

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (PIL) No. 1806 of 2015

Court on its own motion

Versus

The State of Jharkhand & others

With

W.P. (PIL) No. 115 of 2019

Mohammad Khalik Ansari	---	---	Petitioner
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Versus

Union of India through the Secretary, Ministry of Environment, Forest and Water & others	---	---	Respondents
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With

W.P. (PIL) No. 290 of 2013

Hemant Kumar Shikarwar	---	---	Petitioner
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Versus

The State of Jharkhand & others	---	---	Respondents
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With

W.P. (PIL) No. 3771 of 2017

Pankaj Sahu	---	---	Petitioner
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Versus

The State of Jharkhand & others	---	---	Respondents
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With

W.P. (PIL) No. 6195 of 2017

Ram Keshwar Mahto	---	---	Petitioner
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Versus

The State of Jharkhand & others	---	---	Respondents
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Coram: **Hon'ble the Acting Chief Justice**
 Hon'ble Mr. Justice Aparesh Kumar Singh

Amicus Curaie: Mr. Indrajit Sinha, Advocate

For the Petitioners: M/s Rajeev Kumar, Mohammad Asghar, K.S. Nanda, Ram Subhag Singh, Mokhtar Ahmed, Advocates

For the Resp-State: Mr. Manoj Tondon, A.A.G

For the Resp-UoI: M/s Rajiv Sinha, ASGI, Niraj Kumar, A.C to ASGI

For the JSPCB: M/s Richa Sanchita, Bhanu Kumar, Prabhash Kumar, Advocates

48/ 06.09.2019 This Public Interest Litigation was instituted suo-motu, based on a newspaper report, to protect disappearance of Hills in the State under threat of illegal mining,. It came to light during proceedings of the case that a Task Force have been constituted by the State in 2005 to address the issue, but there were crushers and mines which were operating without obtaining no objection certificate from the Pollution Control Board or despite expiry of NOC. Directions were issued to close all such mining operations carried out without valid lease / consent to operate. Vide order dated 18.05.2015, State Government and the Pollution Control Board were directed to produce a complete list of such lessees with details, the action taken in compliance of

the directions issued in the case of '**Deepak Kumar Vs. State of Haryana**' [(2012) 4 SCC 629]. By order dated 29.06.2015, it was clarified that only such mining operations which were being carried without lease / CTO were to be closed. During further proceedings, it came to light that State has devised ten point action plan for implementation by the District authorities. Provisions of Mines and Minerals (Development and Regulation) Act, 1957 which provide for appropriate legal action in cases of illegal mining were also highlighted by the Amicus Curiae. Reports were directed to be filed by the State containing the action taken against the person indulging in illegal mining.

2. Later, during course of the proceedings of this PIL, certain fundamental issues cropped up, as is evident from the order dated 31.07.2017. State was asked to explain whether a minor mineral policy is in place for exploitation of minor mineral keeping into account the well settled principles of sustainable development; inter-generational equity; precautionary principles and polluters-pay's principles; whether scientific evaluation of reserve potential of known deposits have been undertaken; such other incidental issues; whether State has a regulatory mechanism in place to assess the adverse environmental impact of mining of minor minerals *per se*; whether salutary principles, noted above, are kept into account while granting concessions. This Court was informed on 13.09.2017 that a comprehensive minor mineral policy is being prepared which may take three months' times. It was also brought to the Court's notice that a Committee headed by the Deputy Commissioner cum Chairman, DEIAA has been directed to undertake a detailed survey of minor minerals in their respective districts. It was informed that the District Survey Report (DSR) is intended to make a demand supply analysis, identification of mineable reserve in a sustainable manner as it has demarcated "No Mining Zones" in the respective districts taking into consideration various natural resources, bio-diversity, lives and habitats, important significant geographical and infrastructural facilities, so that in view of socio-cultural protection and environmentally sustainable mining, no mining of minor minerals is carried out in "No Mining Zone". [**See: Order dated 13.09.2018**].

3. A careful perusal of the orders dated 01.11.2017, 06.12.2017 and 18.12.2017 indicate the steps being taken for constitution of District Level Expert Appraisal Committee under the Notification of DEIAA and DEAC in terms of MoEF&CC Notification dated 15.01.2016 read with Notification dated 20.01.2016 issued under the provisions of section 3(3) of Environment (Protection) Act, 1986 and Environment Impact Assessment Notification No. 1533 dated 14.09.2006. In one such order, it came to light that Appendix-X of Notification dated 16.01.2016 did not appear to lay

down enough guidelines in the matter of preparation of DSR of minor minerals other than sand. Respondent State and Union of India both were asked to apprise the Court on

(a) Need of laying down uniform guidelines for preparation of DSR of minor minerals other than sand, in the light of the Notification dated 16.01.2016.

(b) Time period within which such guidelines would be finalized and notified by MoEF&CC, Government of India.

Apart from the above, Respondent State Department was also asked to lay down an outer time limit for preparation of DSR, both of sand and other minerals. Proceedings of the PIL and the orders passed thereafter such as orders dated 20.02.2018, 15.03.2018, 11.04.2018 and 25.04.2018 in particular indicate that preparation of DSR of sand in the respective districts of the State were being undertaken, but the need for laying down the guidelines for preparation of DSR of minor minerals other than sand in the light of the Notification dated 16.01.2016 had not been addressed by the Respondent Union of India.

4. The importance of the role of the State Pollution Control Board for ensuring that the terms and conditions of grant of Consent to Operate to the lessee are duly complied with and violation, if any, promptly checked were also stressed. State Pollution Control Board was asked to respond to it. Instances of illegal mining had not abated, rather shown increasing trend. The Court was informed on 20.02.2018 that for strict monitoring of the performance of the District Task Force, the whole process of regulation and prohibition of illegal mining is being made more technology based. The preparation towards that were in full swing and would be made operational by June of that year. The coordinates of mining leases were also to be fed in G.P.S system and linked with the satellites. Even the vehicle used for transportation for minor minerals were to be registered under the Jharkhand integrated Mines and Mineral Management System and those vehicles have to be equipped with G.P.S devise. Learned Amicus Curiae had also pointed out that mere imposition of penalty does not absolve the person concerned of the liability of criminal prosecution, confiscation of seized vehicle in terms of MMDR Act and Environment Protection Act and other ancillary legislation / rules. The seized minerals were also to be auctioned in a fair and transparent manner to fetch revenue, so that the damage to the environment is undone.

5. Taking note of the understaffing in the State Pollution Control Board and other endemic issues faced by it, vide order dated 15.05.2018, a number of directions were issued upon the Board and the State Government for finalization of the rules for

recruitment and other service conditions of the employee of the Board within a time frame and creation of laboratories for carrying out its statutory duties.

6. The directions passed by this Court from time to time thereafter ultimately led to issuance of amendment Notification in official Gazette S.O. 3611(E) dated 25.07.2018 for preparation of DSR for minor minerals other than Sand and Bajri. The legislative vacuum in the area of preparation of DSR of minor minerals other than Sand and Bajri had been overcome by issuance of the Notification dated 25.07.2018 by MoEF&CC, Government of India. Meanwhile, the process of preparation of DSR such as Sand and Bajri had progressed up to a considerable extent, as taken note of in various orders including order dated 16.08.2018. The State Government was impressed to embark upon the preparation of DSR of minor minerals other than Sand and Bajri. The same day, State Pollution Control Board informed the Court that the draft of “Recruitment and Conditions of Service of the employees of Jharkhand State Pollution Control Board, Regulation 2018” approved by the Board, have been submitted to the Department of Forest, Environment and Climate Change, Government of Jharkhand for its approval. The affidavit also refers to the steps being taken to strengthen the Regional laboratories in the district of Dumka, Ranchi etc., to monitor and analyze the Air & Water pollutants at specified points with financial support from the Namami Gange Programme. Board had also started the recruitment process of the laboratory personnel towards strengthening these laboratories. Learned Amicus Curiae had submitted suggestions / concept note in order to have more effective control on illegal mining.

7. The State was granted time on a number of dates thereafter to file a comprehensive affidavit disclosing the steps being taken for illegal mining in various districts of the State including forest land and other areas. It appears from one of the order dated 10.05.2019, that the State took further time to file counter affidavit as per direction dated 14.09.2018. When the matter has been taken up today, learned counsel for the State Manoj Tondon has submitted that a counter affidavit has been filed on 13.05.2019, sworn by the Assistant Mining Officer (Headquarter), in compliance of the order passed by this Court on 14.09.2018. The affidavit indicates that the department has been taking all possible action / steps to stop incidence of illegal mining and transportation. State Government has taken new initiatives and use of technology for curbing illegal mining of both minor and major minerals such as, formulation of rules / policies, formation of State / District Task Force, use of technology, mines surveillance system of major and minor minerals; GPS based vehicle tracking system for mineral carrying vehicles, Khan Prahari for coal,

Jharkhand Integrated Mines and Minerals Management System (JIMMS), Online Auction etc. Jharkhand Mineral (Prevention of illegal mining, Transportation and Storage) Rule 2017 has been notified on 27.01.2018. As per the State this will facilitate the implementation of more efficient process and technology to curb illegal mining in the State. Jharkhand Minor Mineral Concession Rules, 2014 has been amended in 2017 incorporating more stringent provisions against illegal mining. The affidavit indicates that State Government has prepared draft Jharkhand State Mineral Policy which is under the process of approval (Annexure-A). Technology enablement for transparent and penal provisions for prevention of illegal mining and transportation and storage of mining minerals have been specifically highlighted. The affidavit also refers to the constitution of the State Level Task Force with Secretary, Mines and Geology as Chairman and Director, Mines as Member Secretary along with officials from Police and other concerned departments as Members. (Minutes of the meeting dated 06.03.2019) (Annexure-C). It also refers to the District Level Task Force constituted with Deputy Commissioner of respective Districts as Chairman and District Mining Officer as Member Secretary along with S.P., D.F.O and other officials from the concerned Department (Minutes of the last meeting of District Level Task Force, Annexure-D). Summary of action taken by the Deputy Director of Mines and Geology against illegal mining, transportation and storage for the last six years have been furnished in the form of a chart (Annexure-E).

8. During course of deliberations today, focused areas of the instant Public Interest Litigation have been re-emphasized seeking comprehensive response from the Respondent State and State Pollution Control Board. They can be broadly categorized as under:

- (i) Prevention of illegal mining and steps taken by the State towards that; whether it has led to an effective control and decrease in illegal mining; whether course creation are further required;
- (ii) Formulation of minor mineral policy of the State of Jharkhand;
- (iii) Preparation of District Survey Reports:
 - (a) Sand and Bajri
 - (b) Minor Minerals other than Sand and Bajri
- (iv) Strengthening of the State Pollution Control Board and compliance of the direction contained in order dated 15.05.2018.

9. The affidavit dated 13.05.2019 of the State does not address the issues relating to preparation of District Survey Reports – both of sand and other minor minerals. Whereas, preparation of DSR for sand in the respective districts have made

considerable progress. Vide order dated 16th August 2018, State was specifically directed to embark upon an exercise to prepare DSR for other minor minerals after issuance of the Notification S.O. 3611 (E) dated 25.07.2018 of MoEF&CC, Government of India.

10. The State Government had categorically stated that a comprehensive minor mineral policy is being prepared which may take three months' time as taken note of in order dated 13.09.2017. The latest affidavit dated 13.05.2019 of the State however conveys that draft minor mineral policy is still awaiting approval. Learned counsel Mrs. Richa Sanchita has informed that the draft rules for recruitment and other service conditions have been submitted before the State Government in August 2018 itself.

11. Learned counsel for the State Mr. Manoj Tondon has prayed for sufficient time to file a comprehensive counter affidavit to address the major focus areas referred to above including the steps being taken for affective check of illegal mining in the State.

12. Mr. Bhanu Kumar, learned counsel representing the State Pollution Control Board has also sought time to file a comprehensive affidavit regarding the steps taken by the Board for effective check on illegal mining and implementation of the directions contained in order 15.05.2018.

13. We are inclined to accede to the request of the State and the Pollution Control Board for a larger time for bringing on record the progress report in this regard as the issues involved are seminal in nature concerning environmentally sustainable mining of minor minerals in the State.

14. Accordingly, eight weeks' time is granted. Let the matter be listed immediately thereafter.

15. The affidavit containing the latest update of all these issues should be on record on or before expiry of eight weeks' time from today.

16. Let a copy of the order be handed over to the learned Additional Advocate General Mr. Manoj Tondon and learned counsel for the State Pollution Control Board Mr. Bhanu Kumar.

(H.C. Mishra, A.C.J)

(Aparesh Kumar Singh, J)

Ranjeet/