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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 843 of 2013**

M/s Godawari Power & Inspat Ltd., a Company incorporated under the Companies Act, 1956, having its Corporate Office at- Hira Arcade, 1st Floor New Bus Stand, Pandri Raipur Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through the Principal Secretary Department of Forest Mantralaya Mahanadi Bhawan Mandir Hasaud, Naya Raipur District Raipur Chhattisgarh
2. Divisional Forest Officer, East Bhanupratappur, Forest Division Bhanupratappur, District North Bastar Kanker Chhattisgarh

---- Respondents**Writ Petition (C) No. 1285 of 2013**

Bharat Aluminum Company Ltd. Through Its Chief Executive Officer, Balco Nagar, Korba, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through The Principal Secretary and Forest Department, Mantralaya, Mahanadi Bhawan, Mandir Hasaud, Naya Raipur, District Raipur, Chhattisgarh
2. Divisional Forest Officer South Surguja Forest Division, District Surguja, Ambikapur, Chhattisgarh

---- Respondents**Writ Petition (C) No. 1399 of 2013**

M/s Jayaswal Neco Industries Ltd. A Company Incorporated under the Companies Act, 1956, having its Reg. Office At F-8, MIDC, Industrial Area, Hingna Road, Nagpur and one of its Plant at Siltara Industrial Area, Raipur, Chhattisgarh, Through its Manager Legal, Mr. Pravesh Biswas.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Principal Secretary, Department of Forest Mantralaya, Mahanadi Bhawan Mandir Hasaud, Naya Raipur District Raipur, Chhattisgarh
2. Divisional Forest Officer Raigarh, Forest Division District Raigarh Chhattisgarh
3. Auditor and Accountant General, Government of Chhattisgarh, Zero Point, Baloda Bazar Road, P.O. Mandhar, Raipur 493111 Chhattisgarh

---- Respondents

Writ Petition (C) No. 992 of 2014

South Eastern Coalfields Ltd. through General Manager, SECL, Baikunthpur Area Baikunthpur, District Koriya, Chhattisgarh

---- **Petitioner**

Versus

1. State of Chhattisgarh, Forest Department, Through its Chief Secretary, Mantralaya Bhawan, Raipur, Chhattisgarh.
2. The State of Chhattisgarh, Mining Department Through its Secretary, Mantralaya, Bhawan Raipur Chhattisgarh
3. The State of Chhattisgarh, Finance Department Through its Secretary, Mantralaya, Bhawan Raipur Chhattisgarh
4. The Chief Conservator of Forest, Finance / Budget, Aranya Bhawan, Medical College Road Raipur, Chhattisgarh
5. The Conservator of Forest, Bilaspur Range Sindhi Colony, Jarhabhata, BilaspurChhattisgarh
6. The Divisional Forest Officer, Koriya Forest Division, Baikunthpur, District Koriya Chhattisgarh

---- **Respondents**

Writ Petition (C) No. 379 of 2015

M/s Hindalco Industries Limited, Post Office Renukoot, District Sonbhadra Uttar Pradesh, through Shri I.J. Joshi, Joint President (Legal & Administration), Post Office Renukoot, District Sonbhadra Uttar Pradesh

---- **Petitioner**

Versus

1. State of Chhattisgarh, through the Principal Secretary, Department of Forest, Mahanadi Mantralaya, Naya Raipur, Post Office and Police Station Naya Raipur, District Raipur, Chhattisgarh
2. Divisional Forest Officer, East Surguja Forest Division, Ambikapur, District Surguja, Chhattisgarh

---- **Respondents**

Writ Petition (C) No. 1300 of 2014

South Eastern Coal Field Limited, Raigarh Area, through its General Manager District Raigarh, Chhattisgarh

---- **Petitioner**

Versus

1. State of Chhattisgarh, through the Secretary, Forest Department, Mahanadi Bhawan Raipur Chhattisgarh
2. Divisional Forest Officer, Dharamjaigarh Forest Division, District Raigarh, Chhattisgarh.
3. The Collector, Raigarh Distt. Raigarh Chhattisgarh
4. The State of Chhattisgarh, through its Secretary, Department of Finance Mahanadi Bhawan Naya Raipur District Raipur, Chhattisgarh
5. Principal Chief Conservator of Forest (Finance / Budget) Aranya Bhawan,

Medical College Road, Raipur, District Raipur, Chhattisgarh

6. The Conservator of Forest, Bilaspur Range, Sindhi Colony, Jarhabhata, Bilaspur Chhattisgarh

---- Respondents

Writ Petition (C) No. 1212 of 2014

South Eastern Coal Field Limited Korba Area, Through Its General Manager, District Korba Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Forest Department, Mahanadi Bhawan Raipur Chhattisgarh
2. Divisional Forest Officer, Korba Forest Division, Korba, District Korba, Chhattisgarh
3. The Collector, Korba, District Korba, Chhattisgarh
4. The State of Chhattisgarh, through its Secretary Department of Finance Mahanadi Bhawan, Naya Raipur District Raipur, Chhattisgarh
5. Chief Conservator of Forest (Finance / Budget) Aranya Bhawan, Medical College Road, Raipur, District Raipur, Chhattisgarh
6. The Conservator of Forest, Bilaspur Range, Sindhi Colony, Jarhabhata, Bilaspur Chhattisgarh

---- Respondents

Writ Petition (C) No. 2030 of 2014

South Eastern Coal Field Limited, Bishrampur Area, through its General Manager District Ambikapur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through the Secretary, Forest Department, Mahandi Bhawan Raipur Chhattisgarh
2. Divisional Forest Officer, South Surguja Forest Division, District Ambikapur, Chhattisgarh
3. The Collector, Ambikapur, District Ambikapur, Chhattisgarh
4. State of Chhattisgarh, through its Secretary Department of Finance, Mahandi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
5. Chief Conservator of Forest (Finance/Budget) Aranya Bhawan, Medical College Road, Raipur, District Raipur, Chhattisgarh

---- Respondents

Writ Petition (C) No. 2440 of 2014

South Eastern Coal Field Limited, Hasdeo Area, through its General Manager, District Koriya, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Forest Department, Mahanadi Bhawan Raipur, Chhattisgarh
2. Divisional Forest Officer, Manendragarh Forest Division, District Koriya Chhattisgarh
3. The Collector, Koriya, District Koriya, Chhattisgarh
4. State of Chhattisgarh, through its Secretary Department of Finance Mahanadi Bhawan, Naya Raipur District Raipur, Chhattisgarh
5. Chief Conservator of Forest (Finance / Budget) Aranya Bhawan, Medical College Road, Raipur, District Raipur, Chhattisgarh
6. Conservator of Forest, Surguja Forest Circle, Ambikapur Chhattisgarh
7. Union of India, through its Secretary, Ministry of Forest & Environment, New Delhi.

---- Respondents

Writ Petition (C) No. 95 of 2016

M/s. Shri Bajrang Power & Ispat Ltd. through its Director, S. K. Goyal, Village Borjhara, Urla Industrial Area, Raipur 493221 Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, through the Principal Secretary, Department of Forest, Mantralaya, Mahanadi Bhawan, Mandir Hasaud Naya Raipur District Raipur, Chhattisgarh.
2. Divisional Forest Officer, East Bhanupratappur Forest Division Bhanupratappur, District North Bastar Kanker, Chhattisgarh

---- Respondents

Writ Petition (C) No. 1015 of 2014

South Eastern Coalfields Ltd., through General Manager, SECL Chirmiri Area, Chirmiri, Distt Koriya, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Forest Department, Through its Chief Secretary, Mantralaya Bhawan, Raipur, Chhattisgarh
2. State of Chhattisgarh, Mining Department Through Secretary, Mantralaya Bhawan, Raipur, Chhattisgarh
3. State of Chhattisgarh, Finance Department, Through its Secretary, Mantralaya Bhawan, Raipur, Chhattisgarh
4. Chief Conservator of Forest (Finance/Budget) Aranya Bhawan, Medical College Road, Raipur, Chhattisgarh
5. Conservator of Forest, Bilaspur Range, Sindhi Colony, Jarhabhata, Bilaspur, Chhattisgarh
6. Divisional Forest Officer, Koriya Forest Division, Baikunthpur, District Koriya, Chhattisgarh

---- Respondents

Writ Petition (C) No. 2260 of 2014

Monnet Ispat & Energy Ltd. (Formerly known as Monnet Ispat Limited) A company incorporated under the Companies Act, 1956 having its Registered Office at Monnet Marg, Mandir Hasaud, PS Mandir Hasaud, Dist Raipur, Chhattisgarh, and a Corporate Office at 11, Masjid Moth, Greater Kailash Part-II, PS C.R. Park, New Delhi, Through its Authorised Signatory Shri B.N.Sinha S/o Lt Shri S.B.Sinha, Aged about 56 years, R/o Geetanjali Enclave, Ring Road No.2, Bilaspur, PS Civil Lines, Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through, the Principal Secretary, Department of Forest, Mantralaya, Mahanadi Bahwa, Mandir Hasaud, Naya Raipur, District Raipur, Chhattisgarh
2. Divisional Forest Officer, Raigarh Forest Division, District Raigarh, Chhattisgarh
3. Auditor and Accountant General, Government of Chhattisgarh, Zero Point, Baloda Bazar Road, PO Mandhar, Raipur - 493111 Chhattisgarh

---- Respondents

Writ Petition (C) No. 2522 of 2014

South Eastern Coal Field Limited, Bhatgaon Area, through its General Manager, District Surajpur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Forest Department, Mahanadi Bhawan, Raipur, Chhattisgarh
2. Divisional Forest Officer, Surajpur Forest Division, District Surajpur, Chhattisgarh
3. The Collector, Surajpur, District Surajpur, Chhattisgarh
4. State of Chhattisgarh, through its Secretary, Department of Finance, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
5. Chief Conservator of Forest (Finance/Budget) Aranya Bhawan, Medical College Road, Raipur, District Raipur, Chhattisgarh
6. Conservator of Forest, Surguja Forest Circle, Ambikapur, Chhattisgarh
7. Union of India, through its Secretary, Ministry of Forest & Environment, New Delhi

---- Respondents

Writ Petition (T) No. 68 of 2013

Steel Authority of India Limited, Bhilai Steel Plant, Bhilai through the Chief Executive Officer, Bhilai Steel Plant, Ispat Bhawan, Post Bhilai Police Station Bhatti Thana, District Durg, Chhattisgarh 490001

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Forests, Government of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Post & Thana Naya Raipur, Chhattisgarh

- 2. Divisional Forest Officer, Durg, Chhattisgarh
- 3. Union of India, through the General Manager, South East Central Railway, Bilaspur, Chhattisgarh.
- 4. Chief Commercial Manager, South East Central Railway, Bilaspur, Chhattisgarh

---- Respondents

Writ Petition (C) No. 1713 of 2015

- 1. NMDC Ltd. through its General Manager, BIOM, Bachel Complex, District Dantewada, Chhattisgarh
- 2. NMDC Ltd.m through its General Manager BIOM, Kirandul Complex, District Dantewada, Chhattisgarh

---- Petitioners

Versus

- 1. State of Chhattisgarh, through the Secretary, Forest Department, Mahanadi Bhawan, New Raipur, Chhattisgarh
- 2. Divisional Forest Officer, Dantewada Forest Division, District Dantewada, Chhattisgarh
- 3. Union of India, through - the Secretary, Department of Mines and Minerals, New Delhi

---- Respondents

Writ Petition (C) No. 2588 of 2014

South Eastern Coal Field Limited, Gevra Area, through the General Manager South Eastern Coal Field Limited, Gevra Area, District Korba, Chhattisgarh

---- Petitioner

Versus

- 1. State of Chhattisgarh, through the Secretary, Forest Department, Mahanadi Bhawan Raipur, Chhattisgarh
- 2. Divisional Forest Officer, Korba Forest Division, District Korba, Chhattisgarh
- 3. State of Chhattisgarh, through its Secretary, Department of Finance, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
- 4. Chief Conservator of Forest (Finance/ Budget) Aranya Bhawan, Medical College Road Riapur, District Raipur, Chhattisgarh
- 5. The Collector Korba, District Korba, Chhattisgarh

---- Respondents

For Respective Petitioners	: Dr. N.K.Shukla, Senior Advocate with Shri Shailendra Shukla, Shri Vaibhav Shukla, Shri K. Rohan, Shri Ashish Shrivastava, Shri B.D.Guru, Shri Animesh Verma, Shri Hari Shankar Patel, Shri Ankit Singhal and Shri Amit Soni, Advocates.
For Respondent/State	: Shri S.C.Verma, Advocate General with Shri Sudeep Agrawal, Deputy Advocate General.
For Respondent/Union of India	: Shri B. Gopa Kumar, Assistant Solicitor General.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per P.R. Ramachandra Menon, Chief Justice

30/09/2019

1. The major issue involved in all these cases is with regard to the challenge raised by the Petitioners against the *vires* of Rule 5 of the Chhattisgarh Transit (Forest Produce) Rules, 2001, the notification issued on 14.06.2002 by the State Government and the demand notices raised with regard to the 'transit fee' mostly for the first time in the year 2012.
2. We have heard Dr. N.K.Shukla, the learned Senior Advocate with Shri Shailendra Shukla, Shri Vaibhav Shukla, Shri K. Rohan, Shri Ashish Shrivastava, Shri B.D.Guru, Shri Animesh Verma, Shri Shankar Patel, Shri Amit Soni, Advocates for the respective Petitioners and Shri S.C.Verma, the learned Advocate General with Shri Sudeep Verma, the learned Deputy Advocate General for the State; besides Shri B. Gopa Kumar, the learned Assistant Solicitor General representing the Union of India.
3. Shri Vaibhav Shukla, the learned counsel for the Petitioner in Writ Petition (C) No. 1300 of 2014 submits that the challenge is mainly on four different grounds. *Firstly*, that the classification is arbitrary in so far as the minerals involved are available in non-forest areas as well; *secondly*, that the minerals involved are Iron Ore, Bauxite and Coal which are 'major minerals'; with regard to which there is no power vested with the State to prescribe any rule as it is a Central subject *thirdly*; that the Petitioners are not transporting the material through any forest area and that the ores excavated are directly transferred to the Railway Wagons through conveyors and *lastly*, that there is absolutely no rationale for the levy making it retrospective.

4. Insofar as the Petitioner in WP(T) No. 68 of 2013 is concerned, Dr. Shukla, the learned Senior Counsel pointed out that Section 41 of the Indian Forest Act, 1921 dealing with the rule making power only provides for transit through 'land' or 'water' and it does not have any applicability with the transportation through Railway wagons.
5. The sequence of events revealed from these matters which are pending before this Court for quite long, refers to the promulgation of the Chhattisgarh Transit (Forest Produce) Rules, 2001 by the State Government in the year 2001. Pursuant to the said Rules, Notification dated 14.06.2002 was issued stipulating the 'transit fee' to be realised in connection with the transport of major minerals *viz.* iron ore, coal or bauxite (which alone are being dealt with by the Petitioners herein). However, no action was pursued and demands were issued for the first time only in the year 2012 which made the Petitioners to feel aggrieved; who approached this Court with prayers, mainly challenging the *vires* of the Rules, 2001, the Notification and also the demands, as aforesaid. So as to have an easy understanding, specific prayers in Writ Petition (T) No. 68 of 2013 and Writ Petition (C) No. 1300 of 2014 are extracted below:

In Writ Petition (T) No. 68 of 2013:

"10.1 The Hon'ble Court may kindly be pleased to quash the impugned demand notice issued by the Divisional Forest Officer, issued on 17th of May, 2013, whereby Rs. 44,28,46,097.70 (Rupees Forty Four Crore Twenty Eight Lakhs Forty Six Thousand Ninety Seven and Seventy Paisa only) has been demanded against the transit fees for the years 2001-02 to 2012-2013 under the Chhattisgarh Transit (Forest Produce) Rules, 2001 (Annexure P/1).

10.2 The Hon'ble Court further be pleased to declare that the notification issued in exercise of power conferred under Rule 5 of Chhattisgarh Transit (Forest Produce) Rules, 2001 (Annexure P/2) is ultra vires to the principal Act i.e. the Indian Forest Act, 1927.

10.3 The Hon'ble Court may kindly be pleased to declare that the Rule 3 of the Chhattisgarh Transit (Forest Produce) Rules, 2001 (Annexure P/3) is ultra vires to the

Indian Forest Act, 1927.

10.4) The Hon'ble Court may kindly be pleased to call for the entire records leading to passing of the impugned demand notice, for the kind perusal of this Hon'ble Court.

10.5) The Hon'ble Court may kindly be pleased to issue writ of Prohibition against the respondents Railway administration restraining them from stoppage of iron ore transportation from Rail.

10.6) Cost of the petition may also be granted to the petitioner.

In Writ Petition (C) No. 1300 of 2013:

"10 (i). Striking down the Chhattisgarh Transit (Forest Produce) Rules, 2001 (Annexure P/1) and the Notification No. F 7-61/FC/2001, dated the 14th June 2002 (Annexure P/2) as ultra vires being unconstitutional, illegal, without competence and without jurisdiction of the State.

10 (ii). Quashing the Demand Notice dated 24.05.2014 (Annexure P/3) issued by the respondent No. 2.

10 (iii) Any other relief as deemed fit and proper by this Hon'ble Court."

6. When the matters came up for consideration before this Court on 05.07.2013, an interim order was passed in the following terms:

"Heard

These writ petitions have been filed challenging the vires of Chhattisgarh Transit (Forest Produce) Rules 2007 and the Chhattisgarh Mineral (Mining Transportation and Storage) Rules, 2009. The petitioners have also challenged the validity of the demand notices issued against them for payment of arrears of transit fee/storage fee.

In WP(C) No. 635/2013, a demand has been raised for Rs. 79,52,23,541/-; in WP(C) No. 776/2013, a demand has been raised for Rs. 14,69,00,000/- and in WP(C) No. 843/2013, a demand has been raised for Rs.1,13,67,681/-.

The petitioners were granted mining lease in relation to Iron ores. Earlier, no transit fee/storage fee was recovered from the petitioners and they had transported the iron ore without making any payment of transit fee/storage fee because the same has never been demanded by the State authorities. It is stated that recently some audit objection was raised and thereafter only, the notices demanding the above amount of transit fee/storage fee, have been issued to them which is based on total quantity of iron ore transported by them.

These writ petitions were heard on 19.06.2013, 20.06.2013 and 28.06.2013 and notices were issued to the respondents on both counts and counsel appearing on behalf of the State on advance copy had accepted the notice and had prayed for two weeks time to file counter affidavit/reply. In the meanwhile, on 01.07.2013, DFO-Bhanupratappur, Van Mandal Bhanupratappur, District Uttar Bastar, issued a memo dated 01.07.2013 to the writ petitioner in WP(C) No. 843/2013 and directed to make entire payment of arrears within 24 hours and it was also directed to Sub Divisional Officer and Range Officer that if the payment is not made within the said time, they shall stop the mining operations and transportation. When the said order came to the notice of the writ petitioner in WP(C) No. 843/2013, an application (IA No. 04) was filed and the matter was mentioned before this Court on 03.07.2013 and thereafter the matter has been listed before us.

Learned counsel for the Petitioners have submitted that earlier no transit fee/storage fee was demanded and it was never paid by them, however, presently the petitioners are paying transit fee/storage fee and are transporting the mineral from the lease area.

A copy of the application was supplied to the counsel for the State. He is again praying for two weeks time to file counter affidavit as also reply to all these applications.

In the above facts and circumstances of the case, we grant two weeks time to file counter affidavit/reply however, looking to the contents of the recent notice dated 01.07.2013 and further considering that the entire mining operation has been directed to be stopped which may lead to loss of public exchequer, we direct that in the meanwhile, no coercive steps shall be taken against the Petitioners in relation to the said demand notices and the petitioners shall not be stopped from carrying mining operations or transportation on account of the said demands till the next date of hearing. However, the petitioners shall be under obligation to pay current transit fee/storage fee on the prescribed rates in accordance with the rules."

7. The said order was extended further on 05.08.2013. This Court passed yet another order on 12.02.2014 in similar terms so as to make a 'uniform order' applicable in all the cases, also requiring the Petitioners to satisfy the transit fees at the existing rates. However, the realisation of arrears was interdicted; simultaneously requiring the Petitioners to furnish a 'guarantee' (other than cash or bank guarantee). It is stated that the Petitioners have satisfied the said requirement and are enjoying the fruits of the interim order, satisfying the 'transit fee' as on date.

8. In the meanwhile, the dispute as involved herein was taken up by some of the aggrieved parties before the Apex Court, where the matter has been registered and the case is pending consideration. In the said circumstance, Writ Petition (C) No. 635 of 2013 pending before this Court was sought to be transferred by filing Transfer Petition (Civil) No. 1657 of 2018 before the Apex Court, which came up for consideration on 08.05.2017 and the same was allowed by the Apex Court. Pursuant to the said order, the above writ petition was transferred and the same came to be registered on 06.03.2018 and re-numbered as Transferred Petition (Civil) No. 14 of 2018.
9. The learned counsel appearing for the parties submit that the matter is still pending consideration before the Apex Court.
10. After hearing both the sides, we are of the view that, in so far as the issue involved is pending consideration before the Apex Court, no separate adjudication is required to be made parallelly by this Court. The matter will get finalised, based on the law to be declared by the Apex Court in the matter which is pending there. Once a declaration is made by the Supreme Court, it could be made applicable in the cases of the Petitioners herein as well. The only aspect to be taken care of is that, their rights based on the interim orders passed by this Court will have to be protected, till the matter becomes finalised, as above.
11. In the above circumstances, we make the interim orders passed by this Court absolute and dispose of these writ petitions, making it clear that the challenge raised by the Petitioners in these matters will depend on the fate of the issue which is pending consideration before the Apex Court in Transfer Case (Civil) No. 14 of 2018 and connected matters, if any. It is further made clear that, once the law is declared as above, it shall be for the parties to these cases to act accordingly and if the decision goes against the Petitioners herein, they will be required to satisfy the due amount as

may be demanded by the State Government after giving credit to the amount already deposited by them (also on the basis of the guarantee already ordered to be given and furnished by them). On the other hand, if the Petitioners succeed and the verdict comes to be rendered against the Revenue/State, further steps shall be taken from the part of the State/Respondent so as to deal with the amounts already remitted by the Petitioners in this regard. No further order is required to be made in these matters.

12. All these cases stand disposed of as above. It is also made clear that after passing of the final verdict by the Apex Court, if any 'residual issue' survives for adjudication, it will be open for either of the parties to approach this Court for appropriate relief in accordance with law.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE