

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

PIL No. 2 of 2022 with
MC (PIL) No.4/2022

Date of order: 25.08.2022

In Re: (Suo motu): Illegal mining Vs. State of Meghalaya
of coal in the State of Meghalaya

JMK Coke Industries Pvt.Ltd. & ors Vs. State of Meghalaya & anr

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice H. S. Thangkhiew, Judge
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance in PIL No.2 of 2022:

For the Petitioner : -

For the Respondents : Mr. A. Kumar, Advocate General with
Mr. K. Khan, Sr.GA
Ms. R. Colney, GA
Dr. N. Mozika, ASG with
Ms. A. Pradhan, Adv
Mr. M.Z. Ahmed, Sr.Adv with
Mr. N. Syngkon, Adv

Appearance in MC (PIL) No.4 of 2022:

For the Added Parties: Mr. M. Rohatgi, Sr.Adv with
Mr. S.P. Mahanta, Sr.Adv
Mr. L.M. Sangma, Adv
Mr. M. Lyngdoh, Adv

For the Respondents : Mr. A. Kumar, Advocate General with
Mr. K. Khan, Sr.GA
Ms. R. Colney, GA

Despite a Supreme Court order of July 3, 2019 requiring the previously mined coal (up to about the year 2016) to be disposed of, no meaningful action in such regard has been taken.

The relevant order of the Supreme Court required Justice Katakey to recommend measures to ensure speedy disposal of the coal through auction with the assistance of Coal India Limited.

Quite alarmingly, the State is unable to indicate the exact quantities of coal that had been mined prior to 2016 and which awaits disposal at various places. In the third interim report filed by Justice Katakey dated August 9, 2022, it has been recorded at paragraph 3.5 that the previously mined coal “is lying as per NGT inventory” by the sides of the public roads at 24 places; 12 of them being in the East Jaintia Hills, two in the West Khasi Hills, seven in the South West Khasi Hills and three in the South Garo Hills. It is submitted by learned Advocate-General that, in fact, previously mined coal may be lying in dumps which may number 1500 or more.

Whatever be the number of dumps, the State has to stand by the particulars furnished before Justice Katakey and as recorded at paragraph 3.5 of the third interim report. It is imperative that the coal lying at such places be disposed of in accordance with law and upon following the pollution control measures pertaining thereto as expeditiously as possible.

For a start, an inventory of the exact quantum of coal at each place has to be prepared. There is a little game that the State and CIL may have

indulged in by which the State expects CIL to carry out the measurements but CIL says that it has formed a committee without any indication to Court as to how the measurement work is being undertaken.

Measuring coal lying by the roadside may not require any rocket science technology. The State, whether with the assistance of CIL or otherwise, should ensure that the quantities at each of the sites referred to in paragraph 3.5 of the third interim report are indicated. Such exercise should be completed within a week from date. This urgent direction is given since the NGT had passed orders by or about the year 2017 indicating an outer time-limit for the disposal of the previously mined coal and though the Supreme Court order of July 3, 2019 somewhat relaxed the time schedule and required Justice Katakey to make appropriate recommendations and oversee the disposal by auction, the process cannot continue endlessly. It is evident that Justice Katakey has not been able to make much progress in the disposal since the figures as to the quantum of coal lying at each site have not been furnished and unless the quantities are ascertained, the logistics of transportation and storing them in demarcated depots may not be worked out, leave alone the auction.

Simultaneously with the State ascertaining the quantities of coal at each of the said sites, the demarcated depots, including the existing

ones, to hold the entire quantity of coal should be indicated to Court with a timeline, as in a bar chart, disclosing how the disposal up to the last kilogram of the previously mined coal would be completed within a period of, say, nine to ten months beginning September 1, 2022. A clear picture in such regard without any attempt to divert the attention, should be forthcoming from the State when the matter is taken up a week hence.

The State will keep in mind the prescribed norms for the transportation of coal and its storage and will ensure and adopt adequate measures in such regard in accordance with law at the depots prior to the transportation activity being commenced.

Once the quantities of coal lying at the various sites are indicated, Justice Katakey may make appropriate recommendations in consultation with the State officials and CIL for the disposal of the same, upon directing strict adherence to pollution and other applicable norms, within the time frame as indicated in this order.

It further appears from the third interim report, and as has been confirmed by learned Advocate-General, that approximately 67,525 MT of coal illegally mined subsequent to 2016-17 has been seized and awaits disposal. It is necessary that such coal be disposed of as expeditiously as possible so that fresh illegally mined coal is not dumped on top of such seized coal and sought to be passed off as previously mined coal. Indeed,

if further seizures are made of illegally mined coal in recent times, immediate steps in such regard should be taken upon reporting the quantum of seizure to Justice Katakey and seeking directions for disposal thereof.

As far as the seized coal is concerned, requisite permission should be obtained from the relevant criminal courts in accordance with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957. Such courts are also requested to attend to any application in such regard with utmost expedition.

A fourth interim report has been filed by Justice Katakey dated August 23, 2022. Copies of such report will be made over by the Department to learned Advocate-General and any other appearing party desirous of obtaining the same.

The other aspect of the matter pertains to the applicants who have been impleaded in the present proceedings pursuant to an order of the Supreme Court dated June 27, 2022.

It is submitted on behalf of such parties that though a blanket closure of all coke oven plants in the State had apparently been recommended by Justice Katakey and it was directed to be implemented by this Court in an order passed on May 24, 2022, the matter pertaining to coke oven plants finds reference, inter alia, at paragraphs 3.17, 3.18

and 3.19 of the third interim report filed by Justice Katakey on August 9, 2022.

At paragraph 3.18 of the said third interim report it is recorded that the State of Meghalaya informed the single-member committee that none of the 26 coke oven plants in the State “is presently in operation.” The State also informed the committee that the certificates signifying consent to establish (CTE) and the further certificates permitting such coke oven plants to operate (CTO) have not been issued or are no longer valid and the 26 coke oven plants cannot commence any activity without obtaining the CTOs; just as no new coke oven plant can operate without obtaining the CTE.

Paragraph 3.19 of the third interim report records as follows:

“3.19 In any case, in the absence of the CTE and CTO none of the aforesaid 26 Coke Oven Plants can start its operation, which, if done, would be in violation of the provisions of the environmental laws.”

The 26 added parties seeking to operate coke oven plants in the State submit that they accept the position as indicated at paragraph 3.19 of the said report. However, it is submitted on their behalf that nothing in the recommendations made by Justice Katakey or any order passed by this Court in the present proceedings should stand in the way of such parties applying for and obtaining due permission or license or

appropriate certificate to establish or operate coke oven plants in accordance with law.

It is the further submission on behalf of the 26 added parties that the conditions for obtaining permission or license to operate coke oven plants have been altered by the State to the detriment of all those intending to operate coke oven plants and, as such, a writ petition has been instituted in this Court challenging the siting norms issued by the State Pollution Control Board on December 23, 2020.

It is made clear that the present proceedings will not stand in the way of any person interested in operating coke oven plants applying for and obtaining due permission in accordance with law from the appropriate authorities. It will also be open to the 26 added parties or such of them who have instituted the writ petition challenging the new norms to pursue the petition in accordance with law. The pendency of the present proceedings should not stand in the way of such writ petition being prosecuted.

As a consequence of the directions issued pertaining to the 26 added parties, such added parties have no further role in the present proceedings and, as requested on their behalf, such 26 added parties are discharged from the present proceedings.

MC (PIL) No.4 of 2022 stands disposed of.

At the request of learned Advocate-General, let the matter appear
10 days hence.

List on September 7, 2022.

(W. Diengdoh)
Judge

(H. S. Thangkhiew)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
25.08.2022
"*Lam* DR-PS"

