

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 10 of 2020 with
WP(C) No. 41 of 2020
WP(C) No. 54 of 2020
WP(C) No. 60 of 2020

Date of Decision: 18.03.2020

M/s Pahal Coal Traders Pvt. Ltd. Vs. State of Meghalaya & Ors.
Represented by its Director
Shri Tapan Jyoti Bhuyan
Shri Subodh Kumar Tiwari Vs. State of Meghalaya & Ors.
Shri Abdul Ahad Choudhury Vs. State of Meghalaya & Ors.
Prosantho Ch. Marak Vs. State of Meghalaya & Ors.

Coram:

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

Appearance:

In WP(C) No. 10 of 2020

For the Petitioner(s) : Ms. N. Saikia, Adv.
Mr. K. Paul, Adv.
For the Respondent(s) : Mr. A. Kumar, AG with
Ms. S.G. Momin, Addl. Sr. GA (For R 1&2)
Mr. N. Mozika, Sr. Adv. with
Mr. M.L. Nongpiur, Adv. (For R 4&5)
Mr. S. Dey, Adv. (For R 3)

Appearance:

In WP(C) No. 41 of 2020

For the Petitioner(s) : Mr. S.A. Sheikh, Adv.
For the Respondent(s) : Mr. A. Kumar, AG with
Ms. S.G. Momin, Addl. Sr. GA (For R 1&2)
Mr. N. Mozika, Sr. Adv. with
Mr. M.L. Nongpiur, Adv. (For R 4&5)
Mr. S. Dey, Adv. (For R 3)

Appearance:

In WP(C) No. 54 of 2020

For the Petitioner(s) : Ms. P. Bhattacharjee, Adv.
For the Respondent(s) : Mr. A. Kumar, AG with
Ms. S.G. Momin, Addl. Sr. GA (For R1&2)
Mr. N. Mozika, Sr. Adv. with
Mr. M.L. Nongpiur, Adv. (For R 4&5)
Mr. S. Dey, Adv. (For R 3)

Appearance:

In WP(C) No. 60 of 2020

For the Petitioner(s) : Mr. K.C. Gautam, Adv.
For the Respondent(s) : Mr. A. Kumar, AG with
Ms. S.G. Momin, Addl. Sr. GA (For R 1&2)
Mr. N. Mozika, Sr. Adv. with
Mr. M.L. Nongpiur, Adv. (For R 4&5)
Mr. S. Dey, Adv. (For R 3)

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| i) | Whether approved for reporting in
Law journals etc. | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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1. This instant writ petition along with other connected matters being similar with the same subject matter in issue, are proposed to be disposed of by this common judgment and order.

2. The central issue in these writ petitions is the challenge made to the auction notice dated 14.11.2019, the sale pursuant to the auction conducted on 29.11.2019, as well as subsequent orders passed by the respondent authority relating to the auction notice dated 14.11.2019. Directions have also been prayed for issuance of a fresh tender for auction of the unclaimed seized coal in accordance with due process. The unclaimed seized coal in question, pertains to the coal put up for auction vide the impugned auction notice dated 14.11.2019, issued by the District Magistrate, South Garo Hills, Baghmara.

3. This Court by order dated 15.01.2020, at the motion stage, as an interim measure, after hearing the parties stopped further lifting and transportation of the auctioned coal until the next date which was fixed on 30.01.2020. Thereafter, several Misc. applications were filed by the private respondents for vacating the order dated 15.01.2020 for which objections and replies were filed by the writ petitioners. These matters i.e. the writ petitions along with the Misc. applications were then taken up on successive dates by this Court and the question in the manner on how the auction was conducted, was deliberated and argued by the respective counsels. This

Court by order dated 18.02.2020 had also queried the State respondents as to whether the auction was done in compliance of Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957. It is to be noted that this Court by order dated 12.02.2020, had also recorded the submissions of the learned Advocate General, who had proposed a formula, that in case fresh auction was to be conducted, the private respondents be allowed to transport the coal already lifted, but stopped in transit, subject to their filing an undertaking before this Court to pay the differential amount between what was paid by them, and the higher price if any received, if fresh auction was conducted, and if the bid received in the fresh auction is for lesser amount, the coal be allowed to be lifted or transported at the same price.

4. The State respondents then by an affidavit filed on 28.02.2020, brought on record order dated 26.02.2020 issued by the Deputy Commissioner, South Garo Hills, Baghmara cancelling the auction which was held on 29.11.2019 and ordering re-auction of the said coal. The order dated 26.02.2020 of cancellation of the auction is reproduced herein below: -

**“GOVERNMENT OF MEGHALAYA
OFFICE OF THE DEPUTY COMMISSIONER:
SOUTH GARO HILLS: BAGHMARA**

ORDER

Dated Baghmara the 26th February, 2020

No. SGH/DC/NGT/CORRESPONDENCE/98/2019/143: In pursuance of the directions received from the Commissioner and Secretary, Mining and Geology Department, Government of Meghalaya vide letter No. MG. 94/2011/398, Dtd. 26th February, 2020, the auction of seized unclaimed coal held on 29th November, 2019 by the office of the undersigned hereby stands cancelled until further orders for subsequent re-auction of the said coal.

Sd/-

**Deputy Commissioner
South Garo Hills, Baghmara**

***Memo. No. SGH/DC/NGT/CORRESPONDENCE/98/2019/143-1,
Dated Baghmara the 26th February, 2020***

Copy to:

- 1. The Commissioner & Secretary, Mining and Geology Department, Govt. of Meghalaya, Shillong for information and necessary action.***
- 2. Advocate General, DMR, Shillong favour of information.***

3. *The Superintendent of Police, South Garo Hills, Baghmara.*
4. *Person concerned for favour information and necessary action.*

***Deputy Commissioner
South Garo Hills, Baghmara”***

The issuance of the above noted order had effectively rendered all the writ applications infructuous, inasmuch as, the prayers as sought by the writ petitioners were answered by the cancellation of the auction. However, notwithstanding the cancellation, two aspects remain, which require consideration, firstly the fate of the coal that has been lifted, transported and sold and the coal sought to be transported but which is presently pending in transit, and secondly the procedure to be adopted in the re-auction. The first aspect had been brought to the Court's notice by the three Misc. applications filed for vacation/alteration of the order dated 15.01.2020, seeking orders to allow transportation of the lifted coal which had been loaded in their trucks. The second aspect is the procedure and manner to be adopted in the re-auction process, as it is noted with concern that the manner in which the earlier auction was conducted is not at all satisfactory, especially in such matters involving public largesse. On these two premises the counsels for the parties have been asked to advance their submissions.

5. I have heard learned counsel for the parties.

6. The learned counsels for the writ petitioners have submitted that the auction that had been conducted, and subsequently cancelled was done in violation of the guidelines of the Mining & Geology Department, inasmuch as, no wide publicity was given which had prevented potential bidders from taking part in the auction. It was also submitted that the auction should be as per the laid down guidelines which have been framed by the Mining & Geology Department, Government of Meghalaya and further that the coal which had been lifted and in transit be unloaded for re-auction. The learned counsels have also submitted that the reserve/base price, and the price at which the coal was auctioned was abysmally low to favour selected bidders and that the price i.e. base price or reserve price should be computed on actuals. In this context they have referred to the auction prices in the E-auction of the North Eastern Coal Fields Coal India Ltd. Margherita held on

25.01.2020 wherein, the bid price was more than Rs. 10,000/- (Rupees Ten Thousand only) per metric tonne and a total cost including levies, GST, Cess was more than Rs. 13,000/- (Rupees Thirteen Thousand only) per metric tonne.

7. The learned counsels for the State respondents as also for the private respondents in their brief submissions reiterate the proposal as recorded in the order dated 12.02.2020, that in the re-auction for the lifted coal in transportation, they were ready to furnish an undertaking to pay the difference between the price which they had lifted the coal, and the new price that may be achieved in the re-auction. Apart from these submissions, the learned Advocate General submits that the re-auction will be conducted following the procedure as laid down in a fair and transparent manner.

8. It is noted that in the auction that has since been cancelled, the private respondents who were supposedly successful in their bids had already been issued 'Lifting Orders' on 02.12.2019 for 50% of the coal from the respective three locations in South Garo Hills, as indicated in the impugned auction notice dated 14.11.2019, and payment for the said 50% at the auction rate, also had been tendered as is apparent from the documents annexed to the Misc. applications. As such, in consideration of this aspect, the re-auction process will also have to incorporate and consider this factor, inasmuch as, the Lifting Orders had been issued on 02.12.2019, and some quantity of the lifted coal had already been transported and sold, and some as can be seen from the applications are in transit at the time the interim order dated 15.01.2020 was passed.

9. Having given my anxious consideration to the entire matter in its totality, especially the fact that the matter involves precious natural resources and concerns safeguarding of public revenue, the writ petitions and connected Misc. applications are hereby disposed of with the following directions: -

- (i) The re-auction to be conducted, shall strictly be in accordance with the procedure prescribed by the respondent Mining & Geology Department, which was issued under Memo. No. MG. 94/2011/121-A dated 02.09.2019, more specifically the conditions

contained in clause 5 of the guidelines. From the date of the publication of the auction notice, a period of 15 days shall be allowed for bidders to submit their bids and the auction be conducted positively within 3 days thereafter. The Respondent may also cause further additional publicity by also putting the notice in a national newspaper for two consecutive days.

- (ii) The reserve/base price for fresh auction may be considered by the Respondent No. 7 to be computed and fixed at an amount not less than 40% (i.e. Rs. 2160/-) of the LC (Letter of Credit) value for export to Bangladesh, which as per the respondent State stands at Rs. 5400/- per tonne. This assessment is made considering the fact that apart from the fixed Royalty + MEPR Fund amount, the rest of the figures provided by the State respondents are speculative and the amount of the derived price, as fixed by the Divisional Mining Officer appears to be not based on any actual concrete data as far as freight charges, miscellaneous expenses such as storage cost, unloading cost etc. and profit margin are concerned.
- (iii) The remaining amount of coal shall be put up for re-auction after ascertaining the exact quantity available on site, after collating the data, after the issuance of lifting orders dated 02.12.2019 and actual coal lifted and transported or in transit by the private respondents in the following manner: -
 - (a) Coal present in the depots/site to be re-auctioned less the amount lifted as on 15.01.2020.
 - (b) Coal lifted and stopped in transit, not to be allowed for further transportation until the '**differential amount**', [*that is the amount of difference between the successful bid amount in the re auction, and the earlier bid amount*] is tendered by the private respondents before the competent authority/ Deputy Commissioner within one week from date of auction. Amount to be tendered by bank draft or by RTGS. The Mineral Transport Challan to be re stamped to indicate payment of differential amount.

(c) Coal lifted, transported and already delivered to various sources/buyers prior to 15.01.2020, to be accounted for and details submitted as to quantity, to the competent authority/ Deputy Commissioner, and the differential amount to be tendered within one week from date of auction.

10. The other arguments raised and authorities relied upon by the parties, no longer assume any significance in view of the cancellation of the earlier auction and the disposal of the cases in terms of the directions as indicated above.

11. The entire exercise of re-auction by the State respondents should be concluded as expeditiously as possible preferably within a period of 4(four) weeks from the date of this order.

12. In the foregoing facts and circumstances, these writ petitions along with the connected Misc. applications are accordingly disposed of.



JUDGE

Meghalaya
18.03.2020
"V. Lyndem PS"