

SUPREME COURT OF INDIA

Lber Laloo

Vs.

All Dimasa Students Union Hasao District Committee

C.A.No.5272 of 2016

(Ashok Bhushan and K.M.Joseph,JJ.,)

10.05.2019

JUDGMENT

Ashok Bhushan,J.,

1. We have heard the batch of civil appeals and other matters on 08.05.2019 and on which date, judgment has been reserved. At the time of hearing of the civil appeals, learned counsel were also heard on several i.A.s
2. We have heard learned counsel for the applicants, learned counsel for the State of Meghalaya, Shri Nidhesh Gupta, learned senior counsel appearing for the respondents and Amicus Curiae, Shri Colin Gonsalves, learned senior counsel.
3. Several applications have been filed praying for directions from this Court as well as seeking impleadments in these matters. We are of the view that impleadments of the applicants is not necessary in these proceedings. We, however, permit the applicants to intervene in the matter. All impleadment applications filed by different applicants are disposed of accordingly.
4. Our order passed today is confined to various applications seeking directions. All the applications are not being finally disposed of, which final disposal of the applications shall await the final judgment in batch of cases.
5. We proceed to consider the prayer of the applicants seeking certain directions in these applications. These appeals have been filed against different orders passed by National Green Tribunal, Principal Bench, New Delhi. The Gauhati High Court had taken suo moto action in which 15 young labourers died while in mining operations in the State of Meghalaya. The said suo moto writ petition was transferred to the National Green Tribunal, which was registered as O.A. No.73 of 2014. In the original application, prayer was made for stoppage of illegal mining activity in the State of Meghalaya particularly in the District of Jaintia Hill forthwith and for appointment of a committee to carry out the assessment of the impact of illegal mining and determination of the damage to the environment.

6. The Tribunal vide order dated 17.04.2014 had directed the authorities to ensure that rat hole mining and illegal mining be stopped forthwith in the State of Meghalaya and any illegal transport of coal does not take place. Tribunal after notice to the parties had constituted Committee to submit report and take other measures.

7. On request made on behalf of different applicants, National Green Tribunal has permitted transportation of coal under certain conditions. Against the various orders passed by the Tribunal, these appeals have been filed and, in these appeals, also, this Court had passed various orders permitting transportation of coal under terms and conditions. For the present case, we need to notice only the order dated 04.12.2018, by which, this Court passed following order:-

"Mr. Ranjan Mukherjee, learned counsel appearing for the State of Meghalaya states that 176655 metric tonnes of coal is to be transported. We grant time for transportation of the coal up to 31.01.2019. List the matters on 15.01.2019. Issue notice on I.A. No. 157090/2018 in C.A. No. 5272/2016."

8. In pursuance of the order passed by this Court, transportation of coal started immediately after 04.12.2018. Time for transportation of coal was granted by this Court till 31.01.2019. In pursuance of the order dated 04.12.2018, certain individuals and associations have obtained transportation challans for transporting the coal. An unfortunate incident took place in January, 2019, where large number of labourers died in rat hole mining in State of Meghalaya, different I.A.s were filed before this Court and this Court on 15.01.2019 immediately directed for stoppage of transportation of coal. Following order was passed on 15.01.2019:-

"I.A. Nos. 171572/2018, 5051/2019, 5055/2019 & 7845/2019

Issue notice.

Let replies be filed in these interlocutory applications including I.A. No. 157090/2018 before the next date of hearing.

List on 19.02.2019.

Till the next date of hearing there would not be any transportation of any coal lying on the sites."

9. The State Government also immediately in pursuance of the order of this Court issued directions to ensure compliance of the order of this Court. By order dated 18.01.2019, the State Government partially modified its order dated 15.01.2019, while it permitted transportation of coal with certain conditions, the order of the State of Meghalaya dated 18.01.2019 is as follows:-

"ORDERS

In partial modification to this department's order No. MG. 51/2018/25 dt. 15.01.2019, transportation of coal in the State of Meghalaya shall be permitted and regulated with immediate effect as below:

(i) The coal which had been loaded from the sites and in transit before the order of the Hon'ble Supreme Court dt. 15.01.2019 and having valid documents.

(ii) The coal which has originated outside the State of Meghalaya and being transported through the State of Meghalaya for consumption by factories, general household or export etc.

(iii) No challan to be issued for transportation of coal in Meghalaya after the order of Hon'ble Supreme Court dt. 15.01.2019 All authorities concerned are hereby directed to ensure compliance of the aforesaid directions so as to ensure compliance of the order of Hon'ble Supreme Court dt. 15.01.2019

Sd/- [T.Dkhar]

Commissioner & Secretary to the Govt. Of Meghalaya, Mining & Geology Department"

10. Certain i.A.s were again filed before this Court seeking transportation. One of the I.A.s, i.e. I.A. No. 13380 of 2019 was by an auction-purchaser, who after, obtaining auction-purchase sought for transportation of the coal. This Court on 28.01.2019 rejected different I.A.s and only allowed the application No.13380 of 2019 filed by an auction- purchaser. Order dated 28.01.2019 is as follows:-

"I.A. Nos. 13375/2019 and 14124/2019 in C.A. No. 5272/2016:

The apprehension of the applicants, as expressed in the prayer clause in these applications, were taken care of by the Government of Meghalaya with its Order dated 18.01.2019.

Mr. Colin Gonsalves, learned Amicus Curiae, informs that after the order permitting the trucks to move out which has already been loaded with coal from the site and in transit before the Order of this Court was passed on 15.01.2019, those trucks have been allowed to carry the coal. Therefore, no further orders are required to be passed.

The Interlocutory Applications are, accordingly, dismissed.

I. A. No. 13380/2019 in C.A. No. 5272/2016:

It is stated by the applicant that the applicant has purchased coal in auction from the Government. Naturally in such circumstances the applicant has to be allowed to transport the coal. This application is allowed in terms of the prayer made in the application."

11. The Government of Meghalaya again issued an order dated 07.02.2019 clarifying its earlier order dated 18.01.2019. Various associations and individuals have thereafter submitted applications before State of Meghalaya and before this Court praying for

permission to transport the coal. Learned counsel appearing for the State of Meghalaya has submitted copy of a report submitted by Shri B.P. Katakey, Former Judge, Gauhati High Court dated 31.03.2019, which Committee was appointed by the National Green Tribunal by its order dated 31.08.2018. Learned counsel for the State submits that the Committee in the said report dated 31.03.2019 has dealt with transportation of coal in Para O. It is relevant to extract Para O of the report, which is to the following effect:- "O. Coal mining activities including transportation of coal. The Hon'ble Supreme Court, vide its order dated 04.12.2018, initially allowed transportation of coal up-to 31.03.2019, on the basis of the submission made by the learned counsel appearing for the State of Meghalaya that 1,76,655 MTs of coal is available for transportation. The Hon'ble Supreme Court, however, by subsequent order dated 15.01.2019, directed that there would not be any transportation of any coal lying on the sites. In the order dated 19.02.2019, the Hon'ble Supreme Court has noticed filing of various interlocutory applications for allowing transportation of already mined coal. The Committee has been informed by the Commissioner & Secretary to the Government of Meghalaya, Mining & Geology Department that the order dated 15.01.2019 passed by the Hon'ble Supreme Court is still in force. The Committee, having regard to the aforesaid orders passed by the Hon'ble Supreme Court, directed the Mining & Geology Department of the Government of Meghalaya to submit a report about the quantity of coal for which challans for transportation has been issued between 04.12.2018 to 15.01.2019 and the quantity of coal already transported from the State of Meghalaya. The Commissioner & Secretary to the Government of Meghalaya, Mining & Geology Department has apprised the Committee that challans for transportation of 1,69,149 MTs of coal have been issued, pursuant to which 94,099 MTs of coal have been transported out of the State of Meghalaya between 04.12.2018 to 15.01.2019, leaving 75,050 MTs of Coal still to be transported, in respect of which the challans have already been issued.

The Committee has also directed the Deputy Commissioner of East Jaintia Hills District to submit a report on a news item titled "Four died as coal laden truck capsized in EJH" appeared in the Shillong Edition of a local daily, namely, "Shillong Times", in its publication dated 12.03.2019.

The Deputy Commissioner has submitted a report dated 20.03.2019 before the Committee in its proceeding dated 25.03.2019 admitting that an accident has occurred on 11.03.2019 involving a truck carrying coal and in that accident, 4(four) persons died and 4(four) persons received injuries. From the aforesaid admitted position, it is, therefore, evident that despite the order passed by the Hon'ble Supreme Court prohibiting transportation of coal, such transportation is going on which has not been stopped by the authorities for the reasons best known to them. As reported in various newspapers, illegal coal mining activities are also going on despite the ban by the Hon'ble NGT."

12. Learned counsel for the State submits that as per the aforesaid report, about 176655 MTs of coal was still to be transported, with regard to which challans for transportation had already been issued. He further submits that the report further noticed that there were about 75050 Mts. Of the coal for which challans for transportation had been issued, which quantity was included in 176655 MTs of coal, which was permitted to be transported by

this Court on 04.12.2018. The learned counsel for the applicants in support of different I.A.s made various submissions before us. Some of the applicants are those, who have obtained transportation challans for transportation of coal in pursuance of the order dated 04.12.2018 and their coal was included in the quantity of 176655 MTs but could not transport due to order dated 15.01.2019. There are other applicants, who submits that large quantity of coal has already been assessed belonging to them by the State itself and respective Deputy Commissioner. Reference has also been made to the Technical Committee Report appointed by the State Government, which has carried out the assessment. There are other various applicants, where applicants are seeking transport of unassessed coal. It is submitted that all the applicants are entitled for transportation. It is further contended that unless the transportation of coal is not permitted in the ensuing rainy season there shall be an adverse effect to the environment. It is submitted that large quantity of coal is lying in the open, which will cause environmental pollution.

13. Learned Amicus Curiae and Shri Nidhesh Gupta had refuted the submissions of the applicants. It is submitted that coal, which has been sought to be now transported are all coal, which was illegally mined against the Mines and Minerals (Development and Regulation) Act, 1957. It is submitted that detailed submissions have already been made before this Court establishing the illegal mining of coal.

14. We, after having heard the counsel for the parties, are of the view that for the present, we only need to consider the applicants, which are seeking transportation in reference to order of this Court dated 04.12.2018. The Katakey Committee Report dated 31.03.2019 has already referred to the quantity, which was permitted to be transported by order dated 04.12.2018. The report further noticed that in pursuance of the order, challan for transport of coal was issued for 176655 MTs. in pursuance of which 94099 Mts. of coal has already been transported and what is left to be transported was 75050 Mts. of coal. We notice that time for transportation of coal by order dated 04.12.2018 was still 31.01.2019 but due to an unfortunate incident, in which several labourers died in the rat hole mining, this Court stopped the transport on 15.01.2019. We, thus, are of the view that at present, only permission, which can be granted for transportation is of 75050 Mts. of coal with regard to which transport challans have already been issued by the State of Meghalaya. We are conscious that if permission for transport of coal is granted by this Court, there is grave danger of illegal mining. We notice that the ban on mining has already been imposed by the National Green Tribunal, which order has not yet been interfered by this Court.

15. We, thus, permit the transportation of the coal of 75050 Mts. with regard to which transportation challans have already been issued. We are further of the view that for the said transportation of quantity of 75050 Mts., the State of Meghalaya has to take necessary precaution that under the guise of this permission, no other coal is transported or mined. The State of Meghalaya has to deliberate on the mechanism to ensure that only those, who have transportchallans after order of this Court dated 04.12.2018 should be permitted to transport the coal out of the quantity of 75050 Mts. as noted by Kateky Committee. We further make it clear that while permitting transportation, the State authority should maintain the details of such transportation in different registers noticing:

- (i) the information of the quantity of the coal,
- (ii) the details of payments,
- (iii) the person who is transporting the coal,
- (iv) the person who is owner of the coal and
- (v) details and date of verification certificate.

These details are necessary to be noted, since we are yet to take a decision that what further liability can be imposed on such coal, which is going to be transported under this order.

16. The State should take appropriate precaution while granting permission for transportation and under the strength of this order, no other kind or category of coal shall be permitted to be transported. State should entrust the duty to responsible officers of the State Government not below the rank of Deputy Commissioner to ensure compliance of this order and conditions to be fixed by the State Government. We, thus, by this order dispose of applications seeking impleadment by permitting only intervention. On the applications seeking directions, the orders as indicated above are passed, which applications shall await the final disposal of the applications alongwith the final decision of the case.

17. We direct the State of Meghalaya to finalise the mechanism for ensuring verification and transportation of coal as permitted above which mechanism be finalised and publicised for the benefit of all concerned and put in place within a week from today. The actual transportation after due verification along with a verification certificate by an Officer not the rank below than the Deputy Commissioner be permitted from 17th May, 2019 to 31st May, 2019 (15 days). After 31st May, 2019 no transportation shall be permitted.