



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 90 of 2023

Date of Decision: 02.12.2024

Shri. Regeenal Shylla
S/o Smti. Shintirise Shylla,
R/o Moolang, East Jaintia Hills District
Meghalaya – 793160

:::Petitioner

-Vs-

1. State of Meghalaya
Through the Chief Secretary,
Office at: The Secretariat,
MG Road, Secretariat Hills,
Shillong, Meghalaya – 793001
 2. Commissioner and Secretary,
Government of Meghalaya Mining
and Geology Department, The Secretariat,
MG Road, Secretariat Hills, Shillong,
Meghalaya – 793001
 3. The Secretary, Forest and Environment
Department, Government of Meghalaya
The Secretariat, MG Road, Secretariat Hills,
Shillong, Meghalaya
 4. Principal Chief Conservator of Forest(HoFF)
Government of Meghalaya, Sylvan House,
Lower Lachumiere, Shillong
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5. Secretary/Executive Committee of the KHADC
(Khasi Hills Autonomous District Council),
Shillong

6. Secretary/Executive Committee of the JHADC
(Jaintia Hills Autonomous District Council),
Jowai

7. Secretary/Executive Committee of the GHADC
(Garo Hills Autonomous District Council),
Tura

::: Respondents

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) :	Mr. L.M. Sangma, Adv. Ms. D. Pala, Adv. Mr. D. Dkhar, Adv.
For the Respondent(s) :	Mr. A. Kumar, AG with Mrs. N.G. Shylla, Sr. GA Mr. A. Kharwanlang, Addl. Sr. GA Ms. A. Thungwa, GA Mr. J.N. Rynjah, GA (For R 1-4) Mr. V.G.K. Kynta, Sr. Adv. with Ms. C. Nongkhlaw, Adv. (For R 5) Dr. N. Mozika, Sr. Adv. with Ms. K. Gurung, Adv. (For R 6) Ms. L. Langi, Adv. vice Mr. S. Dey, Adv. (For R 7).

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No



JUDGMENT AND ORDER

1. The petitioner by way of the instant writ application has assailed the impugned Office Memorandum being No. MG.60/2014/Pt/398 dated 05.03.2021, whereby the same has prescribed at clause – E(6), that an application for prospecting license for coal shall be for an area not less than 100 hectares. The contentions of the petitioner are that the said clause in the Office Memorandum dated 05.03.2021, is not in consonance with the Mines and Minerals (Development and Regulation) Act 1957, hereinafter referred to as the MMDR Act, the Mineral Concession Rules 1960, and also not in conformity with the Meghalaya Mines and Mineral Policy 2012, the Meghalaya Minor Minerals Concession Rules, 2016, and the Meghalaya Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2022.

2. The basic ground or contention is that the impugned Office Memorandum has been issued against the principles of delegated legislation and the land ownership system of the State of Meghalaya.

3. Mr. L.M. Sangma, learned counsel appearing on behalf of the petitioner has submitted that the State respondents do not have any jurisdiction to issue their stipulation, inasmuch as, firstly, Section 6 of the MMDR Act though providing for maximum area for prospecting, the said



Act does not prescribe the minimum area nor does the Mineral Concession Rules, 1960 prescribe the minimum area 100 hectares for grant of prospecting license or mining lease for coal. In his submissions the learned counsel has referred to Section 6 of the MMDR Act, and has also taken the Court to Sections 15, 15-A and 23-C of the MMDR Act, that deals with the powers of the State Government to make rules, with regard to mines and minerals. The learned counsel has contended that in these provisions, there is nothing to show that the limit prescribed of not less than 100 hectares, is based on any provision of law, and that even in the Meghalaya Mines and Minerals Policy, 2012, at clauses – 5.1 and 5.2., which deals with grant of permission for prospecting licenses, the same does not empower the respondents to prescribe the minimum area. It has been further argued that even in the Meghalaya Minor Minerals Concession Rules, 2016 framed by the State Government in exercise of powers conferred by Section 15 of the MMDR Act, at Section 13 thereof, which deals with the area of mining lease, no provision of a minimum area of 100 hectares is present.

4. It is also submitted that in addition to the arbitrary fixation of the minimum area, the impugned memorandum dated 05.03.2021, also mandates a declaration of ownership and in the check list provided therein, the requirement of furnishing a certificate with regard to exemption from payment of income tax is also not in consonance with Section 10(26) of the



Income Tax Act. On another aspect, it has been submitted that the hilly terrain of the State and the location of the deposit of coal in seams which were not sizeable, compact or contiguous was not taken into consideration, and the memorandum by fixing the minimum area for prospecting, apart from being contrary to the Acts and Rules, has also deprived interested persons from being eligible to apply for prospecting licenses for smaller areas. In concluding his submissions, the learned counsel has submitted that the Supreme Court in the case of *State of Meghalaya vs. All Dimasa Students Union, Dima-Hasao District Committee & Ors.* reported in *(2019) 8 SCC 177*, had observed that there is no lack of jurisdiction in the State to frame policy, but the same was to be confined to the jurisdiction conferred on it by the MMDR Act, whereas the impugned memorandum has however exceeded this jurisdiction. He therefore prays that the impugned clause in the memorandum prescribing the minimum area be set aside and to allow prospecting licenses for persons who have coal bearing land in an area less than 100 hectares.

5. Mr. A. Kumar, learned Advocate General with Mrs. N.G. Shylla, learned Senior Government Advocate appearing on behalf of the State respondents No. 1-4, in reply has submitted that the Standard Operating Procedure (SOP) was arrived at as per the requirements of the MMDR Act, and the Mineral Concession Rules, while keeping in mind the object of



achieving scientific and legal compliant mining of coal in the State of Meghalaya. It is submitted that the contention of the petitioner is misconceived, inasmuch as, the Supreme Court in the case of ***State of Meghalaya vs. All Dimasa Students Union(supra)***, has recognised the fact that under the MMDR Act, 1957, as well as the Mineral Concession Rules 1960, several statutory obligations/jurisdictions have been conferred in the State of Meghalaya, and that when under a parliamentary enactment, the State has been given some statutory obligations, there is no lack of jurisdiction in the State to frame policy to give effect to or implement such jurisdiction. It is then submitted that Entry 23 of the Seventh Schedule to the Constitution also confers power on the State Government to frame regulation of mines and mineral development subject to the extent to which such regulation and development is under the control of the Union.

6. The contention he submits that the State respondents cannot lay down the SOP for coal mining is totally devoid of merit and contrary to the statutory provisions, as also the judgment in the case of ***State of Meghalaya vs. All Dimasa Students Union (supra)***. Learned Advocate General has referred to para – 195.13 of the judgment to advance his arguments as to the power of regulation and control by the State of Meghalaya over such mining activities, and submits that after the judgment of the Supreme Court, the Ministry of Coal convened a meeting of all



stakeholders for starting scientific coal mining in the State of Meghalaya. In the said meeting held on 16.02.2021, he submits that though it is clearly recorded that normally the minimum area required for coal mining is 10 sq. km., given the topography and nature of deposits, it was suggested that prospecting be allowed in an area of 1 sq. km., and it was on this consideration that as per the discussions, the minimum area of 1 sq. km., for prospecting license purposes was prescribed. The learned Advocate General while concluding his arguments has strongly asserted that the SOP notified by the impugned memorandum is in terms of the directions issued by Ministry of Coal and is not violative of any statutory provisions, as alleged.

7. Upon hearing the learned counsel for the parties, the only point in issue in the instant writ petition is whether the State Government is vested with the power and jurisdiction to issue the impugned SOP, whereby the prescription of minimum area of 100 hectares or 1 sq. km. was notified. To examine the source of power, it is necessary therefore to discuss the various statutory provisions as given in the MMDR Act 1957, the Mineral Concession Rules, 1960 and the other allied enactments and policies of the State, as well as the landmark judgment of the Supreme Court rendered in the case of *State of Meghalaya vs. All Dimasa Students Union(supra)*.



8. The MMDR Act 1957, has mandated at Section 4(2), that no prospecting license shall be granted otherwise than in accordance with the provisions of this Act, and rules made therein under, and Section 5(a) and (b) thereof, laid down as follows:

“5. Restrictions on the grant of prospecting licenses or mining leases.-

(1) A State Government shall not grant a reconnaissance permit, prospecting license or mining lease to any person unless such person-

(a) is an Indian national, or a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013); and

(b) satisfies such conditions as may be prescribed:

[Provided that in respect of any mineral specified in Part A and Part B of the First Schedule, no reconnaissance permit, prospecting license or mining lease shall be granted except with the previous approval of the Central Government.]”

Section 5(b) it can be seen has cast a duty upon the State Government to not grant such license, unless one satisfies such conditions as may be prescribed. Section 6 which has also since been amended, prescribes only the maximum area, for which a prospecting license or a mining lease may be granted.



9. Coming to the bone of contention that is the impugned Office Memorandum, it is seen that the same contains the SOP for grant of prospecting license, as well as, mining lease, and at clause – 6, with regard to prospecting license, it is reiterated that area not to be less than 100 hectares. The SOP, it appears was formulated taking into consideration the MMDR Act, 1957, and more importantly the judgment of the Supreme Court passed in *State of Meghalaya vs. All Dimasa Students Union(supra)*. A perusal of the said judgment shows that the Supreme Court had discussed the nature of rights including mineral rights of private owners or communities, the applicable law and the approval procedure, and it was held that in view of Section 2 of the MMDR Act, the Central Government has power of control, regulation and development of minerals and further that the State of Meghalaya had ample powers to ensure compliance with the statutory schemes. This would mean therefore the State of Meghalaya has jurisdiction and power to ensure that no mining of coal should take place, except when the mining lease is granted under the Mineral Concession Rules. In this perspective it would be useful to refer to Para – 90 and 91 of this judgment, which has cast several statutory obligations on the State of Meghalaya, and the same are reproduced herein below:



“90. There can be no dispute to the proposition that in view of the [MMDR Act, 1957](#), the legislative competence of State of Meghalaya under Schedule VII List II Entry 23 stands denuded. However, under the [MMDR Act, 1957](#) as well as the Mineral Concession Rules, 1960, several statutory obligations/jurisdictions have been conferred on the State of Meghalaya, which shall be referred to later in this judgment.

91. When under a parliamentary enactment, the State has been given some statutory obligations, there is no lack of jurisdiction in the State to frame policy to give effect to or implement the jurisdictions conferred on the State by parliamentary enactments. It is true that Mining Policy to be framed by the State has to confine to the jurisdiction conferred on it as per the [MMDR Act, 1957](#) and the Rules framed thereunder. There are other related issues concerning mining like protection of environment and forests for which the State has to declare its policy for implementation of its objective. Several other aspects relating to mining, like rehabilitation, reclamation and restoration have to be effectively implemented by the State for which also, it may be required to frame a policy. We may further notice that the Meghalaya Mines and Minerals Policy, 2012 was already framed by the State of Meghalaya, even before directions were issued by NGT. In pursuance of the NGT directions, it was draft guidelines of 2015, which were prepared by the State of Meghalaya. We, thus, are of the view that direction of NGT to declare Mining Policy by the State of Meghalaya



cannot be said to be without jurisdiction. However, the State in its Mining Policy can only include those areas where it has jurisdiction under the [MMDR Act, 1957](#) and the Rules framed thereunder.”

10. Further, at Para – 122 thereof, it has been directed that while implementing the statutory regime for carrying on mining operations in the hill districts of the State of Meghalaya, the State has to ensure compliance of not only the MMDR Act 1957, but the Mines Act 1952, as well as the Environment (Protection) Act 1986, and at Para – 195.13, had also directed as follows:

“122. While implementing statutory regime for carrying mining operations in the Hills District of the State of Meghalaya, the State of Meghalaya has to ensure compliance of not only MMDR Act, 1957 but the Mines Act, 1952 as well as the Environment (Protection) Act, 1986.”

11. At this juncture, the Office Memorandum dated 17.02.2021, containing the minutes of a stakeholders meeting held on 16.02.2021, to discuss applications received from the State of Meghalaya by the Ministry of Coal, is relevant to be referred to. The importance of this meeting is that the same had examined and discussed the applications received especially with regard to the small size of plots for mining purposes ranging between



40 hectares and 140 hectares. In this meeting, it was then considered prudent in the interest of all concerned, to prepare an SOP to examine all aspects thereof, and that the same was to be notified by the Government of Meghalaya. This meeting which was at the instance of the Ministry of Coal, was the genesis of the impugned SOP, by which the minimum mining area of 1 sq. km. was arrived at. The minute of this meeting being of the extreme importance is reproduced in its entirety.

Minutes of stakeholders' meeting to discuss applications received from State Government of Meghalaya for scientific and safe mining of coal held on 16th February, 2021

A meeting of stakeholders to discuss sixteen applications of private landowners regarding prior approval of Central Government for grant of Prospecting License-cum- Mining Lease for Coal received from State Government of Meghalaya and scientific, safe and environmentally sustainable coal mining in the State was held on 16th February, 2021. The meeting was chaired by Joint Secretary (P&S) in Ministry of Coal.

2. A list of participants is enclosed as Annexure I.

3. A list of applications received in Ministry of Coal is enclosed as Annexure II.



4. JS (P&S) informed the participants that as per judgement dated 3rd July, 2019 of Hon'ble Supreme Court, the private and community landowners in the State of Meghalaya which is governed by provisions of Schedule VI of the Constitution of India, have the surface rights as well as sub-soil rights and Tribals owned the land and also owned the minerals. They can lease out their lands to an eligible person for mining of coal therefrom. He also briefed the participants about the peculiar features of applications received, such as small size of plots for mining purposes – ranging between 40 Ha and 140 Ha. He also informed that many similar applications may be received in future from Meghalaya or any other Schedule VI States. As it would be prudent in the interest of all concerned to prepare a standard operating procedure (SOP) to examine all aspects of scientific, safe and environmentally sustainable coal mining in private plots of land by the State Government as well as in the Government of India, he invited comments from all participants. The SOP would be notified by the Government of Meghalaya.

5. Director (P&D), CMPDIL stated that normally minimum area required for coal mining is ten square kilometers. Even in the scenario under consideration, the size of mining area should be at least one square kilometer i.e. 100 Ha. He informed that though the quality of coal in these areas is good, yet large scale mining is not possible as coal seams are about 1-2 meter thick and discontinuous. He also suggested to adopt suitable mining methods which are small scale with small investment and economical to



owners. He also stated that prospecting license should be given first for exploration and preparation of Geological report, based on which Mining plan should be prepared. CMD, CMPDIL added that GSI has not done exploration in Meghalaya for over a decade and Government of Meghalaya should take up the matter with them. He also suggested that State and land owners may engage entity like CMPDIL, MECL, GSI etc., as they as can take up prospecting operation as under section 4(1) without obtaining any prospecting license or lease.

6. Director (T), CIL suggested that a call on mining lease in these areas may be taken only on the basis of prior prospecting GM, CIL suggested to undertake a pilot project.

7. Shri. Piyush Kumar, GM, CIL in the O/o Director (Technical) in Ministry of Coal suggested that the State Government should consult DGMS, Ministry of Labour for safety aspects. He suggested for prospecting in one square kilometer mining area for conducting coal exploration down to the minimum depth of 250 meters. He added that mining plan can be approved by the competent authority by following MoC guidelines.

8. Secretary (Mining and Geology), Government of Meghalaya expressed his thanks for this very important meeting. The State is rich in coal deposits with 570 million tonnes proven, good quality of coal deposit in Meghalaya and the State Government has already discussed with various stake holders to evolve suitable coal



mining methods and has empaneled companies for exploration, prospecting, preparation of Geological reports and Mining plan. With regards to minimum area, he informed that many owners have coal mine areas of about 50 hectares or less. He emphasized that once the Geological Reports and mining plan are prepared for 100 hectares, proposal to reduce the minimum area to 50 hectares may be examined technically in future. He emphasized that it is important to start coal exploration and requested cooperation from CIL and CMPDIL for that.

9. In view of the discussion held during the meeting, JS (P&S) stated that the State Government would prepare an SOP for processing of these cases by including the following (not necessarily in this order), among other steps to be decided by the State Government:

A. Application details and scrutiny:

- a. First, applications should be made for previous approval of Central Government for prospecting license as per rule 42 of MCR, 1960.*
- b. maps of the proposed mining areas should be plotted on Survey of India map of 1:50,000 scale, adequate and duly verified by an appropriate authority in the State Government.*
- c. Sketch plan of the proposed mining area should be made on a 1:4000 scale on which coordinates of all vertices of the mining area should be indicated in latitude-longitude as well as in*



UTM and duly endorsed by an appropriate authority in the State Government.

- d. State Government would also forward soft copies of applications along with KML files of mining areas.*
- e. State Government would certify that as per the provisions of the 6th schedule, applicants are the owners of lands and that the minerals vest with owner of lands.*
- f. it should be indicated on the applications that these are submitted under the provisions of Chapter V of the Mineral Concession Rules, 1960.*
- g. non-forest land certificate and English version of land documents etc., should also be made available to Ministry of Coal, along with applications.*
- h. Applications for a mining lease of less than 20 years as per Section 7 of MM(DR), Act, 1957 need not be entertained.*

B. Scientific and safe mining:

- a. As per discussion, minimum mining area of one square kilometer should be considered for prospecting license purposes. State Government may consider to do this with the consolidation of two or more adjoining coal bearing plots. State Government may make efforts to sensitize landowners appropriately.*
- b. Mining plan should be prepared strictly as per the guidelines of Ministry of Coal.*
- c. State Government would consult DGMS on safety issues and stick to the advice/directions of DGMS throughout the period of mining.*



d. O.M. of Government of Meghalaya may be amended in accordance with amendments to Acts/Rules and MoC's revised guidelines of 29th May, 2020.

10. JS (P&S) concluded with the remarks that the State Government would prepare an SOP and forward to Ministry of Coal within 7 days along with the applications/proposals of private and community landowners as revised on re-examination by the State Government in the light of the SOP. It should be given top priority.

11.Meeting ended with a vote of thanks to the Chair.

12. A perusal of the said minutes as above quoted, would show that though the area by the SOP has been fixed at 1 sq. km. that is 100 hectares, the proposal to reduce the minimum area to 50 hectares, was left open to be examined technically in future, as such, it is not that the prescription of 100 hectares is final, and not subject to review by the State Government.

13. Therefore, in the considered view of this Court, the SOP which was notified vide the impugned Memorandum dated 05.03.2021, does not suffer from any lack of jurisdiction or is incompetent in any manner, as the same has been made in furtherance and in compliance of the judgment of the Supreme Court, in *State of Meghalaya vs. All Dimasa Students Union(supra)*, the stipulations of the MMDR Act, and Mineral Concession



Rules, and as per the directions of the Ministry of Coal. The other submissions of the petitioner with regard to the provisions of the Meghalaya Mines and Minerals Policy 2012, or the Meghalaya Minor Rules 2016, and also the Meghalaya Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules 2022, are disregarded as they have no application or relevance to the issue at hand.

14. Accordingly, in the facts and circumstances of the case, and as discussed above, the instant writ petition is devoid of merit and is dismissed.

15. No order as to costs.

Judge

Meghalaya
02.12.2024
“D.Thabah-PS”