

**BEFORE THE NATIONAL GREEN TRIBUNAL,
Circuit Bench at High Court of Meghalaya,
Shillong**

**Original Application No. 13 of 2014
And
Original Application No. 73 of 2014
And
M. A. Nos. 174/2014, 653/2014, 656/2014, 660/2014, 661/2014 &
662/2014
In
Original Application No. 73 of 2014**

IN THE MATTERS OF :

**Impulse NGO Network Vs. State of Meghalaya & Ors.
And
All Dimasa Students Union Dima Hasao Dist. Committee**

**CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER
HON'BLE DR. DEVENDRA KUMAR AGRAWAL, EXPERT MEMBER
HON'BLE DR. (PROF.) P.C. MISHRA, EXPERT MEMBER**

Present: **Original Application No. 13 of 2014**
Applicant: Mr. Raj Panjwani, Sr. Advocate along with Mr. Aagney Sail, Advocate
Respondent No.1: Mr. Ranajan, Mukherjee, Advocate
Respondent No 2: Mr. Tayenjam Momo Singh, Advocate
Respondent No. 4: Ms. P. Batra Singh, Advocate and Mr. Purushottam Sakhare and Dr. H. Tepsong, Scientists

(Original Application No. 73 of 2014)
Amicus Curiae Mr. Raj Panjwani, Sr. Advocate along with Mr. Aagney Sail , Advocate
Respondent No.1: Mr. Ranjan Mukherjee, Advocate
Respondent No2: Mr. Tayenjam Momo Singh, Advocate
Respondent No. 3: Mr. Avijit Roy Adv.
Respondent No. 5: Smti Purabi Sarma, Adv.
Respondent No. 6: Mr. V.K. Jindal, Sr. Adv. and Ms. Q.B. Lamre
MoEF & CC: Ms. P. Batra Singh, Advocate and Mr. Purushottam Sakhare and Dr. H. Tepsong, Scientists

Respondent No. 9: Mr. Nitesh, Adv.
Respondent No. 10: Mr. H.S. Thagkhiew, Sr. Adv. with Pyllang Nongbri and Philemon Nongbri, Adv.
Respondent No. 11: Mr. S.P. Mahanta, Sr. Adv. and Dr. O.D.V. Ladia, Adv.
Mr. G.N. Sahewalla, Sr. Adv. and Mr. Sourabh Sharma, Adv.

| Date and Remarks | Orders of the Tribunal |
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| Item Nos. 3&4 October 7, 2014 | Heard. The Committee constituted vide our order dated 01.08.2014 has filed a detailed and comprehensive report dated 01.10.2014 before the Tribunal. At the very outset, we must record our |

appreciation for the effort put in by this Committee as serious attempt to regulate illegal, unauthorised and unscientific mining activities that have been carried out in the entire State of Meghalaya now for a considerable time.

Referring to the impact on environment and ecology of this rat-hole mining which patently was being carried on in a most unauthorised, unscientific, illegal, unregulated and impermissible manner as has been specified in this report at the very opening part, it has been stated that Meghalaya possesses rich deposits of high calorific value coal, and its mining was being carried on by traditional non-scientific method commonly known as "rat-hole mining". Various institutions like NEHU, MPCB, CPCB, CWC and CGWB have attempted the studies and monitored adverse impact of coal mining on air, water and soil for about a decade now. The inspecting team through the Agencies took grab samples from the air, soil, rivers and other water-bodies, hand pumps, bore-wells and carried out analysis. The analysis of the grab samples from different bodies have indicated high acidity as well as high concentration levels of dissolved iron sulphate and other chemical components yielding a higher level of conductivity values. The pH level as well as other levels have been found violative of the prescribed values. The highly acidic nature of rivers/streams is mainly due to the discharge of untreated acidic mine drainage from active or abandoned mines spread across the State. The monitored ambient air quality data has also shown suspended particulate matter beyond the prescribed range. The Committee thus concluded that since unregulated coal mining is going on for decades and resultantly untreated acidic effluents finding their way into various water bodies for a long time, it would be logical to expect an adverse impact on the environment and human life.

Further, the Committee with a specific reference to the ambient air quality has stated that the air quality was monitored in the residential, coal mining and coal storage areas of Jaintia Hills District as per the recommendations of the CPCB. The analysis thereof shows that the ambient air quality of coal mining and coal storage areas is found to be degraded to certain extent.

The Committee has noticed certain disturbing trends in respect of declarations made by the coal owners in the process of assessment of coal quantity in para-(G) of its report: A large number of coal owners have made false declarations without having any commensurate coal stock. Some mine owners have grossly over declared their stock. These can only be attributed to malafide intent to mine coal despite the interim ban or illegal disposal of the coal after the declaration but before the assessment. These cases need to be examined and penalised. Another aspect which the committee has pointed out is in para-20 of its current report where it is stated *"past experience shows that several illegal/unauthorised check gates operate whenever there is movement of coal trucks. The DGP at the State level and the DMs and SPs at the district level will ensure through regular inspections and monitoring that such illegal check gates, wherever existing, are immediately dismantled and no such illegal check gates operate to ensure proper movement of the coal trucks"*.

We may also notice that the learned Amicus Curiae appearing in the case while referring to the previous report of the Committee has pointed out that a large number of coal which was stated to have been declared by the coal miners in fact upon inspection was found to be NIL. Such wrong declarations were made to the extent of lakh tonnes of coal.

From the above, it is evident that all is not well with the mining

activity in the State of Meghalaya. The unscientific, unregulated and impermissible rat-hole mining is proving to be of serious consequences not only in relation to human health, pollution of environment but in causing great revenue losses to the State with cascading effect on general well-being of her citizens as well. The report submitted before the Tribunal has brought out facts which so far either did not surface or receive the attention of all the concerned authorities particularly the State Government. The time has come when all concerned persons/authorities must pay proper heed to the interest of the environment and human health in the State of Meghalaya. May be there is some financial loss to a very small section of the people of the Meghalaya but interests of such limited mass of people i.e. mining owners must give way to the larger interest of public, environment and human health. In our considered view, it is constitutional obligation of the State to ensure and provide decent and clean environment to its citizenry and at the same time to ensure that undue losses further compounding the environmental interest are not caused to the state revenue.

It is not disputed before us that the different Acts having bearing on environmental interests including Water (Prevention and Control of Pollution) Act, Air (Prevention and Control of Pollution) Act, Environment (Protection) Act, 1986, Forest (Conservation) Act, the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960, Mineral Conservation and Development Rules, 1988, EC Regulations of 2006, Forest Conservation Rules, 2003, Indian Forest Act, 1927 and other Acts are in force in the State of Meghalaya and it is the duty of all concerned and that of the individuals to obey the law. To enforce and obey the laws are the mutual obligations of the State and her citizens. This mutuality must be respected to maintain the dignity

and essence of laws, particularly of the environmental jurisprudence.

The learned Counsel appearing for the State of Meghalaya as well as for some of the Applicants have pleaded certain difficulties faced by some of the stakeholders and contended that the royalty payable on extraction of coal should be paid in accordance with section-9 of the Mines and Minerals Development Regulation Act, 1957 (for short, the Act of 1957) and not as per any other provision and they should be permitted to pay royalty in some instalments rather than paying the royalty in one stroke at the time of extraction itself. According to them, it is causing some financial problems for the people of Meghalaya as they are not in a position to pay the entire royalty in one go or in advance. It is further contended that there is some discrepancy as regards the extent of royalty payable as well as the weight of the coal on which such royalty is to be paid.

It is also argued before us that it may not be very practical for the State to fix weighing machines/weigh bridges because of limitation of spaces and geographical conditions of the State of Meghalaya. We may notice that this has been indicated by the Committee in its report. Having perused the report and having heard the learned Counsel appearing for all the parties concerned, we pass the following directions:

1. The guidelines suggested by the Committee for transportation of the extracted coal for six districts are accepted except to the extent where this order specifically provides otherwise. We had permitted the guidelines to be published vide our order dated 01.09.2014. The guidelines, thus, would be read in conjunction with this order and wherever the guidelines are at variance with the specific directions contained in this order, the order of this Tribunal and the directions issued herein shall prevail.

2. We make it clear that the State Government shall forthwith establish ten check posts as contemplated in our order and these ten check posts shall operate in accordance with the directions contained in the earlier orders of the Tribunal.

3. The State and the Committee appointed by the Tribunal shall ensure that weigh bridges are made as per the earlier directions of the Tribunal but wherever it is not possible to provide weigh bridges due to limitation of land etc. the State Government shall install online weigh bridges by fixing requisite sensors on the road. It is made clear that no vehicle carrying coal/transporting coal to any destination would be permitted to leave/exit the state without it passing through the specified weighing bridges.

4. The concerned authorities of the State which in fact under the mining rules would maintain due records of coal extracted/consumed, coal transported and coal permitted to exit the State, and such records would always be produced for inspection before the Committee as and when so directed. The royalty shall be payable under the levying section i.e. section-9 of the Act of 1957 on the coal removed or consumed as i.e. the mandate of the section.

5. The royalty shall be charged on the coal declared or assessed whichever is higher.

6. The coal royalty shall be payable computed by the concerned authorities by adopting correction factor i.e. 0.88 multiplier for converting weight of moist coal to dry coal as suggested by the Committee.

7. We further direct that the royalty shall be payable by the mine owners and it shall be their principal liability. However, the money can be tendered on their behalf by their agent/s. We further make it clear that the amount of royalty shall be a charge on the extracted coal. The amount of royalty can be paid by the mine owner in

accordance with law in three equal instalments-first would be payable forthwith, second within 30 days and third within 15 days thereafter. In other words, the entire amount of royalty shall be paid within 45 days hereafter. We make it clear that the entire extracted coal will not be permitted to be transported before clearance of the entire royalty amount but to the extent of royalty paid on any given date.

8. We direct the State Government to provide royalty collection counters in the district of West Khasi Hills, if not already provided. Any clarification in relation to the payment of royalty or computation of weight can be sought from the Committee, and it will be in the discretion of the Committee to pass appropriate order in that regard, correctness whereof can be challenged before the Tribunal.

9. In relation to the two districts i.e. West Khasi Hills and South Garo Hills, the Committee can proceed to complete the weighing/measuring the mined extracted coal lying on the sites. Wherever the weighing/measuring has been completed in relation to a specific mine, those mine owners can be permitted to transport the coal in accordance with the guidelines and the orders issued by the Tribunal from time to time.

10. As indicated in the report, nearly 6.3 million tonnes of extracted coal valued at Rs. 3078 crores is lying in the State of Meghalaya. The royalty payable to the State in reference to the extracted coal would be somewhere approximately Rs. 400 crores.

In light of the above, we hereby specifically permit transport of coal in the State of Meghalaya forthwith subject however to strict regulatory regime on payment of royalty as aforesaid in a scientific manner ensuring that it does not cause any environmental pollution.

However, we continue the order of injunction prohibiting any unscientific, illegal, unregulated and impermissible rat-hole mining

in any part of the State of Meghalaya.

11. We direct the Committee to submit a complete and comprehensive report as to the methodology along with the mining plan which should be adopted for the purposes of carrying out mining activities in a scientific, regulated, permissible manner in the State of Meghalaya. This report shall also provide the measures that should be taken for ensuring pollution free mining, duly protecting humans in general and labourers life and health in particular, and to keep the flora and fauna intact in the State of Meghalaya and to ensure that there is no further deterioration of water bodies including rivers/streams. This report shall also give measures which should be taken to ensure prevention, control and restoration of acidic water to normalcy with reference to pH, iron and sulphates levels, and to bring SPM and RSPM ambient air within the permissible limits.

The above steps are necessary to ensure that people of Meghalaya should be able to drink water of their streams, rivers and water bodies and breathe clean air without fear of sickness and ill-health. It cannot be disputed that Meghalaya is one of the most green states of the country and has enviable environment and ecology. It is the obligation of the State and every citizen to ensure that the environment, ecology and public health of the State is not permitted or subjected to further degradation and destruction. We would, therefore, be passing appropriate directions in regard to the restoration of the environment, water bodies and/or public health and even would proceed to determine whether all these mine owners are liable to compensate in terms of section 15 read with section 20 of the National Green Tribunal Act, 2010 on the basis of principle of polluter pays.

12. The Committee may for the purposes of submitting the above

report carry on surveys/inspections, and may engage specialised agencies like NEERI or CMPDI to carry-out the specific scientific surveys and submit its final report to the Tribunal.

13. The entire incident which has led to this litigation of a wide magnitude arose as a result of 15 persons getting fatally trapped in a mine on 06.07.2012. Evidently, the Tribunal cannot ignore this most important facet of this case. Though better working conditions in mining may not be strictly a subject of the Tribunal but it needs to be dealt with by the Tribunal as the Government has an obligation to provide humane working conditions, safety gadgets, proper remuneration and such other facilities so that workers engaged in the mines as well as in the transportation of the coal are not forced to work in the conditions which are bound to expose them to chronic diseases and make them susceptible to fall as victims on recurrence of such event. The young boys, who are expected to be studying in the schools at the tender age of 12/13 years are not expected to be working in rat-hole mine.

We express a pious hope that the State Government shall take all such measures including those which have been stated in the recommendations of the Committee and direct the mine owners to provide for all such measures and conditions of service to the mine workers as are required under the prevalent laws. This may not be a question directly related to the environment but by necessary implications it would touch upon the issue of bad environment and service conditions with resultant fear of recurrence of fatal incident and its injurious effect on human health.

14. We request the Committee to map the entire coal reserve of the State and superimpose the existing coal mines irrespective of their individual areas on map in order to identify the clusters and suggest measures needed for preparing appropriate environmental friendly

mining plan. We would request the Committee to complete its proceedings and submit final report at the earliest. We also expect that the State shall provide all manpower and facilities to the Committee to ensure that it completes its work at the earliest in order to facilitate the Tribunal to consider the individual requests to carry on mining activity.

Learned Counsel appearing for the MoEF has placed on record the minutes of meeting dated 17.09.2014. The same are directed to be taken on record. Further report, if any, be filed before the next date of hearing.

15. We would request the Committee to ensure that the proceedings are completed and report is submitted to the Tribunal atleast one week in advance of the next date.

We also direct the Committee to offer its comments as to the extent of coal in relation to which false declarations have been made by the mine owners and the existence of such coal as of today and what action the Committee proposes to State Government against these mine owners.

Rest of the reliefs are declined.

The matter to be listed for further hearing and directions on 8th and 9th December, 2014 at Shillong.

M. A. Nos. 653/2014, 656/2014 and 661/2014

These miscellaneous applications stand disposed of in light of the above order.

M.A. No. 660/2014

The applicant is permitted to intervene in the matter. He will have the right to address the Tribunal. With the above direction, M.A. No. 660/2014 stands disposed of.

.....,CP
(Swatanter Kumar)

.....,JM
(U.D. Salvi)

.....,EM
(Dr. D.K. Agrawal)

.....,EM
(Dr. (Prof.) P.C. Mishra)

