(2020) 12 JH CK 0115

In the Jharkhand High Court

Case No : Writ Petition(C) No.3505, 3529 of 2020, I.A. No. 6017, 6081 of 2020

Eastern Coalfields Limited — APPELLANT

Vs

State of Jharkhand & Ors — RESPONDENT

Date of Decision : 15-12-2020

Acts Referred:

Indian Forest Act, 1927 — Section 2(4)(b)
Jharkhand Forest Produce (Regulation of Transportation) Rules, 2020 — Rule 3(Ka)

Citation : (2020) 12 JH CK 0115

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Indrajit Sinha, Swati Shalini, Shivam Utkarsh Sahay, Rajiv Ranjan

Final Decision : Disposed Of

Judgement

1. These cases are taken up through video conferencing.

2. At the request of learned counsel for the petitioner(s), the defect(s), as pointed out by the office, is ignored for the present.

3. Since both the writ petitions involve similar issue, these cases are being taken up by this Court together with the consent of learned counsel for the

parties.

4. W.P.(C) No.3505 of 2020 has been filed for quashing letter no.1587 dated 10th October, 2020 (Annexure-5 to the writ petition) issued by the

Divisional Forest Officer, Godda Forest Division, Godda- respondent no.3, whereby the said respondent has demanded the details of coal despatched

from Rajmahal Open Cast Project of the petitioner-Company for the period from 1st October, 2020 to 7th October, 2020 for the purpose of

compliance of Jharkhand Forest Produce (Regulation of Transportation) Rules, 2020 (hereinafter to be referred as 'the Rules, 2020'). The petitioner has also prayed for quashing letter no.3145 dated 13th October, 2020 (Annexure-6 to the writ petition) issued by the Joint Secretary, Department of

Forest, Environment & Climate Change, Government of Jharkhand, Ranchi, whereby, while interpreting the judgment of the Hon'ble Supreme Court

rendered in the case of State of Uttarakhand & Ors. Vs. Kumaon Stone Crusher, reported in (2018)14 SCC 53,7 it has been communicated that coal

mined by the petitioner-Company is forest produce, upon which transit permit fee under the Rules, 2020 is payable. The petitioner has further put

challenge to letter no.1615 dated 14th October, 2020 (Annexue-7 to the writ petition) issued by the respondent no.3, whereby the petitioner-Company

has been informed that if the provisions of Rules, 2020 is not complied, appropriate penal action will be taken against it.

5. W.P.(C) No.3529 of 2020 has been filed for quashing letter no.1595 dated 1st October, 2020 (Annexure-2 to the writ petition) issued by the

Divisional Forest Officer, Deoghar Forest Division, Deoghar- respondent no.3, whereby the said respondent has informed the petitioner-Company that

Rules 2020 will apply for transportation of minerals/forest produce as well as coal mined from all sources and has directed to ensure compliance of the

provisions of the Rules 2020 in respect of transit of the same. The petitioner has further prayed for quashing letter no.1620 dated 7th October, 2020

(Annexure-3 to the writ petition) issued by the respondent no.3, whereby the petitioner- Company has been directed to deposit Rs.57.00 lacs through

demand draft in favour of the respondent no.3. The petitioner has also prayed for issuance of a direction upon the respondent authorities that Rules

2020 will not apply to the minerals, if the mining activity is not done within forest premises.

6. I.A. No.6081 of 2020 in W.P.(C) No.3505 of 2020 has been filed on behalf of the petitioner for staying the operation of letter no.1810 dated 25th

November, 2020 issued by the respondent no.3, whereby it has been directed that if the transit fee is not deposited, entire transportation of coal will be

stopped and also for restraining the respondents from taking any coercive action against the petitioner- Company in connection with transportation of

coal from Rajmahal Open Cast Project, Rajmahal

7. I.A. No.6017 of 2020 in W.P.(C) No.3529 of 2020 has been filed on behalf of the petitioner for staying the operation of letter no.1775 dated 23rd

November, 2020 issued by the respondent no.3, whereby the entire transportation of coal of the petitioner-Company has been stopped and also for

restraining the respondents from taking any coercive step against the petitioner-Company in connection with transportation of coal from S.P. Mines,

Chitra, as the said area of transportation does not fall under any forest.

8. Learned counsel for the petitioner submits that while issuing the impugned letters the respondents have not properly interpreted the judgment of the

Hon'ble Supreme Court rendered in the case of Kumaon Stone Crusher (Supra.). Though as per the said judgment of the Hon'ble Supreme Court,

coal"" is a forest produce, yet for taking the transit permit, transportation of the same has to originate from forest area within the State or outside the

State. The Joint Secretary, Department of Forest, Environment and Climate Change, Government of Jharkhand, in the impugned letter dated 13th

October, 2020 has though referred paragraph nos.215.1(b) (mentioned as paragraph no.221(1)(b)), but has perhaps overlooked paragraph no.215.3 of

the said judgment, wherein the Hon'ble Supreme Court has concluded as under:

215.3. The words ""brought from"" as occurring in Section 2(4)(b) of the 1927 Act mean brought from forest from where forest produce has

originated. The words ""brought from forest"" cannot be read as ""bought through forest"". We, however, clarify that for an item to be treated as forest

produce, its origin may be in any forest within the State of U.P. or in a forest outside the State of U.P.

9. It is further submitted that the word 'Vanopaj' (forest produce) mentioned in rule 3(Ka) of the Rules, 2020 has been given the same meaning as

defined in Section 2(4)(b) of the Indian Forest Act, 1927. Section 2(4)(b) of the said Act, 1927 defines forest produce as under:-

2. Interpretation clause.-

(4) forest produce includes-

(a). ....

(b). the following when found in, or brought from, a forest, that is to say,-

(i) ....

(ii) ....

(iii) ....

(iv) peat, surface soil, rock, and minerals (including limestone, laterite, mineral oils and all products of mines or quarries);

10. It has been stated in paragraph no.8 of I.A. No.6081 of 2020 filed in W.P.(C) No.3505 of 2020 that the coal extracted from Rajmahal Open Cast

Project, where mining is presently not being done over any forest land, are used for various purposes including supplying the same to various thermal

power stations and as such the impugned action of the respondent authorities in restraining the transportation of minerals from the said mine is

arbitrary and against the national interest.

11. Similarly, in paragraph nos.6 and 7 of I.A. No.6017 of 2020 filed in W.P.(C) No.3529 of 2020, it has been stated that S. P. Mines, Chitra of the

petitioner-Company is not producing coal from any forest area and as such levy of fee for transportation of minerals from the said mines at the

instance of the respondent authorities is prima facie arbitrary and illegal. It has further been stated that coal extracted from the said mines is also

supplied to various thermal power stations throughout the country.

12. Learned counsel for the petitioner, thus, prays that the operation of the impugned letters issued by the authorities of the respondent-State of

Jharkhand may be stayed during pendency of these writ petitions.

13. Mr. Rajiv Ranjan, learned A.G., while referring rule 3(Ka) of the Rules 2020, submits that if the mining area partly falls under forest land, the

Department of Mines and Geology, Government of Jharkhand is empowered to realise proportionate transit permit fee per month for transportation of

coal originating therefrom. It is further submitted that since the Hon'ble Supreme Court has clearly held that coal is a forest produce, the petitioner-

Company is under legal obligation to pay transit permit fee to the Department of Forest, Environment and Climate Change, Government of Jharkhand

as the mining area of the petitioner-Company covers both forest and non-forest land and hence there is no illegality in issuing the impugned letters.

Learned Advocate General, however, prays for four weeks' time to seek instructions and file counter affidavit in both the writ petitions.

14. In view of the said prayer, put up these cases under appropriate heading on 10th February, 2021.

15. In the meantime, the respondent authorities shall not take any coercive action against the petitioners of both the writ petitions for transportation of

coal from their respective mines in pursuance of the impugned letters issued by the respondent no.3.

16. I.A. Nos.6081 of 2020 in W.P.(C) No.3505 of 2020 and I.A. No.6017 of 2020 in W.P.(C) No.3529 of 2020 are accordingly, disposed of.

