Serial No.02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

PIL No.8/2022

Date of Order: 11.04.2023

Champer M. Sangma Vs. State of Meghalaya & ors

Coram:

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

Appearance:

For the Petitioner : Mr. S. Dey, Adv with
Mr. S. Deb, Adv

For the Respondents : Mr. K. Khan, AAG with
Mr. S. Sengupta, Addl.Sr.GA
Mr. D. Nath, GA (For State of Assam)
Mr. P. Bora, Sr.Adv with
Mr. S.H. Jaman, Adv for R/14
Dr. N. Mozika, DSG with
Ms. A. Pradhan, Adv

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

The petitioner refers to an affidavit filed by Youdhistra Bhama verified on an undated day of April, 2023 upon being identified by a reckless Advocate by the name of LDN Thangkhiew.

Since Youdhistra Bhama is in Court, he has been examined under oath and he has indicated that the relevant affidavit was affirmed on April

3, 2023. The relevant deposition of Youdhistra Bhama in such regard will be appended to the said affidavit.

In such affidavit copies of certain tax invoices have been disclosed, indicating that the respondent No.14, on whose behalf the said affidavit has been filed, obtained coal, inter alia, from Bittu Coal Traders and Vaishno Devi Traders Private Limited, which, in turn, was exported to Bangladesh, apparently through the Gasuapara Customs station.

The petitioner has obtained, pursuant to queries raised under the Right to Information Act, 2005, information from the Customs authorities indicating, inter alia, that on several days beginning December 14, 2021, the coal for export was carried to the Gasuapara LCS using e-way bills of Jaimaa Coal Private Limited, the 14th respondent herein. Such export, according to the documents, were effected between December, 2021 and May, 2022.

Apart from the fact that the affidavit filed on behalf of the respondent No.14 was pursuant to an order dated March 29, 2023 which required, in effect, to indicate the origin of the coal but the affidavit is eerily silent on such aspect, it is submitted on behalf of the petitioner that Jaimaa Coal Private Limited, Bittu Coal Traders and Vaishno Devi Traders Private Limited are owned and controlled by the same person or members of the family of the same person. Indeed, the email ID of Vaishno Devi Traders Private Limited is jaimaa81@gmail.com. Further, the State of Assam has filed an affidavit through its Director-General of Police from which it appears that a first information report has been lodged on February 8, 2022 by an Assistant Commissioner of State Tax against Youdhistra Bhama of Jaimaa Coal Private Limited with the allegation that "after conduct of routine scrutiny and surveillance of the registration, the department could unearth that Sri Bhama in the name of doing permissible business activities, had been indulging in creating a fictitious supply chain through generation of fake tax invoices and e-way bills." The FIR went on to indicate that the investigation conducted by the relevant Department of the State of Assam had revealed that although the person named in the complaint "has sold coal for an amount of Rs.40.21 crores having tax involvement of Rs.52.80 lakhs but there were no records of purchase ..."

The object of the present petition, filed in public interest, is to demonstrate the apparent complicity of the State government with the illegal miners of coal in the State and those involved in the illegal transportation of the illegally mined coal.

From or about the year 2016, there could have been no mining of coal in the State since it is the State government's consistent stand that no license has yet been issued for undertaking scientific mining of coal and, by 2016, orders of the National Green Tribunal, as affirmed by the Supreme Court, were already in place completely banning the extraction of coal in the State of Meghalaya except in accordance with law.

Upon the matter of the rampant illegal mining of coal in the State coming to the notice of this Court in 2022, suo motu proceedings were instituted. There are several other matters pertaining to the illegal transportation of coal, the failure on the part of the State government to check overloaded vehicles and the like: all of which point to the State government being a party to the illegal mining and transportation of the coal in flagrant disregard of orders passed by the Supreme Court, no less. The malaise has not been arrested and it has prompted this Court, in the suo motu proceedings, to ascertain whether some Central Armed Police Forces may be engaged to undertake the checking activities. There may not be any illegal mining if there is no transportation of such coal and illegal transportation can be checked by police on roads and easily arrested if there was the right intent on the part of the State.

It appears that several persons have sought to take advantage of the fact that the previously illegally mined coal had been dumped in many places with directions issued by the Supreme Court for its disposal. Till such time that orders were made in the suo motu proceedings instituted in the year 2022, the State had taken no steps to ensure that the previously illegally mined coal till the year 2016 was disposed of. As a result, fresh coal continued to be illegally mined and dumped in open public view with the State claiming that such coal may have been a part of the previously illegally mined coal.

Mining operations continued in open view and may be still continuing with the State ignoring orders of this Court and orders already in place from the year 2016. Though the previously illegally mined coal has now been directed to be sold through auction and in the presence of Coal India Limited by a retired Judge appointed for such purpose by this Court, the quantum of coal available appears to be much more than available in 2016.

A new method appears to have been put in place where a lot of coal is exported through Gasuapara with such coal being apparently obtained from outside the State. The object of the exercise in the present petition is to demonstrate that most of the coal recently exported through the Gasuapara LCS has only been coal that has been illegally mined in the State with forged documents showing that such coal has been brought in from elsewhere. The petitioner claims that the respondent No.14 has no document to show the origin of the coal that was in its possession in April, 2021 when it sought permission to export the same through the Gasuapara LCS. Directions issued by the Court for the respondent No.14 to file its affidavit in such regard has resulted in the documents of Bittu Coal Traders and Vaishno Devi Traders Private Limited being relied upon, despite it being obvious that Bittu Coal Traders, Vaishno Devi Traders Private Limited and Jaimaa Coal Private Limited are, in effect, one and the same entity as they are controlled by the same human agency.

The petitioner complains that queries raised with the State Departments under the said Act of 2005 have fallen on deaf ears despite appeals being carried. The circumstances are such that an adverse reference may rightly be drawn by the Court that the State is averse to the truth coming out and has sought to filibuster the attempt by the petitioner to demonstrate that most of the coal exported through the Gasuapara LCS has been the illegally mined coal in the State and not coal emanating from outside the State.

Learned Additional Advocate-General appearing for the State submits that as far as the State is concerned, it only looks at an e-way bill or invoice which is produced by the would-be exporter to indicate the source from which the would-be exporter obtained the coal. According to the State, it has no duty at all to ascertain the origin of the coal once an apparent valid invoice is presented.

In the light of repeated orders of this Court to the effect that Supreme Court orders were being violated by the State not arresting the illegal mining of coal, the State ought to have been more alive to the fact that internally mined coal may be attempted to be exported by seeking to claim that such coal had been obtained from elsewhere. However, if the State itself is involved in the process, which appears to be the more likely scenario, then the State would hide behind the specious excuse now proffered that it allows transaction by looking at the documents produced without seeking to ascertain the veracity thereof. On the other hand, the State of Assam has expressed its doubts as to the genuineness of the business conducted by the respondent No.14 and, whatever steps may or may not have been taken pursuant thereto, at least a nominal FIR has been lodged. Not even so much appears to have been done by the State of Meghalaya in the matter of arresting the illegal mining of coal in the State.

The petitioner has relied on a bunch of papers which, according to the petitioner, is a chart prepared on the basis of the documents supplied by the Customs authorities pursuant to the RTI queries raised by the petitioner. The primary reply of the Customs appears at page 15 of the petitioner's affidavit filed on March 9, 2023 which is a copy of a letter dated September 23, 2022 by which information was forwarded by the office of the Superintendent, Gasuapara LCS to Advocate for the petitioner.

It is also recorded that it is submitted on behalf of the respondent No.14 that considering the large quantities of coal referred to in the order dated March 29, 2023, the invoices and other documents pertaining to the acquisition of the coal by the respondent No.14 run into several thousands of documents. Four hard paper cartons, said to contain such papers, have been carried to Court. Such cartons will be deposited with the Court Master of this Court for them to be made over to the Registrar-General for their safe custody. The boxes will be opened to inspect the contents thereof in course of further Court proceedings and in the presence of Advocate-on-record of the respondent No.14.

The detailed chart prepared by the petitioner in a spiral-bound form of a paper-book has been made available to the State today. A similar set will be made available to Advocate for the respondent No.14 in course of the day.

It is necessary that the Customs authorities, represented by the Superintendent of Customs, Gasuapara LCS be added as a party for the purpose of confirming the validity of the material relied upon by the petitioner which apparently emanated from the office of the Superintendent.

It will be open to the respondent No.14 to file a further affidavit, if necessary, to indicate the source of the vast quantities of coal as noticed in the order dated March 29, 2023. It would not do for the respondent No.14 to merely cite another trader from which the coal was obtained since the large amount of coal then in the possession of the respondent No.14 in 2021 would have come from some specific mines and it is such mines or the source of coal which ought to be indicated.

Dr. Mozika, learned DSGI, says that he will obtain instructions from the Superintendent of Customs, Gasuapara LCS. Accordingly, it will be open to Dr. Mozika, who is already appearing for the Coal Controller in the present proceedings, to forward copies of all papers pertaining to the present proceedings to the relevant Superintendent of Customs so that his presence and active participation is possible.

The State submits that some system has now been put in place by which illegal mining and illegal transportation of coal within the State may have been stopped. Such matter would be considered in the appropriate proceedings; but even if it be assumed that some measures have now been put in place, that would not exonerate the State or lead to any inference that prior to such system being put in place, the State may not have been complicit in helping the illegally mined coal in the State being exported to Bangladesh.

The matter will appear on April 25, 2023.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
11.04.2023
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