

**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. No. 174 of 2014, M.A. NO. 425/2014 & M.A. NO. 478/2014  
In  
Original Application No. 73 of 2014  
And  
Original Application No. 110(T<sub>HC</sub>)/2012**

**IN THE MATTER OF :**

**Impulse NGO Network Vs. State of Meghalaya & Ors.  
And  
All Dimasa Students Union Dima Hasao Dist. Committee  
And  
Threat to Life Arising Out of Coal Mining in South Garo Hills District  
Vs.  
State of Meghalaya & Ors.**

**CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON  
HON'BLE MR. RANJAN CHATTERJEE, EXPERT MEMBER**

**Present: Original Application No. 13 of 2014**  
**Applicant:** Mr. Raj Panjwani, Sr. Advocate along with Mr. Aagney Sail and Ms. Hasina Kharbhih, Advocate  
**Respondent No.1:** Mr. Ranajan, Mukherjee, Ms. Aprajita Mukherjee, Advs. with Sh. R. P. Marak, Director of Mineral Resources Mr. Y. Tsering, Principal Secretary Mining & Geology Dept., Mr. R.P. Marak, Director of Mineral Resources  
**Respondent No2:** Mr. Tayenjam Momo Singh, Advocate  
**Respondent No. 4:** Ms. P. Batra Singh, Advocate and Dr. S.C. Katiyar, Joint Director, MoEF and Mr.W.I. Yatbon, Dy. Conservator of Forests, MoEF  
**Respondent No.6:** Mr. V.K Jindal  
**(Original Application No. 73 of 2014)**  
**Applicant:** Mr. Arunabh Chowdhury, Mr. Parthiv Kr. Goswami and Barnali Chowdhury, Advs.  
**Respondent No.1:** Mr. Pinaki Mishra, Sr. Adv. with Mr. Ranjan Mukherjee, Advocate and Ms. Aprajita Mukherjee, Advocate, Sh. C.K. Marak, Dy. Secy. Mining & Geology, Meghalaya Govt. Y. Tsering, Principal Secretary Mining & Geology Dept. Sh. R. P. Marak, Director of Mineral Resources  
**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, Adv.  
**MoEF & CC:** Ms. P. Batra Singh, Adv.  
**Respondent No. 8:** Sh. S.C. Shyam Sr. Adv.  
**Respondent No. 9:** Mr. Nitesh, , Adv.  
**Respondent No. 10:** Mr. H.S. Thanj Khiew, Sr. Adv. with Pyllang Mr. Nongbri and hilemon Nongbri, Advs.  
**Respondent No. 11:** Mr. S.P. Mabanta and Mr. ODV Ladia, Advs. & Mr. Pragyam Sharma

**Original Application No. 110(T<sub>HC</sub>)/2012**

**Applicant:** Mr. Raj Panjwani, Sr. Advocate along with Mr. Aagney Sail and Ms. Anuradha Advocates

**Respondent No.1:** Mr. Ranjan, Mukherjee, Ms. Aprajita Mukherjee, Advs. with Sh. R. P. Marak, Director of Mineral Resources Mr. Y. Tsering, Principal Secretary Mining & Geology Dept. and Mr. C.K. Marak, Deputy Secretary.

**MoEF:** Ms. P.B. Singh Adv.

**Respondent No. 3:** Sh. S.C.Shyam Sr. Adv.

**Respondent No. 4:** Mr. S.C. Shyam Sr.Adv. and Mr. D.K. Sabu and Mr. Tapan Kr. Barman Advs. DGMS

**Respondent No.6:** Smt. Purabi Sarma, Adv.

**Respondent No. 7:** Mr. Tayenjam Momo Singh, Advocate

Date and Remarks	Orders of the Tribunal
<p><b>Item Nos. 1to3</b> <b>1<sup>st</sup> August,</b> <b>2014</b></p>	<p><b><u>M.A No.485 of 2014 and M.A. No. 478 of 2014 in Application No. 73 of 2014.</u></b></p> <p>Both these Applications have been filed by the Applicants for their impleadment. They claim that they have interest in the subject matter of the application and they are likely to be affected by the orders which may be passed by the Tribunal in these applications. There is no opposition to this application.</p> <p>Therefore, we allow both these applications, subject to just exception and without prejudice to the rights and contentions of the parties in the main petition. Both these applicants are directed to be impleaded as intervener / respondent and would be at liberty to argue at the time of hearing of the main application.</p> <p>Therefore, both these applications are accordingly allowed and disposed of.</p> <p>By this Order we shall deal with three main petitions; i.e, Application No.73/2014, Application No.13/2014 and Application No.11(T<sub>HC</sub>)/2012. The applicants in the main Application No.73/2014 are the members of the All India Dimasa Students Union concerned with the illegal, unscientific, unregulated and improper mining activity, particularly the rat-hole mining. These applicants have approached the Tribunal with a prayer that there</p>

should be an injunction order against carrying on of this kind of mining, which is primitive and exposes human life to a great danger. According to them, it affects ecology and environment of the area to the disadvantage of the Society. They prayed that this activity be stopped and proper measures be taken before the mining activity can be permitted in the entire state of Meghalaya with particular reference to Jaintia Hills.

Application No.13/2014 has been filed by Impulse NGO Network. While referring to the illegal, unscientific and unregulated mining activity going on in various parts of the state of Meghalaya, they prayed for prohibitory orders and further that a Committee be constituted to prevent further damage to environment and the said Committee may also be directed to fix responsibility of the persons who are responsible for degradation of environment and loss to ecology, besides polluting the rivers and stream water. They also prayed that there should be a social impact assessment and directions in regard to restoration of the environment and ecology be passed by this Tribunal. The applicants referred to various parts of the State of Meghalaya but they also made a definite reference with regard to Jaintia Hills in the State.

Application No.110/2012 is a petition which has been transferred to the National Green Tribunal from the High Court of Guwahati. The High Court vide its order dated 27<sup>th</sup> July, 2012 had directed on a note submitted by the Registrar General of that court, founded on the news reports made by the print media in different newspapers during the period 11<sup>th</sup> – 13<sup>th</sup> July, 2014. This incident is stated to have occurred on 6<sup>th</sup> July, 2012, where a large number of labourers were trapped in the illegal mining being carried on by Respondents No.4 & 5 in this petition. Out of them, it is stated

that nearly fifteen persons died while others escaped.

It was the news reports in the print media even from 10<sup>th</sup> July, 2012, that persuaded the High Court to direct issuances of notice to the various parties even on 11<sup>th</sup> July, 2012. The Telegraph had reported that fifteen labourers had been trapped inside the coal mine. The Learned Counsel appearing for the State and some of the Respondents accepted notice on 24<sup>th</sup> September, 2012 before the High Court which finally as already noticed, was transferred to this Tribunal vide Order dated 5<sup>th</sup> January, 2013 and it was registered as Application No.110/12 before this Tribunal. In the media reports which, inter alia, impressed the High Court in issuing notice to the parties was that unscientific, illegal mining as in Jaintia Hills was also being carried on in Garo Hills region.

In the letter written by the Assistant Commander, Officer Incharge, National Disaster Response Force (NDRF) to the Deputy Commissioner, South Garo Hills, it was specifically noticed that on 12<sup>th</sup> July, 2012 that fifteen coal mine labourers were suspected to be trapped inside since 6<sup>th</sup> July, 2012, due to flooding of the coal mines as mentioned in the media. In the letter it was also suggested as to what measures / steps could be taken in that behalf. Furthermore, on 11<sup>th</sup> July, 2012, the Deputy Commissioner, South Garo Hills wrote to the Registrar of Guwahati High Court while reporting the matter in relation to the incident of 6<sup>th</sup> July, 2012, stating that he was informed that on 6<sup>th</sup> July, 2012 around 12:30 PM, some thirty labourers were supposedly inside the coal mine when the mine collapsed. Fifteen of them somehow managed to escape. However, fifteen labourers are feared to be still trapped inside and that a case under section 304A IPC had been registered with the concerned Police Station against the owner of

the said mine and that investigation was simultaneously taking place along with Magisterial Enquiry. During the pendency of these petitions, the heirs / relatives of some of the deceased have filed affidavits confirming that their relations who were working in the said mine died and that some of them were paid the meagre compensation of Rs.80,000/- by the Contractor/ Mine Manager.

In these circumstances, this Tribunal while exercising its jurisdiction under sections 14 and 15 of the National Green Tribunal Act, 2010 issued notices to various parties and vide order dated 17<sup>th</sup> April, 2014, the Bench of this Tribunal passed a detailed injunction order and directed that the rat-hole mining/illegal mining be stopped forthwith throughout the State of Meghalaya and any illegal transportation of coal shall not take place until further orders by the Tribunal.

This order of the Tribunal came to be challenged by some of the aggrieved parties before the Supreme Court of India in Civil Appeal No. 5756,5757 and 5758 of 2014 which were dismissed vide order dated 19<sup>th</sup> May, 2014 passed by the Supreme Court of India. However, the Supreme Court granted liberty to the applicants to approach the Tribunal for variations of the orders, if they so desire.

As a result of the above order, a number of applications have been filed before the Tribunal praying for variation of the orders as well as some of the interveners who are supporting the cause of the main applicants in regard to illegal, unscientific and unregulated mining being carried on in the State of Meghalaya and that the same should be stopped. Some of these applications were dealt with by the Tribunal vide its order dated 9<sup>th</sup> June, 2014. Vide the same order, the Tribunal had constituted a Committee primarily consisting of the Government officials and members of the Pollution Control Board. The Tribunal issued certain directions to this

Committee and the said Committee was expected to submit a detailed report. These directions related to suggestions with regard to carrying on scientific, proper, regulated and licensed mining upon seeking due clearance from the concerned authorities. It was further to take up the matter with the State Government and ensure submission of Mining Plan for the State of Meghalaya as well as the Health Plan particularly in relation to carrying on of mining activities in the State of Meghalaya. It may be specifically noticed here that the Tribunal had specifically prohibited carrying on of illegal, unscientific and unregulated mining with particular reference to the rat-hole mining in the entire State of Meghalaya but having noticed the fact that large quantity of extracted coal lying at the depot or in and around the mining sites, the Tribunal had permitted the transportation of the coal but with due checks and balances. The conditions of transportation with specific checks and balances were to be provided by this Committee.

This Committee, however, failed to perform its functions and submit an appropriate report, inter alia, primarily on the following points:

- 1) It failed to frame requisite guidelines for transportation of extracted coal in accordance with the order dated 9<sup>th</sup> June, 2014.
- 2) It delegated its powers to various departments and authorities which it was not entitled to do.
- 3) It constituted sub-committees to perform functions which it was not empowered to form.
- 4) It failed to submit appropriate report to this Tribunal and has not taken up the matter with the concerned authorities in terms of the directions contained in the order dated 9<sup>th</sup> June, 2014; particularly condition Nos. V, VI, VII, VIII, IX, X & XIII.

We have no hesitation in observing that the Committee constituted vide order dated 9<sup>th</sup> June, 2014 has failed to perform

the function assigned to it and has caused serious impediments not only in the environment related issues and proper transportation of already extracted coal which was permitted by the Tribunal but has caused huge revenue loss to the State.

One finds no reference of these petitions and the Committee has shown scant respect for the orders of the Tribunal. On the contrary, this Committee has taken up the stand that the inspections were to be completed within one week and as they were unable to do so, the entire work came to a standstill and nothing has been done thereafter for the entire remaining intervening period till date. We observe with some regret that we cannot permit this Committee to carry on functioning any further as it may prove to be seriously prejudicial to the environment, ecology and even to the revenues of the State.

Various applicants have approached this Tribunal stating their respective economic and other hardships. Even organizations like Hindustan Paper Corporation Limited and North Eastern Electricity Power Corporation have approached the Tribunal, among others. According to the claim of the former, there is acute shortage of coal and thus their production is considerably hampered. While according to the latter, the rivers and stream water are highly polluted (acidic) to the extent that it is unfit for human and industrial consumption. According to them, even their turbines have been damaged because of the polluted water to the extent that the production of power was minimized and even had to be stopped occasionally.

In addition to the above, there are serious disadvantages of unscientific, unregulated and illegal mining, particularly, the rat-hole mining being carried on in the entire State of Meghalaya. It not only affects the environment and ecology of the area but it also

seriously pollutes the groundwater, rivers and streams of the area where such activity is being carried on indiscriminately and unscientifically.

At this stage we may notice that the Central Pollution Control Board along with the Pollution Control Board of State of Meghalaya had conducted an inspection and collected samples. They submitted analysis report showing that the groundwater and the stream water is violative of the prescribed parameters and is highly acidic. It is also undisputed that the water source in the entire State of Meghalaya is primarily provided by natural streams rivers and water bodies. If the water in such bodies is found to be acidic then there can be no doubt that it is patently injurious to human health. The adverse effects of such polluted water are obvious not only from these analysis reports but even from the industries point of view, where it is causing pollution by causing damage to the machinery and exposing the persons working therein to health hazards which are a direct consequence thereof.

Now let us examine the merit of the contentions raised on behalf of some of the applicants and even the State that there are economic interests which need to be protected and a further ban on carrying on of mining activities may adversely affect the economic interest of the State and the individuals who are involved in this activity. We find this argument without substance, both legally and practically. Firstly, Article 21 of the Constitution of India, gives prominence to the right to life, than any other interest including economic interest of the State or the individuals. It will be travesty of justice if in our country, the largest democracy in the world, economic interests are to take precedence over the fundamental right to life and to live in a healthy environment. More so, when



the reason for such precedence is that non-permitting of an illegal activity is likely to hurt a section of the society economically. Repeatedly, the Supreme Court of India has held that even a State cannot be permitted to take shelter of the economic limitations where it comes to protection of life and liberty of the citizens of the country.

However, the Senior Counsel appearing for the State of Meghalaya stated that they would definitely prefer regulated mining and then protect the economic interests of the State in question. We do appreciate this approach of the State, provided it is taken in its true spirit and substance.

Coming to the other limb of the submission relating to the practical aspect of disadvantage flowing from the ban on illegal mining; it is undisputed before us that huge quantity of extracted coal is already lying at the depots and also in and around the mining sites. In fact, the recent report submitted by the Committee appointed by us vide its order dated 9<sup>th</sup> June, 2014 states that nearly 3659152 metric tonnes of coal as declared by the mine owners/managers but the same was assessed by the Committee to be 3736352 metric tonnes in the report. It is also stated that the extracted quantity of the coal declared by the mine owners/manages which could not be verified is 8587147 metric tonnes. According to them, the valuation of extracted coal is approximately Rs.18,000 crores as on date. We have already noticed that the proceedings of the Committee even in this behalf are not quite satisfactory, but at this stage we will take these figures to be estimated figures whereby coal worth Rs.18,000 crores can be transported, which itself may take a considerable time running into several months. The extraction of coal would become relevant only when this extracted coal is exhausted or is about to

be exhausted and before that mining of coal would lose its relevancy and importance primarily from the economic point of view. The State can earn its revenue from the transportation of the said extracted coal while the individuals/ mine owners can make money by sale of this coal in accordance with rules and regulations and transportation strictly in accordance with the orders of the Tribunal as contained in the order dated 9<sup>th</sup> June, 2014. Thus we find no merit whatsoever in this plea. This is being raised for the sake of raising the plea, rather than caring for the substantive benefit and the constitutional rights of the citizens which the State of Meghalaya is duty bound to respect and provide.

Having dealt with the above issues, now we would revert back to the necessity for constitution of a new Committee for the reasons already recorded *supra*. We are of the considered view that it would not be in the interest of justice and expeditious restoration of mining activity and proper transportation of the extracted coal that the Committee constituted earlier by the Tribunal should be permitted to function any further. Hence, we appoint the following Committee which shall substitute the Committee constituted by us vide our order dated 9<sup>th</sup> June, 2014:-

The new Committee shall constitute of:-

1. Shri. Kuljit Singh Kropha, IAS, Additional Chief Secretary, Home, Political, etc, Departments, State of Meghalaya
2. Shri. M.S. Rao, IAS, Principal Secretary, Environment and Forests & Labour and Principal Secretary to the Governor, State of Meghalaya
3. Senior most scientist, CPCB not In-charge of the region in the State of Meghalaya
4. Member Secretary of the Pollution Control Board of the State of Meghalaya.

5. A Professor to be nominated by the Director of IIT, Guwahati having expertise in mining activity.

We further direct as follows:

- a) The newly constituted Committee which is the substitute for the earlier Committee shall confirm the quantity of extracted coal and its value as stated in the report of the earlier Committee.
- b) The newly appointed Committee shall perform all functions and carry out the directions as contained in the order of the Tribunal dated 9<sup>th</sup> June, 2014, expeditiously and shall be duty bound to comply with all the directions that are contained in the order of the Tribunal dated 9<sup>th</sup> June, 2014, which order shall form an integral part of this order.
- c) The newly appointed Committee shall be at liberty to appoint / engage experts or such other persons from public or private sector or specialized institutions as it may be necessary as to assist the Committee in performance of its functions. It is made clear that the Committee will not delegate any of its functions to any other sub-committee or body.

We request the State Government and other bodies to spare the concerned Officers from their respective departments and institutions to perform their assigned functions being members of the newly constituted Committee.

The Senior most Officer among them shall be the Chairman/ Nodal Officer of the Committee. He shall ensure that the Committee meets within one week from today and within one week thereafter,

it shall provide the complete scheme with regard to valuation of the extracted coal lying in the various mining sites, depots or anywhere else in the State of Meghalaya. It shall further provide for comprehensive guidelines related to removal and transportation of the extracted coal. It should ensure that proper checks for removal of coal in terms of quantity, quality, and environmental pollution from washing the coal enroute and all other incidental matters are specifically addressed within the period of two weeks. The guidelines so framed, shall be put on the website of the State Government, local newspapers and shall be circulated to all the mining organizations, the Deputy Commissioner and Superintendent of Police of the respective areas and districts.

After a period of two weeks from today, the Government in its discretion shall permit the removal/ transportation of the coal, subject to strict adherence to the conditions specified by this Committee and in no other manner and way. We make it clear that if the Committee has any difficulty in providing such guidelines within the stipulated period, we grant specific liberty to the Committee and the State to approach the Tribunal at Delhi at any point of time. We are passing this direction primarily to ensure that there is no prejudice caused to the interest of the State or the common man while protecting the health, environment and ecology of the area in question.

It is imperative for us to notice the submission on behalf of the State. This would help in providing clarity and unambiguously bring on record the correct facts. The Learned Counsel appearing for the State of Meghalaya upon instructions from the concerned Secretary and the Officer states that presently there is no scientific, regulated, licensed mining with the permission of the Competent Authority in law being carried on in any part of the State of

Meghalaya.

The Learned counsel appearing for the Pollution Control Board of Meghalaya has further supported this statement by submitting that none of the Mine owners or operators, as on date have been given consent to establish and or operate in the entire State of Meghalaya. If that be so, it can hardly be argued by any party that the Tribunal should permit unscientific, illegal, unregulated and undesirable mining, particularly the rat-hole mining in the State of Meghalaya. Therefore, we continue the interim prohibitory order till further orders and direct that no unscientific, unregulated, illegal mining without seeking Environmental Clearance or the consent of the concerned Board, particularly the rat-hole mining would be permitted to be carried on in any part of the State of Meghalaya. All the concerned authorities particularly the Deputy Commissioners and the Superintendents of Police of each district will be personally responsible to ensure the compliance of this order. However, we permit the transportation of already extracted coal, strictly in accordance of this order and the guidelines/conditions that will be formulated within two weeks from today by the newly constituted Committee.

Needless to notice at this stage that these are purely interim orders which will continue till next date of hearing and will be subject to final disposal of the applications pending before the Tribunal. It is also without prejudice to the rights and contentions of the parties.

A number of Applicants and Respondents in the petitions have filed evidence by way of affidavits. Let copy of all the affidavits filed by any party be furnished to all the Counsel appearing in the case. We make it clear that the parties that have filed evidence by way of affidavit shall be present before the Tribunal for examination

/cross-examination on the next date of hearing.

We direct the Superintendent of Police, Dhubri District, Assam, to ensure that the following persons who have submitted affidavits are directed to be present before the Tribunal on the next date of hearing,

1. Md. Rohim Uddin @ Rabim Uddin, S/O. Late Nalu Sheikh.
2. Md. Kuddus Ali, S/O Late Afaz Ali.
3. Momotaz Bibi W/O Late Md. Sahabuddin(S/O Late Md. Rupchand Sheikh).
4. Md. Rezzak Ali, S/O Late Md. Rupchand Sheikh.

The Learned Counsel for the parties submitted that they would lead evidence in support of their respective cases. Since the Tribunal is exercising the jurisdiction vested in it under Section 14 and 15 of the NGT Act, 2010 and in accordance with the provision of the Section 19 of the Act read with NGT Practice Rules. It would be necessary to follow a procedure that is in consonance with principle of natural justice and parties be given due hearing. Consequently, we grant liberty to all the parties/applicants to file the list of witnesses which they wish to examine in support of their case within two weeks from today with advance copy to all the counsel appearing in the case. Along with the list they shall also file affidavit of the witnesses which they wish to examine unless and until they wish to summon these witnesses through trial process of the Tribunal. Liberty is granted to summon such witnesses as well. The witnesses whose affidavit are filed by the respective parties shall be present for examination/ cross examination before the Tribunal on the next date of hearing.

We make it clear that the affidavit so filed on behalf of the parties shall relate to issues of prohibiting permanently

unscientific, illegal unregulated and unlicensed mining including rat-hole mining in the State of Meghalaya. Further what mechanism has to be provided to ensure scientific mechanized proper and licensed mining in the State of Meghalaya and what directions need to be issued in this regard. Lastly what directions tribunal should pass in relation to compensation for degradation of the environment and ecology and its restoration in accordance with provision of Section 15 of the NGT Act, 2010. The Affidavits need not be filed in the matters beyond the issues mentioned herein above.

The Learned Counsel appearing for the Applicant has brought to our notice the extracts of the report of the Controller and Auditor General of India for the period ending 31<sup>st</sup> March, 2013 wherein certain observations have been made with regard to illegal, unregulated mining and the revenue loss that has been caused to the State of Meghalaya. The Learned Counsel appearing for the State however objected to the said report being taken into consideration at this stage as it is subject to comments by the Public Accounts Committee of the Legislative Assembly. We are not basing our findings on this report at this stage. Needless to notice, the Government of India has already implemented various key livelihood programmes with substantial outlay for ensuring that people in the State or in any part of the country are safeguarded against economic disadvantages. We direct the State Government to ensure that in the meanwhile neither illegal mining nor illegal transportation is permitted to.

The learned counsel appearing for the State would place on record the copy of the statement of the three witnesses and the mine manager as referred to at page 14 of the paper book may be produced on the next date of hearing.

List matter on 7<sup>th</sup> and 8<sup>th</sup> October, 2014 for evidence and further arguments.

.....,CP  
(Swatanter Kumar)

.....,EM  
(RanjanChatterjee)

