(2025) 11 JH CK 1964

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6378 Of 2025

Chaman Tulsyan APPELLANT

Vs

State Of Jharkhand, through its Secretary RESPONDENT

Date of Decision : 17-11-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 226
Indian Toll (Jharkhand Amendment) Act 2002 — Section 2
Jharkhand Highways Fee (Determination of Rates and Collection Amendment Rules 2021 — Rule 3A, 3A(1), 3A(3), 3A(4), 3(2), 7

Citation : (2025) 11 JH CK 1964

Hon'ble Judges : Sujit Narayan Prasad, J;Arun Kumar Rai, J

Bench : Division Bench

Advocate : Shruti Shekhar, Shray Mishra

Final Decision : Disposed Of

Judgement

Sujit Narayan Prasad, J

1. The instant writ petition has been filed under Article 226 of the Constitution of India seeking therein following reliefs: -

"(i) For issuance of an appropriate writ/order/direction, including writ of Declaration, declaring that action of Respondent-State of Jharkhand in levying/ collecting 'Toll Tax' in the form of 'Composition User Fee' through the medium of 'Jharkhand Integrated Mines and Minerals Management System Portal' (hereinafter referred to as JIMMS Portal for short) at the time of generation of Transport Challan for transportation and otherwise removal of minerals, is contrary to the provisions of Jharkhand Highways Fee (Determination of Rates and Collection Amendment Rules 2021 (hereinafter referred to as Rules of 2021 for short) especially in view of the fact that neither any notification under Rule 3(2) of the rules of 2021 has been issued notifying the date of collection of Composition User Fee on completion of sections of State Road, nor any scheme under Rule 3A has been issued enabling levy of 'Composition User Fee'.

(ii) For issuance of further appropriate writ/order/direction, including Writ of Declaration, declaring that action of the Respondent-Department of Mines and Geology prescribing in JIMMS Portal the mechanism for levy of Composition User Fee on each and every transaction of generation of Mining Challan/Transport Challan, is wholly contrary to the scheme of the rules of 2021 and is further wholly arbitrary and unreasonable being violative of Articles 14 and 19(1)(g) of the Constitution of India.

(iii) For issuance of further appropriate writ/order/direction, for quashing/setting aside Letter No.2089 dated 28.12.2021 (Annexure-2) issued by the Respondent No.3, wherein mechanism has been developed for realization of 'Toll Tax' in the form of 'Composition User Fee' from the mining lessees/dealers/transporters and vehicle owners dehors the provisions contained under the Rules of 2021.

(iv) For issuance of any other appropriate writ(s)/order(s)/direction(s) as Your Lordships may deem fit and proper in the facts and circumstances of the case."

2. The brief facts of the case, as per the pleading made in the writ petition, required to be enumerated, which are as under: -

(i) The petitioner is engaged in the business of mining of minor mineral in the district of Sahibganj and is having a subsisting mining lease dated 06.08.2016 situated at Mauza, Jokmari, Plot No. 85,86 and 88 (part) having an area of 7.65 acres situated in the district of Sahibganj.

(ii) The petitioner, in respect of the aforesaid Mining Lease, is separately registered in JIMMS Portal administered under the provisions of 'The Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage), Rules, 2017'. The petitioner is regularly carrying out his business of mining i.e. excavating minerals including its consequent transportation strictly in terms of the provisions of Jharkhand Minerals Rules, 2017 and there is no dispute in respect of the same.

(iii) The Respondent-State of Jharkhand, through the Department of Mines, with effect from 1st February, 2022, has imposed additional condition at the stage of generation of Transport Challan and has compulsorily provided for levy of 'Toll Tax' in the form of 'Composition User Fee' which is to be paid by vehicle owners at the time of generation of Transport Challan. Said 'Toll Tax' in the form of 'Composition User Fee' is levied on 'To and Fro basis' @ Rs. 600/- for each way and, thus, total Toll Tax levied is 1200/- at the time of generation of each Transport Challan.

(iv) The aforesaid exercise has been carried out by Respondent-Department of Mines pursuant to enactment of Rules of 2021 which has been notified vide Notification dated 16th September, 2021. The said mechanism has been implemented in JIMMS Portal, which would be evident from Letter No. 2089 dated 28.12.2021 issued by Respondent No.3-Director of Mines.

(v) Further, the Respondent-State of Jharkhand, vide 'The Indian Toll (Jharkhand Amendment) Act, 2002' amended the provisions of the Indian Toll Act, 1851.

Under the said Jharkhand Toll Amendment Act, 2002, provisions were incorporated enabling the State of Jharkhand to realize Toll Tax upon any road or bridges.

(vi) The Respondent-State of Jharkhand, in exercise of the power conferred under Section 2 of the Indian Toll (Jharkhand Amendment) Act 2002 framed 'The Jharkhand Highways Fee (Determination of Rates and Collection) Rules, 2011). The said Rules provided for levy and collection of Toll for use any State Highways, etc. from the date of completion of Section of the said Highways, etc.

(vii) However, vide Notification being Notification No. 553(S) dated 17.02.2022, sub-rule (4) of Rule 3A of the Rules of 2021 has been amended and it has been provided, in substance, that Composition User Fee shall not be levied on commercial vehicles carrying materials less than 9 (nine) tons. From the perusal of the aforesaid Rule 3A, it would transpire that the State Government may, by a notification in the official Gazette, provide for levy of Composition User Fee in addition to the amount of User Fee payable under the Rules. Further, the said Rule provides for levy of Composition User Fee on 'to and fro' basis, and. @ Rs. 600/- for each way has been prescribed under the said Rule.

(viii) The aforesaid amendment carried out under the Rules of 2021 is with a sole intent to levy additional Toll Tax in the form of 'Composition User Fee', which is to be levied on vehicles for use of State Road or part thereof for commuting in mining area.

(ix) It is the case of the petitioner that the purpose of the aforesaid amendment is contrary to the very scheme of Tolls Tax Act, which provide that Toll can be levied only if corresponding benefit is provided to the public and the same cannot be levied as a measure of collection of Tax for enriching consolidated fund of the State. However, contrary to the aforesaid purpose, Rules of 2021 has been enacted targeting levying of Toll Tax in the form of 'Composition User Fee' on vehicles transporting minerals.

(x) Further, in context of the above, Transport Challan is generated through JIMMS Portal and the said Transport Challan is only issued to a vehicle which is registered in JIMMS Portal.

(xi) After promulgation of Rules of 2021, the Department of Mines carried out amendment in JIMMS Portal, and at the time of generation of Transport Challan. Composition User Fee' on 'to and fro basis @ Rs. 600/-each way i.e. total amount of Rs. 1200/- is levied when a Transport Challan is generated. Not only that levy of Composition User Fee i.e. additional Toll Tax is completely contrary to the basic structure for which Toll Tax can be levied, but even the said action of the Respondents of levying Composition User Fee on each and every transaction of generation of Transport Challan is even contrary to the Rules of 2021.

(xii) Further, in context of the above, in terms of Rule 3(2) of the Rules of 2021, Composition User Fee can be levied only in respect of such section of State Road for which a notification has been issued in that regard upon completion of the State Road. Further, under Rule 3A, Composition User Fee can be levied only in addition to the User Fee payable under the Rules and, thus, Composition User Fee can be imposed only in respect of such transaction where transportation of minerals is in respect of the section of the State Road which is leviable to 'User Fee' as has been notified in terms of Rule 3(2) of the Rules of 2021.

(xiii) Subsequently, vide Notification dated 16th June, 2022 published in Extraordinary Gazette on 20th June, 2022 the provisions of Rule 3A has been substituted and in Rule 3A(1) the words 'in addition to the amount of Composition User Fee' have been substituted with the words 'in lieu of user fee payable under Sub-Rule (1) of Rule 3. Further, after the amendment in Rule 3A, vide notification dated 16th June, 2022, the State Government is not entitled to levy of Composition User Fee.

(xiv) The Composition User Fee is levied in lieu of User Fee payable under Sub-Rule (1) of Rule 3, and thus, the same is substitute for levying User Fee. However, although Composition User Fee has been made as a substitute for levying of User Fee even then under the Rules, since Composition User Fee is levied in lieu of User Fee, the said levy of Composition User Fee can be attracted only if the section of State roads etc. are notified in terms of Rule 3(2) of the Rules.

(xv) Further, the provisions made in the JIMMS Portal for levy of Composition User Fee is not only directly in the teeth of the provisions made under Rule 3 but, it is also contrary to the amendment to the provisions of Rule 3A(1) of the Rules 2021. In this regard, under the amended Rule 3A(1) of the Rules, Composition User Fee can be levied only if the State Government provides for a scheme for payment of Composition User Fee but, as yet, no such scheme has been provided by the State Government even after the amendment made in Rule 3A, and, thus, the levy of Composition User Fee through JIMMS Portal is not sustainable in the eye of law.

(xvi) Apart from that, the Rule 7 of the Original Rules only enables the Respondent-authority to collect through JIMMS Portal 'User Fee' and not 'Composition User Fee' and the said Rules have not yet been amended. Under the said circumstances, prescription of levy of Composition User Fee through JIMMS Portal at the time of generation of e-Challan is not sustainable in the eye of law.

(xvii) Further, the provision made under the JIMMS Portal providing for levy of Composition User Fee @ Rs 1200/-for generation of each Transport Challan is clearly violative of Rule 3(2) and Rule 3A(1) and the said general condition imposed under the JIMMS Portal is wholly unreasonable, arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India.

(xviii) Further, the respondent-Department of Mines, with effect from 1st February, 2022, has started implementing levy of Composition User Fee and in the JIMMS Portal, dues against each vehicle @ Rs. 1200/- is reflected on generation of one Transport Challan.

(xix) The Petitioner is having his Crusher Units and in view of the provisions incorporated in the JIMMS Portal, Petitioner are being charged twice Composition User Fee @ Rs. 1200/-. The Petitioner, for the purpose of transportation of stone boulders from his Mines to its Crusher Units, generate Transport Challan and at that stage Composition User Fee is levied, and, further, when the Petitioner transport the crushed minerals for onward sale, then, at that stage also, Composition User Fee is levied.

(xx) However, since Respondents under the Rules have prescribed for levy of Composition User Fee on to and fro basis the Composition User Fee is being levied to the Petitioner @ Rs. 2,400/- instead of Rs. 1,200/-.

(xxi) Apart from that, the provisions incorporated under the JIMMS Portal for compulsory payment of Composition User Fee at the time of generation of Transport Challan; de-hors the fact that transportation of minerals would be undertaken in respect of a section of State Road, whether notified or not, for the purpose of levy of User Fee, is completely contrary to the provisions of the Rules of 2021 itself.

(xxii) Further, the aforesaid condition, which has been prescribed for levying fixed rate @ Rs. 1200/- for generation of each Transport Challan is itself, on the face of it, is arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India and is completely contrary to the scheme of the Toll Tax, as has been interpreted by the Hon'ble Apex Court in its various Judgments.

(xxiii) Recently, on 24.06.2025, Director, Mines has issued a letter directing JIMMS Portal to ensure collection of Composition User Fee from minerals bearing vehicles at the time of generation of Transport Challan. Said letter is reflected in the JIMMS Portal, which is a Notification informing all stakeholders that it has become mandatory for stakeholders to make payment of Composition User Fee on vehicles being used for transportation of minerals. Immediately after issuance of aforesaid letter, in the Online JIMMS Portal, at the time of generation of Transport Challan/Mining Challan for transportation of minerals, requirement is being reflected for deposit of Composition User Fee of Rs. 1200/- per trip and without payment of Rs. 1200/- per trip, Transportation Challan is not being generated.

(xxiv) Further, the issuance of the letter dated 24th June, 2025 by Director Mines directing for levy of Composition User Fee at the time of generation of Transport Challan is directly contrary to the undertaking of learned Advocate General, wherein it was clearly assured that no coercive steps shall be taken for realization of Composition User Fee.

(xxv) The Respondent-Road Construction Department Notification dated 13th May, 2025 has amended sub-rule 3 of Rule 3A by framing Jharkhand Highways

Fees (Determination of Rates and Collection) Amendment Rules, 2025 prescribing thrice penalty of composition user fee in case of non-payment of composition user fee.

(xxvi) Further, the levy of Composition User Fee by virtue of Jharkhand Highways Fees (Determination of Rates and Collection) Amendment Rules, 2021 and/or its subsequent amendment, is beyond the provisions of Section 2 of the Indian Toll Act, 2851 or the Indian Toll (Jharkhand Amendment) Act, 2002.

3. Learned counsel for the petitioner, based upon the aforesaid facts of the case, has submitted that the instant writ petition is fit to be allowed.

4. Mr. Shray Mishra, learned AC to learned Advocate General appearing for the respondent-State has submitted that the similar issue has already been decided by the co-ordinate Bench of this Court in W.P.(C) No.1532 of 2022 and analogous cases on 24.09.2025.

5. The aforesaid fact has not been disputed by the learned counsel for the petitioner.

6. Submission, therefore, has been made by the respondent-State that the present writ petition may be disposed of in terms of the said judgment passed by the co-ordinate Bench of this Court.

7. We have considered the arguments advanced on behalf of the parties and perused the judgment passed by the co-ordinate Bench of this Court in W.P.(C) No.1532 of 2022 and analogous cases on 24.09.2025.

8. We, after going through the prayer and pleadings made in the writ petition, as also, the judgment dated 24.09.2025 passed in W.P.(C) No.1532 of 2022 and analogous cases, have found that the issue, which is the subject matter of the present writ petition, has already been decided by this Court in the aforesaid judgment. For ready reference, the relevant paragraphs of the said judgment are being referred as under:-

"… 68. Though the learned counsels for the petitioners have raised several issues before this court, yet it seems appropriate to first take up the primary and main issue raised by them, which is as follows:-

"Whether the Rules, 2021 and the subsequent amendments thereto which provide for levy of 'toll' in the name of "Composition User Fee" on transportation of minerals through mechanical vehicles using State roads or parts thereof or commuting in mining areas, is beyond the scope of the provisions of Section 2 of the Act, 1851?"

78. The Jharkhand Highways Fee (Determination of Rates and Collection) Rules, 2011 was notified by the Road Construction Department, Government of Jharkhand vide Notification dated 15th April, 2011, in exercise of the powers conferred under Section 2 of the Act, 2002 and the same was framed for the purpose of collection of fee/toll for use of sections of state highways, major

district roads, other district roads, bridges, inter- changes, flyovers, ROB/RUBS, bypasses and tunnels.

79. Rules, 2011 was subsequently amended by the Government of Jharkhand vide Rules 2021 introducing the concept of levy of 'Composition User Fee" which was sought to be levied by the State for use of state roads and/or commuting on roads and bridges in mining areas, in addition to the 'User Fee' payable under Rule 3 of Rules, 2011.

81. The Road Construction Department, Government of Jharkhand, vide Notification dated 16th June, 2022, carried out amendment in Rules, 2021 and framed the Jharkhand Highways Fee (Determination of Rates and Collection) Amendment Rules, 2021 (substitution) providing, inter alia, that in lieu of 'User Fee' payable under sub-rule (1) of Rule 3, "Composition User Fee" would be levied on all such mechanical vehicles carrying minerals/goods more than nine tonnes for using any State road or part thereof or commuting in mining areas as the case may be, in the manner and at such rate as provided in the said Rules.

83. The Rules, 2021 was further amended vide Jharkhand Highways Fee (Determination of Rates and Collection) Amendment Rules, 2025 vide Notification dated 13th May, 2025 issued by the Road Construction Department, Government of Jharkhand primarily for imposition of penalty in the event of non-payment of "Composition User Fee". Moreover, the earlier provision provided for levy of "Composition User Fee" on "To and Fro" basis was substituted with the provision of levying "Composition User Fee" on "Trip basis" fixing the rate of "Composition User Fee" as Rs.1200/- for each trip instead of Rs.600/-for each way. Further amendment was carried out in sub-rule (8) of Rule 6 and the ambit of collection of "Composition User Fee" was expanded, providing that the payable "Composition User Fee" would be mandatory as per the provisions of sub-rule (4) of Rule 3A at the time of issuance of Online Challan/Transit Passes, such as Mineral e-Challan, GST e-waybill, VAT transit Pass, Forest Transit Pass, Excise Transit Pass and/or other such documents.

84. The Government of Jharkhand, through the Director of Mines has issued a direction as contained in Letter No.1559/M dated 24.06.2025, so as to ensure that at the time of transportation of minerals, the collection of "Composition User Fee" is undertaken through JIMMS Portal.

85. On perusal of the Rules, 2021 and the subsequent amendments thereto, it would be evident that the State Government has sought to levy "Composition User Fee" for use of any state road or part thereof or commuting in mining areas on all mechanical vehicles carrying minerals weighing more than 9 tons which is liable to be paid through JIMMS Portal at the time of issuance of online challans/ transit passes and the amount of "Composition User Fee" has been enhanced to Rs.1200/- per trip.

91. From the language used in Section 2 of the Act, 1851 as well as the ratio laid down by the Hon'ble Supreme Court in the aforesaid cases, it is explicitly clear

that section 2 empowers the State Government to levy toll upon any road or bridge which has been made or repaired at the expense of Central or any State Government and to entrust the collection of such tolls under the management of such persons as it thinks fit. The condition precedent for levying 'toll' under section 2 of the Act, 1851 is making or repairing of road or bridge by the Central or State Government. It is a sum of money recoverable by the State Government in lieu of providing the service. 'Toll' is not a tax, rather it is a compensatory fee which is chargeable for service. There is an element of quid pro quo in any such charge. Though in view of section 8 of the Act, 1851, the collected tolls are part of the public revenue and may be absorbed in the general revenue of the State, nevertheless by very definition of 'toll', it cannot be otherwise used for augmenting the State's revenue.

92. There is a difference between tax and toll. The imposition of tax is made for public purpose to meet the general expense of the State without any special benefit to be conferred on the payer of tax and it is a part of common burden. On the other hand, toll is a recompense for use of a road or a part thereof by a user because it receives a special benefit of transporting or travelling on such roads constructed and maintained out of the funds of Central or State Government.

93. It is evident from the language used in Rules, 2021 and the subsequent amendments thereto that the State Government has levied "Composition User Fee" on minerals carrying vehicles for use of any state road or part thereof or commuting in mining areas to generate state revenue which is not permissible under the Act, 1851.

94. By imposing toll in the nature of "Composition User Fee", the State Government has not taken care of the fact as to whether the mineral carrying vehicle is actually using the toll road or not and thus the element of quid pro quo is missing in imposition of the "Composition User Fee".

95. It has been provided in the impugned Rules that the "Composition User Fee" is to be paid through JIIMS portal at the time of issuance of online challans/ transit passes and as such the same is levied by the State Government even without providing any service. Moreover, the State roads have not been specifically identified in the impugned Rules so as to levy the "Composition User Fee" on the mechanical vehicles carrying minerals in lieu of using the same.

106. Another aspect in the matter is that, one of the key elements of 'tax' as well as 'toll' is the taxable event attracting the levy. The occurrence of taxable event creates or attracts the liability to impose tax. It is an event that results in the obligation to pay taxes to the concerned tax authority. The scheme of 'Toll Tax' does not envisage levy of toll on goods or on any transaction of sale thereof, rather, charging event of levy of toll is upon user of public roads or bridges.

107. On consideration of Sections 2 and 7 of the Act, 1851, it would transpire that the taxable event for levy of toll is the plying of vehicles on roads or bridges

constructed or repaired by the Central or any State Government. However, in view of the impugned rules, the taxable event is commuting the mechanical vehicles carrying minerals more than 09 tonnes in the mining areas. Moreover, in the present case, incidence of tax is primarily on minerals and not on user of public roads/bridges. Thus, in the impugned rules, the taxable event has been changed making the same inconsistent with the Parent Act.

114. In the present case, the respondents by the impugned Rules and the subsequent amendments thereto are trying to create a class within class by providing that the mechanical vehicles carrying more than 9 tonnes of minerals are liable to pay "Composition User Fee" and the other vehicles carrying other goods of same weight have been exempted.

Thus, for levying "Composition User Fee", the respondent-State has taken into consideration the nature of material loaded on the vehicles, which cannot be held justified.

115. Even if the argument of the learned Advocate General to the effect that movement of heavy vehicles causes damage/depletion of the roads is accepted as true, then also, there had to be levy of "Composition User Fee" on all the heavy vehicles irrespective of the nature of material being carried. Moreover, a fund in the name of 'District Mineral Foundation Fund' has already been created which mandates that a part of the royalty paid under the Act, 1957 will be utilized for providing the required physical infrastructures i.e. roads and bridges in the mining areas.

116. We are of the view that the classification made by the respondent-State between mineral carrying vehicles and other vehicles has no nexus with the object sought to be achieved by it. Thus, the impugned Rules and the subsequent amendments thereof to the extent of imposing the "Composition User Fee" is also violative of Article 14 of the Constitution of India.

118. In view of the discussions made hereinabove, we are of the view that the Rules, 2021 and the subsequent amendments made thereto with respect to levy of toll in the nature of "Composition User Fee" on transportation of minerals through mechanical vehicles for using the state roads or commuting in mining areas is beyond the scope of the provisions of section 2 of the Act, 1851 and as such the same is struck down."

9. This Court, after examining the factual aspect of the present case, has found that the issue involved herein is identical to that of the case, which has been decided in W.P.(C) No.1532 of 2022 and analogous cases on 24.09.2025.

10. Accordingly, the instant writ petition is disposed of, in terms of the judgment dated 24.09.2025 passed in W.P.(C) No.1532 of 2022 and analogous cases.

11. In consequence thereof, pending interlocutory application(s), if any, stands disposed of.