

THE HIGH COURT OF MEGHALAYA

WP(C) No.188/2014

Nongal Dobu Coal Truck Owners Association,
represented by its Secretary Shri. Zinbaward N. Sangma,
S/o (L) S.G. Marak,
R/o Williamnagar,
East Garo Hills District,
Meghalaya.

::::: **Petitioner**

-Vrs-

1. The State of Meghalaya represented by its Chief Secretary.

2. The Principal Secretary to the Govt. of Meghalaya,
Transport Department, Meghalaya, Shillong.

3. The Director General of Police, Govt. of Meghalaya.

4. The Deputy Commissioner,
East Garo Hills District, Williamnagar, Meghalaya.

5. The Additional District Magistrate (Judicial),
East Garo Hills District, Williamnagar, Meghalaya.

6. Shri. Kenendro N. Marak,
S/o (L) Genggott Ch. Momin,
R/o Chiokgre, Williamnagar,
East Garo Hills District, Meghalaya

::::: **Respondents**

BEFORE THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner : Mr. KC Gautam, Adv

For the Respondents : Mr. ND Chullai, Sr GA
Mrs. NG Shylla, GA for respdt.No.1-5
None appears for the respdt.No.6

Date of hearing : **25.07.2014**

Date of Judgment & Order : **25.07.2014**

JUDGMENT AND ORDER (ORAL)

By this writ petition, the petitioner is assailing the order of the respondent No.5 Additional District Magistrate (Judicial), East Garo Hills District dated 23.05.2014 for allowing the respondent No.6 to lift and transport the coal from the transport check gate, Rongmil without delay and also that the Taxation and Mining & Geology Department shall allow transportation of the said coal free of tax and royalty.

2. At the very outset, it is not clear that under what authority the respondent No.5 Additional District Magistrate (Judicial), East Garo Hills, Williamnagar exempted the tax and royalty in transporting and lifting the coal from the transport check gate, Rongmil by the respondent No.6. The respondent No.5 Additional District Magistrate (Judicial), East Garo Hills, Williamnagar is not the competent authority under the relevant Acts & Rules to exempt the tax and royalty on transportation of coal by the respondent No.6.

3. Heard Mr. KC Gautam, learned counsel for the petitioner and Mr. ND Chullai, learned Sr. GA assisted by Mrs. NG Shylla, learned GA appearing for the respondents No.1-5. Office note dated 06.06.2014 indicates that steps had been taken for service of notice of the present writ petition to the respondent No.6 by registered post with AD. Neither the AD nor the registered notice returned un-served even after the expiry of one month from the date of issuing the notice to the respondent No.6 by registered post with AD and accordingly, service of notice of the present writ petition to the respondent No.6 shall deem to have been effected properly. None appears for the respondent No.6 without showing any cause.

4. **FACTUAL BACKGROUND:-** The petitioner is the registered Association formed by the members doing business of transportation and mining of coal and one of the primary objectives of the petitioner-association is to safeguard the economic as well as commercial interest of its member. The concerned authority issued the certificate of registration bearing No.SGH/SR/350 of 2006 for the petitioner-association. The Additional District Magistrate (Judicial), East Garo Hills, Williamnagar issued Auction notice dated 05.03.2014 for sale of the said offloaded coal dumped at transport check gate, Rongmil, East Gao Hills, Williamnagar inviting the bidders to the auction sale of the said offloaded coal dumped at transport check gate, Rongmil, East Garo Hills, Williamnagar as per the terms and conditions mentioned in the Auction notice dated 05.03.2014 and also that the bidders should submit their bids on or before 07.03.2014 at 10:30 am and the bids will be opened on the same day at 11:00 am and every bidders has to attach with bid an earnest money amounting to Rs.20,000/- (Rupees twenty thousand) only in the form of Bank Draft. On perusal of the Auction notice dated 05.03.2014, it is clear that only two days time was allowed to the intending bidders to submit their bids in response to the said Auction notice dated 05.03.2014. For easy reference, the coal auction notice dated 05.03.2014 (*Annexure-III to the writ petition*) is quoted hereunder:-

“GOVERNMENT OF MEGHALAYA
OFFICE OF THE DEPUTY COMMISSIONER
EAST GARO HILLS: WILLIAMNAGAR

COAL AUCTION NOTICE

Auction sale of offloaded coal dumped at Transport Check Gate, Rongmil East Garo Hills will be held in the office of the Deputy Commissioner, Williamnagar as per the terms and conditions below:-

The quantity of coal to be auctioned is about 1000 (one thousand) M.T. This is the approximate figure and the intending bidders are suggested to assess themselves the quantity of coal dumped at the Transport Check Gate, Rongmil.

The quotations should be submitted in the office of the Deputy Commissioner, East Garo Hills, Williamnagar on or before **7th March, 2014 at 10:30 AM** and will be opened on the same day at **11:00 AM**. The intending bidders shall be present at the time of opening of auction bid.

Every bidders has to attach with bid an earnest money amounting to **Rs.20,000/- (twenty thousand)** only in the form of **Bank Draft** in favour of the Deputy Commissioner, East Garo Hills, Williamnagar which is to be stapled along with the application. **Cheque will not be accepted.** Without the bank draft of earnest money the bid shall be invalid and disqualified. The starting amount of auction as per the present market rate is fixed **Rs.20,00,000/- (Rupees twenty lakhs) only.** Accordingly, the bidders quoting less amount than the fixed rate shall be rejected. The bidders should enclose attested copies of their valid Election Photo Identity Card, Trading License, Tax Clearance Certificate and Caste Certificate along with their auction application.

The bank draft of earnest money will be refunded back to all bidders except the highest bidder after completion of the auction. The successful bidder will have to deposit full amount of bid in the form of cash before the auction is awarded. Failure to do so will lead to the order being cancelled, earnest money forfeited and the next highest bidder declared as successful bidder. The successful bidder has to lift/remove the auction coal from the dumping place within **7 (seven) days** failing which 2% of bid value per day will be charged extra after the stipulated time.

No government employees shall take part in the coal auction directly or indirectly, if any Government servant is found participating in the coal auction the security deposit money shall be forfeited.

The undersigned will not be responsible for any loss or damage caused due to stealing or natural calamities etc. as it is the total responsibility of the successful bidder who won the auction.

The undersigned reserved the right to accept or reject any or all the bidder without assigning any reason thereof.

Sd/
(P.R. Marak, MCS)
Addl. District Magistrate (Judl)
East Garo Hills, Williamnagar."

5. On the second day i.e. 07.03.2014 from the date of issuing the Auction Notice dated 05.03.2014, the respondent No.5 issued an order dated 07.03.2014 directing the respondent No.6 to lift the coal which had been sold

on auction from the dumping place within 7(seven) days w.e.f. 08.03.2014. It is stated that there were complaints against the said Auction notice dated 05.03.2014 and also the order dated 07.03.2014 allowing the respondent No.6 to lift the coal from the dumping place on many grounds, some of which are that the period for submitting the bids by the bidders mentioned in the Auction notice dated 05.03.2014 is very short and also because of short notice, many intending bidders could not submit their bids and also that the said Auction notice dated 05.03.2014 was not widely circulated. The Deputy Commissioner, East Garo Hills, Williamnagar, after taking into consideration of the said complaints made by the interested bidders, passed an order dated 10.03.2014 for revocation of the said order dated 07.03.2014 awarded in favour of the respondent No.6. In the said revocation order dated 10.03.2014, it is clearly indicated that the date of re-auction of the coal dumped at the transport check gate, Rongmil will be fixed after the General Election to Lok Sabha, 2014. For easy reference, the order dated 10.03.2014 (*Annexure-F to the affidavit-in-opposition filed by the respondents No.1-5*) is quoted hereunder:-

“GOVERNMENT OF MEGHALAYA
OFFICE OF THE DEPUTY COMMISSIONER
EAST GARO HILLS: WILLIAMNAGAR

Dated Williamnagar, the 10th March, 2014

O R D E R

No.EGH/JUDL/AUCTION/113/2011/156: A complaint dated 10th March 2014, in connection with the coal auction held on 7th March, 2014 submitted by the previous bidders who complained that the period of notice was too short and they could not get sufficient time to participate in the auction.

In consideration of the complaint of the bidders and with a view to giving opportunity to all the intending bidders the auction conducted on 7th March, 2014 is hereby cancelled. Therefore, coal shall not be lifted from the dumping place, i.e. Transport Check Gate, Rongmil.

Accordingly, the Order vide No.EGH/JUDL/AUCTION/113/2011/150, Dated 7th March, 2014 awarding the auction to the highest bidder Shri. Kenendro N Marak of Chiokgre village for an amount of Rs.25,00,000/- (Rupees twenty five lakhs) only is revoked. The amount of Rs. 25,00,000/- (Rupees twenty five lakhs) deposited in the Treasury vide T.V. No.7204 dated 07.03.2014 to be refunded to Shri. Kenendro N Marak.

The date of re-auction of the coal dumped at the Transport Check Gage, Rongmil will be fixed after the General Election to Lok Sabha, 2014.

Sd/-
(V.K. Mantri, IAS)
Deputy Commissioner,
East Garo Hills, Williamnagar.”

6. After the said order dated 07.03.2014 in favour of the respondent No.6 had been finally revoked under the said revocation order dated 10.03.2014, which had been quoted above in extenso in the aforesaid paras, the respondent No.5 Additional District Magistrate (Judicial), East Garo Hills, Williamnagar, who is inferior rank/hierarchy to the Deputy Commissioner, East Garo Hills, Williamnagar, who issued the said final revocation order dated 10.03.2014 issued impugned order dated 23.05.2014 allowing the respondent No.6 to lift and transport the coal from the transport check gate, Rongmil without delay and the Taxation and Mining Geology Department shall allow the transportation of the said coal free of tax and royalty. Therefore, the impugned order dated 23.05.2014 had indirectly cancelled the final order of the senior officer i.e. the Deputy Commissioner, East Garo Hills, Williamnagar dated 10.03.2014 and also the impugned order dated 23.05.2014 is in clear infraction of the conditions mentioned in the said order of his senior officer dated 10.03.2014. The main grounds for assailing the impugned order dated 23.05.2014 are that (i) there is lack of transparency in issuing the impugned order dated 23.05.2014; (ii) the impugned order dated 23.05.2014 is infraction of the conditions mentioned in

the final order passed by the senior officer dated 10.03.2014, which had been quoted above; **(iii)** there cannot be cancellation of the final revocation order dated 10.03.2014 passed by the senior officer i.e. the Deputy Commissioner, East Garo Hills, Williamnagar by a subsequent order dated 23.05.2014 issued by the subordinate officer i.e. respondent No.5 Additional District Magistrate (Judicial), East Garo Hills, Williamnagar and; **(iv)** the respondent No.5 Additional District Magistrate (Judicial), East Garo Hills, Williamnagar is not the competent authority for relaxing the tax and royalty in lifting and transporting of coal from the transport check gate, Rongmil under the impugned order dated 23.05.2014.

7. Mr. KC Gautam, learned counsel for the petitioner in support of grounds taken in the present writ petition for assailing the impugned order dated 23.05.2014, placed reliance on the decisions of the Apex Court in **(i) Tata Cellular v. Union of India: (1994) 6 SCC 651; and (ii) Raunaq International Ltd. v. I.V.R. Construction Ltd. & Ors: (1999) 1 SCC 492** and also the decision of this Court in **Sudip Dey (Dr.) v. North Eastern Hill University (NEHU) & Ors” (2014) 1 MJ 498**. The Apex Court in **Tata Cellular’s** case (*Supra*) held that the judicial review of the executive order is confined to the decision making process and not the merits of the decision itself inasmuch as, the Court is not sitting as appellate court while exercising the power of judicial review. In the present case, Mr. KC Gautam, learned counsel for the petitioner strenuously contended that there is arbitrariness in the decision making process of the impugned order dated 23.05.2014 by the respondent No.5 Additional District Magistrate (Judicial), East Garo Hills, Williamnagar by setting aside the final revocation order of his senior officer i.e. the order dated 10.03.2014 passed by the Deputy Commissioner, East Garo Hills, Williamnagar and also the impugned order dated 23.05.2014 is in clear infraction of conditions mentioned in the final order passed by the

higher authority i.e. the order dated 10.03.2014 passed by the Deputy Commissioner, East Garo Hills, Williamnagar . Paras 74 & 75 of the SCC in **Tata Cellular's** case (*Supra*) read as follows:-

“74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

75. In *Chief Constable of the North Wales Police v. Evans: (1982) 3 All ER 141, 154* Lord Brightman said:

“Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.”

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms:

“This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practiced at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner (p.1160).”

In R. v. Panel on Take-overs and Mergers, ex p Datafin Plc: (1987) 1 All ER 564, Sir John Donaldson, M.R. commented:

“An application for judicial review is not an appeal.”

In Lonrho plc v. Secretary of State for Trade and Industry: (1989) 2 All ER 609, Lord Keith said:

“Judicial review is a protection and not a weapon.”

*It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In Amin, Re. **Amin v. Entry Clearance Officer (1983) 2 All ER 864**, Lord Fraser observed that:*

“Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer.”

Paras 14 & 22 of the SCC in ***Raunaq International Ltd.*** case

(*Supra*) read as follows:-

“14. Where there is an allegation of mala fides or an allegation that the contract has been entered into for collateral purposes and the court is satisfied on the material before it that the allegation needs further examination, the court would be entitled to entertain the petition. But even here, the court must weigh the consequences in balance before granting interim orders.

22. In Tata Cellular v. Union of India: (1994) 6 SCC 651, this Court again examined the scope of judicial review in the case of a tender awarded by a public authority for carrying out certain work. This Court acknowledged that the principles of judicial review can apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of that power of judicial review. The Court also observed that the right to choose cannot be considered as an arbitrary power. Of course, if this power is exercised for any collateral purpose, the exercise of that power will be struck down: (SCC p.675, para 71)

“71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters.... and the need to remedy

any unfairness. Such an unfairness is set right by judicial review.”

After examining a number of authorities, the Court concluded (at pp. 687-88) as follows:-

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative or quasi-administrative sphere. However, the decision can be tested by the application of the “Wednesbury principle” of reasonableness and the decision should be free from arbitrariness, not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure”.

Paras 16 & 17 of MJ in **Sudip Dey (Dr.)** case (Supra)

(incidentally authored by the same Court) read as follows:-

*16. It is so well settled that the judicial review of the administrative action is directed against the decision making process. The Apex Court taking into consideration of what Lord Diplock observed in **Council of Civil Service Unions v. Minister for the Civil Service: (1984) 3 WLR 1174 (HL): (1984) 3 All ER 935, 950 in Ranjit Thakur v. Union of India & Ors: (1987) 4 SCC 611** held that:*

“25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so

disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court- Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. In **Council of Civil Service Unions v. Minister for the Civil Service, (1984) 3 WLR 1174 (HL): (1984) 3 All ER 935, 950** Lord Diplock said:

"Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community."

17. The Apex Court reiterated in **Sugarbai M. Siddiq & Anr vs. Ramesh S. Hankare (DEAD)** by **LRS: (2001) 8 SCC 477** that the power of judicial review of the High Courts is to the decision making process.

The Apex Court in **State of West Bengal & Ors vs. Committee for Protection of Democratic Rights, West Bengal & Ors: (2010) 3 SCC 571** held that:

"51. The Constitution of India expressly confers the power of judicial review on this Court and the High Courts under Articles 32 and 226 respectively. Dr. B.R. Ambedkar described Article 32 as the very soul of the Constitution – the very heart of it – the most important article. By now, it is well settled that the power of judicial review, vested in the Supreme Court and the High Courts under the said articles of the Constitution, is an integral part and essential feature of the Constitution, constituting part of its basic structure. Therefore, ordinarily, the power of the High Court and this Court to test the constitutional validity of legislations can never be ousted or even abridged. Moreover, Article 13 of the

Constitution not only declares the pre-Constitution laws as void to the extent to which they are inconsistent with the fundamental rights, it also prohibits the State from making a law which either takes away totally or abrogates in part a fundamental right. Therefore, judicial review of laws is embedded in the Constitution by virtue of Article 13 read with Articles 32 and 226 of our Constitution.”

8. For the forgoing reasons, this Court is of the considered view that there is no transparency in the decision making process of the impugned order dated 23.05.2014 and also the respondent No.5 Additional District Magistrate, East Garo Hills, Williamnagar is not the competent authority to set aside the order of his superior officer i.e. the Deputy Commissioner, East Garo Hills, Williamnagar dated 10.03.2014 and further, the respondent No.5 Additional District Magistrate, East Garo Hills, Williamnagar is not the competent authority to relax the tax and royalty on coal transported by the respondent No.6 in pursuance of the impugned order dated 23.05.2014. This court has no alternative but to set aside the impugned order dated 23.05.2014; and accordingly set aside the impugned order dated 23.05.2014.

9. Writ petition is allowed.

JUDGE

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