aforesaid four districts including the details of the quantities and the details of owners being available with it, it may ensure that entire coal is handed over to the Coal India Ltd., as per the mode and manner to be formulated by Katakey Committee in consultation with officers of the Coal India Ltd. and the State of Meghalaya.
- 23) It is for Coal India Ltd. to decide as to venue, where they shall receive the coal, i.e., either at any of its depot or any other place in the State of Meghalaya and it is for the Coal India Ltd. to finalise the process of disposal and auction of the coal. It shall be the duty of the State of Meghalaya and its officers especially Deputy Commissioner of the area concerned to enter details of quantity of the coal, name of the owner and place from where it is collected. All concerned

shall take steps to ensure weighment of the coal when it is received by Coal India Ltd.

24) *The expenses of transportation shall be borne by the State of Meghalaya, Coal India Ltd. or by both, which expenses shall be deductible from the price received of the coal. The State of Meghalaya shall be entitled to royalty and payment towards MERP Fund as well as taxes out of the price of the coal. After deducting its expenses for transportation with 10% of price of the coal, the Coal India Ltd. shall remit the balance amount to the State and it is for the State after deducting the royalty and payment to the MERP Fund and taxes to pay back balance the amount to the owner.*

25) *The coal which has been seized by the State in illegal transportation and illegal mining for which different cases have been registered by the State, is not to be dealt with as directed above. The seized coal shall be dealt by the State in accordance with Section 21 of the Act, 1957 and on being satisfied, the State can take a decision to recover the entire quantity of coal so illegally raised without lawful authority.*

192 *In view of the foregoing discussions and conclusions, all these appeals are decided in the following manner: -*

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4) *All I.As. seeking direction for transportation of coal are disposed of directing: -*

i) *All extracted coal as assessed by State of Meghalaya lying in different districts of State of Meghalaya which as per order of NGT is in custody of State of Meghalaya shall be handed over to Coal India Ltd. for proper disposal.*

ii) *The Katakey Committee after discussion with Coal India Ltd. and State of Meghalaya shall formulate a mechanism for transport, weighment of all assessed coal.*

iii) *The Coal India Ltd. shall auction the coal so received by it as per its best judgment and remit the proceed to State to the extent as directed above.*

iv) *All coal seized by the State for which cases have already been registered shall be dealt by the State in accordance with Section 21 of 1957 Act."*

8. We may now deal with the report of the Committee which is, *inter alia*, as follows:

"It is, therefore, evident that though the learned counsel appearing for the State of Meghalaya submitted before the Hon'ble Tribunal that the compliance report in that regard shall be submitted to this committee within two weeks, the direction to install Digital Display Boards has not been fully implemented till date. As stated above, such Boards have been installed in the State Capital, i.e., in Shillong only. The same have not been installed in the coal mining affected districts and Sub-Divisions so far.

The Committee directs the aforementioned 4(four) Cement Plants, namely, Green Valley Industries Ltd, Gold Stone Cement Ltd, Hills Cement Ltd and Virgo Cement Ltd and one Thermal Power Plant, namely, CMJ Breweries Ltd to depute their representatives to attend the next sitting of the Committee scheduled to be held on 14.08.2019 along with all required information and documents without fail.

The Secretary to the Govt. of Meghalaya, Mining and Geology Department, during the Proceeding No. 16-B held on 23.07.2019 has produced before the Committee a letter dated 22.07.2019 seeking a month's time to formulate a comprehensive plan and proper policy of transportation and handing over of coal to the Coal India Limited for disposal/auction as per rules of the Coal India Limited. The Committee has also been

informed that after finalisation, the same shall be placed before the Committee for deliberation.

Based on the said communication, one month time has been granted to the Mining and Geology Department, Govt of Meghalaya. The second special sitting scheduled to be held in Guwahati on 26.07.2019 with the representatives of the Coal India Limited and the concerned departments of the Govt of Meghalaya to discuss about the formulation of a policy for transportation and handing over of the coal to the Coal India Limited, has, therefore, been postponed and the next date was decided to be fixed in its Proceeding to be held on 14.08.2019.

The Committee in the said Proceeding has recorded that the majority of the directions issued by it in the Proceeding No.12 dated 25.04.2019 have not been implemented so far and hence the Commissioner & Secretary to the Govt of Meghalaya, Mining and Geology Department has been directed to submit a report on the status of implementation of each of these directions in the sitting scheduled to be held on 14.08.2019.

From the aforesaid position, it is, therefore, evident that the directions issued by the Committee in its Proceeding No.12 dated 25.04.2019 have not been fully complied with till date.

(C) CONSIDERATION OF THE RECOMMENDATIONS OF THE COMMITTEE MADE IN ITS PROCEEDING NOs. 13, 14 AND 15 DATED 03.05.2019, 03.06.2019 AND 28.06.2019, COPIES OF WHICH HAVE BEEN SENT BY MAIL IN ngp.filing@gmail.com ON 08.07.2019.

- (1) *The Committee in the Proceeding No.13 dated 03.05.2019 recommended for consideration for release of an amount of Rs.40,36,500/- from the MEPR Fund to implement the pilot project for afforestation and reclamation of coal mining affected land and organisation of festival-cum-*

mass awareness programme submitted by the Principal Chief Conservator of Forest (Climate Change Research and Training), Govt of Meghalaya and North Eastern Regional Office of the Central Pollution Control Board.

(2) *The Committee also in the Proceeding No. 14 dated 03.06.2019 has recommended for consideration by the Hon'ble Tribunal for passing necessary order for deployment of CAPFs to assist the State Police in checking the transportation and mining of coal in the State for the purpose of enforcement of the direction issued from time to time to ban illegal mining and transportation of coal.*

(3) *The Committee in the said Proceeding had also recommended for consideration by the Hon'ble Tribunal to release an amount of rupees one crore from MEPR fund to facilitate the Forest & Environment Department for aforestation of the coal mine affected areas and to ensure availability of adequate number of good quality plants.*

(4) *The Committee in the Proceeding No.15 dated 25.06.2019 has also recommended for consideration by the Hon'ble Tribunal for release of Rs.19,19,500/- from the MEPR Fund towards the cost to be incurred in the Pilot Project of Micro Algae Treatment of the acidic water in the identified stream in the coal mining affected areas to be implemented by M/S Trinity Impex International.*

The Hon'ble Tribunal may consider the aforesaid recommendations of the Committee.

The Committee, on 31.08.2019 shall submit the further report relating to the status of implementation of the Action Plan prepared by it, directions issued by it from time to time and also the directions issued by the Hon'ble Supreme Court in Civil Appeal No. 10720 of

2018 (State of Meghalaya Vs All Dimasa Students Union, Dima Hasao District Committee and Ors) and other analogous matters passed In Judgment & Order dated 03.07.2019.”

9. Learned Counsel for State of Meghalaya submitted that with regard to display boards, further steps have been taken and a report dated 03.08.2019 has been filed before this Tribunal and a report will also be filed before the Committee. The Committee may look into the same.
10. As regards effective action against illegal transportation, the Committee has suggested deployment of Central Armed Forces and the State Police. The Committee has also suggested release of certain funds. Learned counsel for the State submitted that the recommendations of the Committee be accepted.
11. We accept the recommendations of the Committee for release of the amount as presented in para (3) & (4) of recommendations as noted above. As regards deployment of Central Armed Police Forces (CAPF), our attention has been drawn to earlier proceedings before this Tribunal in order dated 25.03.2015 as follows:

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1. *The Additional Secretary, North East in the Ministry of Home, Central Government shall, within a period of two weeks from today, hold a meeting with the Chief Secretary of the State of Meghalaya and other concerned Authorities and consider the proposal of the State of Meghalaya for deployment of appropriate force to ensure compliance of orders of the Tribunal and protection of the Environment and Ecology, particularly water bodies as recorded in various orders of the Tribunal. We are hopeful, that the decision will be taken objectively and in the interest of public at large.”*

12. We are informed that in pursuance thereof, the Central Government did provide the requisite Forces at that time. In the light thereof, the State of Meghalaya to follow the same course of approaching the Central Government. The Central Government may give due consideration to such proposal expeditiously.
13. Only other issue which survives for consideration is the enforcement of directions of the Hon'ble Supreme Court for handing over coal already mined and lying at various places in Meghalaya to the Coal India Ltd. As per directions of the Hon'ble Supreme Court, in the judgement dated 03.07.2019 the same may be looked into by the Committee in consultation with the officers of Coal India and the State of Meghalaya. We suggest that the Committee may fix specific timeline for the purpose.
14. Our attention in this regard has been drawn to a *Challan* dated 13.08.2019 issued by the Divisional Mining Officer, Jowai with regard to transportation of the 'auctioned' mineral. Learned Counsel for the State may ascertain whether the transportation is in terms of the scheme prepared by the Committee in accordance with the directions of the Hon'ble Supreme Court and if not, remedial action may be taken. The Committee may look into this aspect and applicability of online electronic manifest system for regulating movements of vehicles and issuance of *challans* as per the Tribunal's order dated 11.04.2019.
15. The companies in question are directed to furnish the requisite information to the Committee, failing which this Tribunal may have to take coercive measures against the Chief Executive Officers of the

companies. This aspect will be considered in the light of further report of the Committee. The Committee may also make its recommendations about the conduct of officers not cooperating in compliance of orders of the Hon'ble Supreme Court and this Tribunal so that the State may take appropriate action and inform this Tribunal.

16. The Committee has proposed to send its further report by 31.08.2019. Thereafter, a further report be sent after three months by 30.11.2019.

17. List again on 10.12.2019 or as and when the occasion arises.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

August 22, 2019
Original Application No. 110(THC)/2012
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