

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 5794 of 2022

1. N M D C Ltd. Through Its Authorized Signatory Rajeev Lochan Bharti (AGM) Biom, Bacheli Complex, District Dantewada C.G.
2. N M D C Ltd., Through Its Authorized Signatory Rajeev Lochan Bharti (AGM) Biom, Kirandul Complex, District Dantewada Chhattisgarh.

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary Department Of Forest, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, Raipur District Raipur Chhattisgarh.
2. Divisional Forest Officer, Dantewada Forest Division District Dantewada Chhattisgarh.
3. Union Of India, Through - The Secretary, Ministry Of Forest, New Delhi.

---- **Respondents**

24.12.2022	<p>Mr. Abhishekh Sinha, Sr. Advocate assisted by Mr. Vaibhav Shukla, Mr. Ujjwal Choubey, Mr. Himanshu Yadav, Advocates for the Petitioners.</p> <p>Mr. Kashif Shaqeel, Dy. A. G. for the State.</p> <p>Heard on I. A. No. 02, application for grant of interim relief.</p> <p>Learned counsel for the petitioners has assailed the order dated 23.11.2022 (AnnexureP/1) whereby, the respondents have retrospectively levied transit fee of Rs. 1,44,62,65, 632,00 consolidated for both the units (Bacheli and Kirandul) of the petitioner under the provisions of Chhattisgarh Transit (Forest Produce) Rules 2001 and consequential notification dated 14.06.2002@ Rs. 7,00 per tonne on the transportation of iron ore from 14.06.2002 to 31.10.2012.</p> <p>Learned Sr. counsel for the petitioners would submit that as per the provisions of Chhattisgarh Transit (Forest Produce) Rules 2001 the said rules</p>

have been framed by the State of Chhattisgarh, which were published on 25.08.2021. These rules were assailed before this Court on earlier occasion also and various States have framed these types of Rules and these rules have been challenged before various High Courts and thereafter the matters were traveled upto the Hon'ble Supreme Court and the Hon'ble Supreme Court had finally decided the issue in case of **State of Uttarakhand and Others Vs. Kumaon Stone Crusher** reported in **(2018) 14 SCC 537** wherein the Hon'ble Supreme Court has decided the issue that the rules are not beyond the capacity of the State legislation and the competency of the State Governments to frame such rules have been held to be valid.

Learned Sr. Counsel would further submit that on earlier occasion the matter was challenged before the Hon'ble Division Bench wherein Hon'ble Bench granted interim protection to the petitioner Company in WPC 635/2013 on 05.07.2013 wherein the Hon'ble Division Bench has passed the following order:

“In the above facts and circumstances of the case, we grant two weeks time to file counter affidavit/reply, however looking to the contents of the recent notice dated 01.07.2013 and further considering that the entire mining operation has been directed to be stopped which may lead to loss of public exchequer, we direct that in the meanwhile, no coercive steps shall be taken against the petitioners in relation to the said demands notices and the petitioners shall not be stopped from carrying mining operations or transportation on account of the said demands till the next date of hearing. However, the petitioners shall be under obligation to pay current transit fee/storage fee on the prescribed rates in according with the rules.” and has directed the petitioner to pay transit fee from 2019 onward and since then the petitioners are paying the same without any objection. So the dispute is confined from 14.06.2002 to 31.10.2012.”

The learned counsel for the State would submit that vide impugned order the dues have been assessed by the Forest Department to the extent of Rs. 79,52,23,541/- and Rs. 65,10,42,091/- as reflected from the notices issued to the petitioners on 23.11.2022 respectively.

The learned Sr. Counsel for the petitioners would further submit that since no transit passes have been issued to them therefore, no recovery for the period, when transit passes have not been issued, should be made by the respondents. He would draw attention of this Court towards the judgment passed by the

Hon'ble Supreme Court particularly paragraph 215.6 has held as under:

“215.6 Rule 3 of the 1978 Rules is not independent of Rule 5 of the 1978 Rules. Transit fee is payable on all kinds of transit passes and cannot be confined only to transit passes as referred to in Rule 4(1)(b) only.”

When this Court put a specific query to the learned counsel for the State that what are the material to calculate such amount and whether the transit pass from the year 2002 to 2012 have been issued to the petitioner/Company or not, he would pray for time to seek instructions.

Considering the submission that details of transit fee payable by the petitioners have also not been brought to their notice, also considering the fact that for the subsequent period from 2013 the petitioners are paying the transit fee regularly, as an interim measure it is directed the respondents shall be restrained from interfering in the transportation of ore from the mines of the petitioner till the next date of hearing .

Since the dispute pertains to the period from 2002 to 2012. it is also directed that the State shall provide details to the petitioner for assessing the liability of the petitioners towards the demand raised by the respondent as per notice (Annexure P/1 & P/2) issued by the respondent authorities.

It is made clear that the payment of current period transit fee is a condition precedent for transportation of ore of these mines of the petitioners.

Post this matter on **12th of January, 2023.**

In view of above, I.A. Nos. 3 & 4 stand disposed of.

Certified copy, today.

Sd/-

(Narendra Kumar Vyas)
Vacation Judge