

(2013) 03 JH CK 0014
In the Jharkhand High Court
Case No : W.P. (C) No. 5981 of 2012

M/s. Sri Ganesh Minerals

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Citation : (2014) 4 EFLT 208

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Judgement

Aparesh Kumar Singh, J.

I.A. No. 1024 of 2013 in W.P.C. 5981 2012 with I.A. No. 1023 of 2013 in W.P.C. 6003 2012 with I.A. No. 1025 of 2013 in W.P.C. 6003 2012

1. By way of these interlocutory applications petitioners have sought direction upon the respondent-authorities to allow them to transport mineral/ores within the district of West Singhbhum without having to undergo the check at the only check gate at Hat Gamharia, which has been established by the respondent-State authorities to ensure checking of vehicles transporting minerals/ores from within the mines in the district of West Singhbhum to any other district or outside the State.

W.P.C. No. 5981 of 2012 with W.P.C. No. 6003 of 2012 with W.P.C. No. 6023 of 2012

Heard counsel for the parties.

2. It appears that the aforesaid three writ applications are arising out of the same order, accordingly, the aforesaid applications are being disposed of by this common judgment.

3. In the aforesaid three writ petitions, petitioners have sought for quashing of the order contained in memo no. 549 dated 7.4.2011 (Annexure-10 to W.P.C. no.

5981 of 2012) by which they were restrained from purchasing iron ore and operating their crusher until further orders on the basis of an order of the Deputy Commissioner, Singhbhum West at Chaibasa. They have also sought quashing of the letter no. 4740 dated 11.8.2011 (Annexure-11 to W.P.C. no. 5981 of 2012) issued by the Divisional Forest Officer, Saranda Forest Division, Chaibasa, whereby the crusher units like the petitioners operating at Manohapur within the district of West Singhbhum were directed to transport the mineral/ore only through the check gate at Hat Gamharia.

4. Counsel for the petitioners has assailed the order at Annexure-10 on the ground that though it has been indicated therein that they were having the consent of the State Pollution Control Board to operate the crusher units till 30.6.2011 but by the impugned order passed on 7.4.2011 itself petitioners have been restrained from purchasing minerals/ores or running their crusher units. Counsel for the petitioners has assailed Annexure-11 dated 11.8.2011 on the ground that the petitioners units are not transporting mineral/ores beyond the boundary of the district of West Singhbhum, however they have been placed with onerous obligation to pass through check gate at Hat Gamharia located only at the boundary of the district West Singhbhum and East Singhbhum for which they have to travel approximately 400 km, though for transportation of the minerals in question within the district of West Singhbhum, they would be at best require to travel 50-75 km. Counsel for the petitioners, while relying upon the stand taken in the counter affidavit filed on behalf of the respondent-State have stated that even the respondents have sought to justify the impugned order with the only reason that it has been intended to prevent illegal transportation and storage of minerals/ores from within or outside of the district or to any other state. For that purpose they have installed the check gate at Hat Gamharia and through a general order all such persons including the petitioners have been directed to undergo such checking of vehicles while transporting minerals/ores in order to prevent violation of the Rules/Regulations framed for prevention of illegal transportation, mining and storage.

5. Counsel for the respondents, on the other hand submitted that the restraint, which has been impose vide Annexure-11 are in furtherance of the objective to prevent illegal transportation of minerals/ores from within the district of West Singhbhum to any other district and/or other State and due to paucity of resources only one check gate has been installed at present and petitioners are also subjected to same condition for preventing illegal transportation or minerals/ores. The respondent forest authorities are also required to take steps under the law for ensuring that activities relating to illegal mining and transportation of minerals are not carried out in forest area.

6. Counsel for the petitioners, however submitted that transit challan issued in their favour itself indicate the source as well as the destination, which clearly are within the district of West Singhbhum. In any case, the obligation imposed is too onerous as any vehicle transporting minerals/ores has to travel a distance much

beyond what it is actually required to travel for transportation of such minerals within the district itself. It is also submitted that petitioners' unit are already having a license under the Minerals Dealers Rules, 2007 as well as permission to store minerals. The respondent-authorities have issued transit challan for transportation of minerals within the district itself as per the Regulation of 2005. Therefore, the condition which has been imposed cannot be sustained in law and respondents may have any other way to curb the illegal transportation and storage of such minerals.

7. I have heard the counsel for the petitioners and gone through the relevant materials on record including the impugned orders. So far as the order dated 11.8.2011 (Annexure-11) is concerned, admittedly the same has been issued intending to prevent illegal transportation of mining from and within district of West Singhbhum to any other district or outside the State. The check gate appears to have been installed at Hat Gamharia which is situated at the boundary of the districts of East and West Singhbhum. The petitioners who intend to transport the mineral/ore within the district of West Singhbhum under valid transit challan issued under the Regulation of 2005 for transportation within the district only and there is no reason to insist upon the petitioners to undergo checking by traveling approximately 400 km and again come back to deliver the goods within the district of West Singhbhum. In these circumstances, the respondent-authorities though are obliged to implement the operation of the Rules, which have been framed to prevent illegal mining and transportation within and beyond the district of West Singhbhum, but for intra district transportation of such minerals by the units who are already having dealer license under the Rules of 2007 and in respect of whom transit challan within the district are being issued under the Regulation, 2005 by the mining authorities themselves, respondents have to weigh other means to ensure checking such illegal transportation of minerals by employing flying squad and other forces/personnel which may be available at their level. However, restriction imposed upon the petitioners to undergo the checking at much longer distance only at Hat Gamharia in the district of West Singhbhum does not seem to be reasonable and obviously are restrictive in nature for carrying out business by the petitioners. In these circumstances, it is made clear that the operation of the impugned order dated 11.8.2011 (Annexure-11) shall not insisted upon in respect of such units like the petitioners who are transporting minerals within the district of West Singhbhum under validly issued transit challan by the competent authority. However, the authorities of forest department may take steps for checking of illegal transportation of minerals through check gates installed at the entry points in the forest area as also regulate the entry of vehicles in Reserve Forests as are permissible in law. So far as the Annexure-10 dated 7.4.2011 is concerned, apparently they have been issued without any notice or opportunity to show cause to the petitioners, moreover issued at the time when the petitioners appeared to have valid consent certificate from the State Pollution Control Board. Counsel for the petitioners, however submits that they are seeking extension of

the said consent and accordingly, they may be allowed to approach the concerned competent authority for seeking permission to carry out operation of purchase of minerals and operation of the crusher units in question.

8. In that view of the matter, aforesaid three writ applications are disposed of in the manner indicated herein above with a liberty to the petitioners to approach the competent authority of the State Pollution Control Board as well as concerned State authorities to carry out running of their crusher units pursuant to the fulfillment of the statutory requirements and the formalities. Accordingly, the aforesaid three writ petitions are disposed of along with the respective interlocutory applications.