

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.617 of 2021

1. Jharkhand Int Nirmata Sangh having its office at Basera Complex, Ranikudar, PO and PS: Kadma, Town-Jamshedpur, District- East Singhbhum through its Chairman Ladu Ram Sharma, aged about 78 years, son of late Sagar Mal Sharma, resident of Ranikudar, PO and PS Kadma, Town-Jamshedpur, District-East Singhbhum.
2. Bharat Bricks, a proprietorship concern, having its works at Harindukri, P.O. and P.S. Ghatsila, District-East Singhbhum through its proprietor Suresh Kumar Bansal, aged 55 years, Son of Late Hari Kishan Bansal, resident of Ghatsila, P.O. and P.S. Ghatsila, District-East Singhbhum.
3. M/s. Jain Clay Products, a proprietorship concern, having its works at Harindukri, P.O. and P.S. Ghatsila, District-East Singhbhum through its proprietor Satya Narayan Jain, aged 73 years, Son of Late Ful Chand Jain, resident of Ghatsila, P.O. and P.S. Ghatsila, District-East Singhbhum.
4. M/s. Jain Brothers, a Proprietorship concern, having its place of business at Tetuldanga, P.O. and P.S. Ghatsila, District-East Singhbhum, through its Proprietor Shyam Sundar Jain, aged 60 years, son of Late Murarilal Jai, resident of Chitni, P.O. and P.S. Ghatsila, District-East Singhbhum.
5. M/s. Puja Bricks, a Proprietorship concern, having its place of business at Mouza Amai Nagar, P.O. and P.S. Ghatshila, District-East Singhbhum through its proprietor Basudeo Giri, aged about 65 years, Son of Late Shyam Charan Giri, resident of Ghatsila, P.O. and P.S. Ghatshila, District-East Singhbhum.
6. M/s. Sanjay Bricks, a proprietorship concern, having its place of business at Mouza Barajudi, P.O. and P.S. Ghatsila, District-East Singhbhum through its proprietor Sanjay Agarwal, aged 44 years, son of Late Jagdish Prasad Agarwal, resident of Ghatsila, PO and PS Ghatsila, District East Singhbhum.
7. M/s. Rohit Bricks, a proprietorship concern, having its place of business at Bakada, P.O. Guhipal, P.S. Bahrajora, District-East Singhbhum through its Proprietor Dhananjay Pandey, aged 50 years, son of Late Gorakh Nath Pandey, resident of and P.O. Guhipal, P.S. Bahrajora, District-East Singhbhum.
8. M/s. Roy Bricks, a proprietorship concern having its place of business at Amainagar, P.O. and P.S. Ghatsila, District-East, Singhbhum, through its Proprietor Soumen Roy, aged 38 years, son of Sri Moni Lal Roy, resident of Ghatsila, P.O. and P.S. Ghatsila, District-East Singhbhum.
9. M/s. Jharkhand Clay Products having its place of business at Kashidah, P.O. and P.S.Dumria, District-East Singhbhum, through its proprietor Krishna Bhagat, aged 55years, son of Late Devraj Bhagat, resident of Dumria, P.O. and P.S. Dumria, District-East Singhbhum.
10. Maa Rankini Bricks, a proprietorship concern having its place of business at Laldih, P.O. and P.S. Ghatsila, District-East Singhbhum through its proprietor Rajesh Kumar, aged 50 years, son of Sri Laxmi

Narayan Singh, resident of Ghatsila, P.O. and P.S. Ghatsila, District-East Singhbhum.

11. Bajrang Minerals, a Proprietorship concern having its place of business at Mahulia, P.O. and P.S. Ghatsila, District-East Singhbhum through its proprietor Pramod Dubey, aged 43 years, son of Sri Ramjee Dubey, resident of Ghatsila, P.O. and P.S. Ghatsila, District-East Singhbhum.
12. Krishna Brick a Proprietorship concern having its place of business at Saradakar, P.O. and P.S. Ghatsila, District-East Singhbhum through its proprietor Ashok Kumar Agarwal, aged 48 years, son of Late Shankar Lal Agarwal, resident of Ghatsila, P.O. and P.S. Ghatsila, Singhbhum. District-East
13. Om Brick Products, a proprietorship concern having its place of business at Murakati, P.O. at Barejuri, P.S. Ghatsila, District-East Singhbhum through its proprietor Bala Prasad Agarwal, aged 60 years, son of Late Ramjee Lal Agarwal, resident of Ghatsila, P.O. and P.S. Ghatsila, Singhbhum. District-East
14. Bala Prasad Singhania & Sons having its place of business at Murakati, P.O. Barajuri, P.S. Ghatsila, District-East Singhbhum through its proprietor Bala Prasad Singhania, aged 60 years, son of Late Ramjee Lal Agarwal, resident of Ghatsila, P.O. and P.S. Ghatsila, District-East Singhbhum.
15. M/s. Priya Bricks, a proprietorship concern having its place of business at Kashida, P.O. and P.S. Ghatsila, District-East Singhbhum through its Proprietor Natwar Agarwal, aged 54 years, son of Late Mahabir Prasad Agarwal, resident of Ghatsila, P.O. and P.S. Ghatsila, District-East Singhbhum.
16. Maruti Bricks, a proprietorship concern, having its place of business at Murajhahore, P.O. and P.S. Chakulia, District-East Singhbhum through its proprietor Nazvin Kumar Kedia, aged 41 years, son of Naorang Lal Kedia, resident of Chakulia, P.O. and P.S. Chakulia, District-East Singhbhum. Petitioners

Versus

1. The State of Jharkhand through the Principal Secretary, Department of Mines and Geology, Nepal House, Doranda, PO and PS Doranda, District-Ranchi.
2. The District Mining Officer, East Singhbhum at Jamshedpur, having office at Circuit House Area, PO and PS: Bistupur, Town-Jamshedpur, District East Singhbhum. Respondents

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
 HON'BLE MR. JUSTICE ARUN KUMAR RAI**

 For the Petitioners(s) : Mr.Indrajit Sinha, Advocate
 For the Respondent(s):Mr. Shray Mishra, AC to AG

C.A.V. On 17.12.2025

Pronounced On: 15/01/2026

[Per , Sujit Narayan Prasad, J.]

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking following relief(s):

“For grant of appropriate writ/order/direction from this Hon’ble Court restraining the respondents from directing the petitioners to obtain consent to operate and Environment Clearance from appropriate authority under Rule 34(I) of the Jharkhand Minor Mineral Concession Rules, 2004 which is not applicable in respect of the permit holders;

And

For issuance of a further writ/order/direction from this Hon’ble Court restraining the respondents from asking for payment of DMFT in respect of brick kilns as brick earth being the separate category and does not find place in respect of brick earth;

And

For issuance of appropriate writ/order/direction from this Hon’ble Court under which provisions the Respondents are charging management fee and environmental cess in respect of the brick kilns;”

2. The brief facts of the case as per pleadings made in this writ petition are as under:

- i. The petitioners are carrying on manufacture of brick kilns since long at several places in the district of East Singhbhum.
- ii. Brick earth is the main ingredient in manufacture of the bricks and it is a seasonal operation which generally operates from the month of November to 1st week of May and after that due to summer and during rainy season, no manufacture of brick is physically possible.
- iii. The District Mining Officer, West Singhbhum, Chaibasa had issued a Press Release No. 233182 (West Singhbhum) 2020-21 giving necessary information to the manufacturers of the brick kilns to obtain E.C.

(Environmental clearance) and CTO (consent to operate) and thereafter to make any application for grant of permit along with payment of consolidated amount of royalty and other fees.

iv. Similar notices were also issued by the District Mining Officer, East Singhbhum and Seraikella Kharsawan for obtaining CTO and Environment Clearance and payment of DMFT.

v. One of the petitioners had received letter No. 1198, dated 29.12.2020 issued by District Mining Officer, East Singhbhum, Jamshedpur whereby Priya Bricks have been asked to pay DMFT Rs. 17,100/-, Management fees Rs. 2019 and environmental cess Rs. 570/-.

3. Being aggrieved with the aforesaid directions, the petitioners have approached this court by filing the present writ petition.

4. It is evident from the factual aspect that the writ petitioners are claiming that there is no requirement to obtain consent to operate or environment clearance from the appropriate authority under Rule 34(I) of the Jharkhand Minor Mineral Concession Rules, 2004 (hereinafter, referred as Rule,2004). Likewise, the petitioners are also not liable to make payment of DMFT in respect of brick kilns as the brick kilns does not come under the fold of minerals.

Arguments on behalf of the petitioners:

5. Mr. Indrajit Sinha, the learned counsel appearing on behalf of the petitioners has submitted that the issue which has been raised in the present writ petition is with respect to extracting soil from the earth and while doing so there is no requirement to obtain consent from the appropriate authority.

6. He has also submitted that removing soil from the earth is no way creating any adverse impact on the environment and, therefore, obtaining environmental clearance is also not necessary. However, brick kiln certainly requires environmental clearance as well as clearance from the Pollution Control Board as it has adverse impact upon the environment.

7. It has been contended that the respondent authorities have taken the ground in the counter-affidavit that in view of the provisions of Rule 34(1) of Rule 2004, it is mandatory for each lessee/permit holder to follow the provisions for Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and Environmental (Conservation) Act, 1986 and it is mandatory for each lessee/permit holder to follow the provisions for conservation of environment, air and water pollution and they have to follow the rules wherein it is mandatory for each permit holders to get

environment clearance and consent from appropriate authority and thereafter production and dispatch of the minerals will be allowed.

8. The learned counsel has further submitted that since the soil which is being removed from the earth is having no adverse impact on the environment and, as such, there is no requirement to get environmental clearance certificate or the certificate from the Pollution Control Board and as also the brick kiln does not come under the fold of minerals and, as such, no liability can be casted to deposit the amount in the DMFT.

Arguments on behalf of the State:

9. *Per contra*, Mr. Shray Mishra, the learned counsel appearing for the State has submitted by placing reliance upon the counter-affidavit that the ground which has been taken that merely because the soil is being removed from the earth and, as such, there is no adverse impact upon the environment, is not fit to be accepted, reason being, that soil is also a part of environment and if the soil is being extracted for the purpose of brick kiln the same certainly have the environmental impact, particularly, in broader view of the Environmental (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 and hence, all the requirements which are applicable in other mining operations will also be applicable in the case of the brick kiln as

would be evident from the specific provisions contained in Rule 34(I) of the JMMC Rules, 2004.

10. It has been contended that removing soil from the earth cannot be segregated from the process of manufacturing of the brick kiln rather if any permission is being granted by the competent authority of the State Government, i.e., for the purpose of manufacturing of the brick kiln which starts from extraction of the soil from the earth and, as such, both processes cannot be segregated rather for the purpose of manufacturing of brick kiln, the soil is an integral part as a raw material and, hence, removal of soil from the earth is having adverse impact in the environment and it also creates water pollution and air pollution.

11. It has further been contended that environmental clearance certificate is required since removal of soil from the earth has adverse environmental impact and for the purpose of maintaining the environmental balance, the impact on the environment, due to removal of soil from the earth is required to be assessed and, as such, it is incorrect on the part of the writ petitioners to take a ground that removing of soil from the earth is having no adverse impact upon the environment and as such there is no requirement to have the environmental clearance certificate.

12. It has also been submitted that since in the manufacturing process of brick kiln, the soil being a natural resources and thus it

is being extracted from the earth and, hence, the requirement of depositing the amount in the DMFT fund cannot be disputed.

13. The learned counsel on the aforesaid grounds has submitted that the writ petition lacks merit and hence, the same is liable to be dismissed.

Analysis:

14. We have heard the learned counsel for the parties and gone through the pleadings made in the writ petition, arguments of both the parties, counter-affidavit and reply thereof. The issues which require consideration are:

- i. Whether the removal of soil can be segregated from the process of manufacturing of brick kilns so that in the matter of removal of soil from the earth the environmental clearance certificate is not required.
- ii. Whether the soil being the raw-material for the purpose of manufacturing of brick kilns and if it is being removed from the earth then can it be said that there is no adverse impact upon the environment and, as such, there is no requirement for payment of amount in DMFT fund under JMMC Rules 2004.

Re: issue no.(i)

15. In the present case, we are dealing with the removal of soil from earth for the purpose of manufacturing of brick kilns. Hence, it would be pertinent to see the definition of soil provided

in Mines and Minerals Development and Regulation Act, 1957 (herein referred as Act 1957) and JMMC Rules, 2004.

16. Under section 3(e) of the Act, 1957, definition of ‘Minor Minerals’ has been provided, which is quoted herein below-

“Minor Minerals” means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.

17. Hence, as per definition of “Minor Minerals” provided under section 3(e) of the Mines and Minerals Development and Regulation Act, 1957, ordinary clay is included in minor mineral.

18. Here, it is pertinent to note that the Central Government has, by notification, declared the ‘brick-earth’ and ‘ordinary earth’ as ‘minor mineral’.

19. Therefore, as per definition of “Minor Minerals” provided under section 3(e) of the Act, 1957, ‘ordinary clay’, as well as ‘brick-earth’ and ‘ordinary earth’ are included under the definition of ‘Minor Mineral’.

20. Now, in the JMMC Rules, 2004, the definition of ‘Mineral’ has been provided under Rule 2 (20) according to which ‘Mineral’ means definition of ‘Minor Mineral’ provided under section 3(e) of the Mines and Minerals Development and Regulation Act, 1957, for ready reference Rule 3(20) of JMMC Rules, 2004 is being quoted herein which reads as under:

(20 "खनिज" का अर्थ है खान और खनिज विकास का विनियमन अधिनियम, 1957 की धारा 3 के खण्ड 'ई' में परिभाषित लघु खनिज।

21. So, under JMMC Rules,2004 also ‘ordinary clay’ as well as ‘brick-earth’ and ‘ordinary earth’ are included in the definition of ‘Minor Mineral’.

22. Herein, it needs to be mentioned standard draft of Indian Bureau of Mines namely **Minor Minerals Conservation and Development Rules, 2010**, (herein Rule 2010) which finds mentioned in Rule 34E (1) of JMMC Rules,2004 and it deals with Environmental aspects of quarrying of minor minerals and is applicable for prospecting and quarrying of minor minerals.

23. Under the standard draft of Minor Minerals Conservation and Development Rules, 2010, has also adopted the definition of “Minor Minerals” as provided under section 3(e) of the Act, 1957.

24. Hence, under the standard draft of Minor Minerals Conservation and Development Rules, 2010, ‘ordinary clay’ as well as ‘brick-earth’ and ‘ordinary earth’ are included in the definition of minor mineral.

25. Before proceeding further, in order to answer the issue as mentioned in the preceding paragraph, it would be apt to appreciate the legal provisions as contained in JMCC rules, 2004 in connection with the said issue.

26. It requires to refer herein that the Rule 30 of JMCC Rules,2004 wherein it has been stipulated that the owner of Brick –kiln in order to procure the brick-earth has to pay a consolidated

amount to the state government, for ready reference the Rule 30 of JMCC Rules,2004 is being quoted as under: -

“30. ईट की मिट्टी पर स्वामित्व को समेकित करना—इन नियमों के अन्तर्विष्ट कुछ भी हो, प्रत्येक वर्गीकृत क्षेत्र में, एक निश्चित संख्या में ईट के लिए एक विहित प्रक्रिया के तहत ईट भट्टा मालिक/ ईट की मिट्टी निकालने वाले व्यक्ति को अनुसूची 3 के अनुरूप प्रति भट्टा प्रति वर्ष, एक समेकित राशि का भुगतान राज्य सरकार को करना होगा। राज्य सरकार तीन वर्ष में एक बार समेकित राशि की दर को सरकारी राजपत्र में अधिसूचना के द्वारा संशोधित कर सकती है।

परन्तु यह कि राज्य सरकार, समेकित राशि, जो भुगतान किया जाना है, को निर्धारित करने के उद्देश्य से, उन स्थानों को विभिन्न वर्गों में वर्गीकृत इन तथ्यों को ध्यान में रख कर सकती है जिन्हें वह उचित समझती है।

परन्तु यह कि ईट मिट्टी निकालने वाला/ईट भट्टा मालिक यदि विहित तरीके से स्वाभिस्व की समेकित राशि का पूर्ण भुगतान कर अनुज्ञापत्र प्राप्त करने में असफल रहता है तो उसके विरुद्ध नियम 54 के अनुसार कार्रवाई की जायेगी।

इस नियम के उद्देश्यों की व्याख्या-

1. व्यापार का अर्थ है और इसमें शामिल हैं, इंटपारना, भट्टा जलाना तथा ईट की मिट्टी निकालने वाले भट्टा मालिक द्वारा ईट बेचना तथा ऐसे अन्य कार्यकलाप जो ईट उत्पादन से संबंधित हो।
2. इस नियम के उद्देश्य के लिए, ईट की मिट्टी निकालने वाले व्यक्ति का अर्थ है और इसमें शामिल है व्यक्ति अथवा व्यक्तिगण जिन के द्वारा अथवा जिनके बदले ईट उत्पादन के लिए कोई मिट्टी निकाले।
3. इस नियम के उद्देश्य से ईट भट्टा मालिक का अर्थ वह व्यक्ति है जो ईट भट्टा का स्वामित्व रखता है अथवा जिसके बदले में उस भट्टे में ईट का उत्पादन होता है और उसमें मैनेजर, एजेंट तथा पट्टाधारी भी शामिल है।”

27. Hence, Rule 30 of JMCC Rules,2004 is in respect of consolidation of royalty in respect of brick kilns which provides that notwithstanding anything contained in these rules, the State government shall by notification in the official Gazette determine consolidated amount of royalty which may be revised once in

three years to be paid by the brick kiln owners/person removing brick-earth, per annum as per Schedule 3, to the State government in the manner prescribed therein on the fixed number of bricks for every classified area.

28. Rule 30 of JMCC Rules, 2004, provides explanations and Explanation No.1 of the Rule 30 provides that business means and includes molding of brick, ignition of kiln, persons removing soil/kiln owner. Explanation No.2 provides that person removing brick-earth means person who quarry soil for production of brick. Explanation No.3 provides that owner of the brick kiln means a person who is proprietor of the brick kiln and production of bricks takes place in the kiln.

29. It would be appropriate to discuss herein the Chapter IV of JMCC Rules, 2004, states about grant of quarrying permits, which is quoted as under-

अध्याय-4

“31. खुलीखानअनुमति पत्र प्रदान करना-1) सक्षम पदाधिकारी को प्रपत्र'जी में एक आवेदन देने पर वे अपने क्षेत्राधिकार में अनुसूची² के तहत निर्धारित दर पर स्वामिस्व के पूर्व भुगतानो परान्त एक अनुमति पत्र के तहत जो तीन हजार क्यूबिक मीटर से अधिक मात्रा का नहीं हो, किसी भी विशेष क्षेत्र में प्रपत्र-एच में किसी व्यक्ति को खनिज निष्कासन तथा हटाने की खुलीखान अनुमति पत्र दे सकता है। इस अनुमति पत्र को देने के पूर्व सक्षम अधिकारी स्वयं इस तथ्य से संतुष्ट हो लेंगे कि अनुमति पत्र की वास्तव में आवश्यकता है तथा यह जिस क्षेत्र में खनिजों के निष्कासन के लिए अनुमति पत्र आवेदित किया गया है उस क्षेत्र में खनन पट्टा प्राप्त करने की जरूरत को बाधित नहीं करता है।

परन्तु यह कि सड़क, रेल, पुल, डैम, नहर आदि सटश्य निर्माण में उपयोग के लिए मिट्टी एवं मोरम खनिज का अग्रिम स्वामिस्व का पूर्ण भुगतानो परान्त अनुत्रा पत्र निर्गत करने के लिए सक्षम प्राधिकारी द्वारा 3000 घनमीटर की अधिकतम सीमा कीबाध्यता नहीं रहेगी।

परन्तु यह भी कि जिन मामलों में विधि/उपविधि/न्याय निर्णय के आलोक में पर्यावरणीय स्वच्छता प्रमाण पत्र की आवश्यकता होगी, वहां खनिज का उत्तोलन एवं प्रेषण सक्षमप्राधिकार से निर्गत पर्यावरणीय स्वच्छता प्रमाण पत्र प्राप्त होने केउपरान्त ही किया जायेगा।

(2) सक्षम पदाधिकारी लिखित रूप में कारण अंकित करते हुए ऐसे अनुमति पत्र को अस्वीकृत कर सकते हैं।”

30. Hence, Rule 31 of Chapter 4 states about grant of quarrying permits. Rule 31 provides that on an application made in Form 'G' the competent officer may grant a quarrying permit in Form 'H' on payment of royalty as per rate given in Schedule-2 to extract minerals which shall not permit for more than 3000 Cubic meters and before giving this quarrying permit the competent officer shall satisfy himself as to whether in fact, he requires any quarrying permit and it does not restrict the requirement of lease for which application is made.

31. Chapter 4A was introduced in JMCC Rules, 2004, by amendment in 2014, which is in respect to ‘Scientific Mining and Environment Protection’ and its Rule 34(A) (1) provides that mining work shall be carried on as per approved mining plan/mining scheme.

32. Rule 34E (1) of JMMC Rules, 2004, relates to ‘Expectations in Mining Plan’ and Rule 34E (1) states that every

lease holder/permit holder shall carry the mining activity as per the Standard draft prepared by Indian Bureau of Mines in consonance with Minor Minerals Conservation and Development Rules, 2010. Rule 34E (1) is quoted herein below for ready reference-

34E (1) प्रत्येक खनन पट्टाधारी /अनुज्ञप्तिधारी द्वारा भारतीय खान ब्यूरो द्वारा विहित लघुसंरक्षण एवं विकास नियमावली, 2010 के मानक प्रारूप एवं भारतीय खान ब्यूरो द्वारा समय पर निर्गत दिशा-निर्देश के अनुरूप मान्यताप्राप्त अर्हक व्यक्ति द्वारा तैयार तथा राज्य – द्वारा इस निमित्त प्राधिकृत पदाधिकारी से सम्यक रूप से अनुमोदित खनन योजना/खनन की के अनुरूप खनन कार्य किया जायेगा।

33. Further, Chapter 4B is in respect of ‘Conservation of Environment’. Rule 34F stipulates that holder of mining lease shall take as much as possible precautions as provided in Rule 34F. For ready reference Rule 34F is quoted herein below-

अध्याय-4बी

पर्यावरण का संरक्षण

34 पर्यावरण का संरक्षण-(1) खनन पट्टा का प्रत्येक धारक खनन कार्य करते समय, पर्यावरण का संरक्षण और प्रदूषण का नियंत्रण करने के लिये यथा संभव पूर्व सावधानियां निम्नलिखित रीति से बरतेगा, अर्थात्-

(क) जहां कहीं भी उपरी मिट्टी विद्यमान है और खनन कार्य के लिये उसकी खुदाई की जानी है, वहां उसे पृथक से हटाया जायेगा।

(ख) इस प्रकार से हटायी गयी उपरी मिट्टी का भविष्य के उपयोग के लिये भंडारण किया जायेगा।

(ग) ढेरों को, उन से सामग्री के बहकर निकलने से भूमि का ग्रेड घटने या कृषि क्षेत्र के नुकसान, सतही जल (सर्फेस वाटर) संग्रह का प्रदूषण या बाढ़ कारित होने से रोकने के लिये समुचित रूप से सुरक्षित रखा जायेगा।

(घ) ढेरों के लिये पट्टा क्षेत्र के भीतर यथा संभव अभेद्य एवं खनिज रहित स्थान चुना जायेगा।

(ड.) उपरी मिट्टी के ढेरों का यथोचित रूप से चबूतरा बना दिया जायेगा और उस पर वनस्पति से या अन्यथा उन्हें स्थिर किया जायेगा।

(2) इस प्रकार हटायो गयी उपरी मिट्टी का उपयोग उस भूमि के प्रत्यावर्तन या पुनरूद्धार करने के लिये किया जायेगा, जिसकी खनन कार्य के लिये आगे आवश्यक नहीं हो।

(3) अधिभार इत्यादि का हटाया जाना, भण्डारण और उपयोग-

(क) खनन पट्टा/खनन अनुज्ञा पत्र का प्रत्येक धारक, खनन के दौरान या आकारीकरण के दौरान जनित अधिभार, अनुपयोग, चट्टान, कूड़ा करकट और सूक्ष्म कणों का अलग-अलग ढेरों में भण्डारण करेगा।

(ख) ढेरों को समुचित रूप से सुरक्षित किया जायेगा और उनके यथोचित रूप से चबूतरे बना दिये जायेंगे और उपर वनस्पति से या अन्यथा उन्हें स्थिर किया जायेगा।

(ग) जहां कहीं संभव हो, अनुपयोगी चट्टान, अधिभार इत्यादि को खदान के क्षेत्र में इस दृष्टि से पुनः भर दिया जायेगा, ताकि भूमि को यथासंभव उसके मूल रूप में उपयोग में लाये जा सके।

34. Further it needs to refer herein the Rule 34G which relates to land reclamation by lease holder/permit holder. Rule 34G is quoted herein below-

34G भूमि का सुधार तथा उसका पुनरूद्धार-खनन पट्टा का प्रत्येक धारक-

(1) खनन कार्य से प्रभावित भूमि के क्रमिक प्रत्यावर्तन, उसके सुधार और उसके पुनरूद्धार का भार अपने उपर लेना और इस कार्य को, ऐसी कार्य के पूर्ण किये जाने और खदान का परित्याग किये जाने के पूर्व, पूर्ण करेगा।

(2) खनन कार्य ऐसी रीति से करेगा, जिससे कि खनन पट्टा के अधीन धारित तथा समीपस्थ क्षेत्र के पेड़-पौधों को कम से कम नुकसान पहुंचे।

(3) **खनन पट्टा/खनन अनुज्ञापत्र का प्रत्येक धारक-**

(क) उसी क्षेत्र में या उपायुक्त द्वारा चुने गये किसी अन्य क्षेत्र में खनन कार्य के कारण नष्ट हुए वृक्षों की संख्या के कम से कम दुगुने वृक्षाण का तत्काल उपाय करेगा।

(ख) पट्टे के अस्तित्व के दौरान उनकी देखभाल करेगा, तत्पश्चात् इन वृक्षों को जिस क्षेत्र में खदान अवस्थित है, उस ग्राम पंचायत को सौंप देगा, और

(ग) खनन कार्य द्वारा विनष्ट अन्य पेड़ पौधों को यथासंभव पूर्ववत करेगा।

(4) खनन पट्टा/खनन अनुज्ञापत्र धारक द्वारा इन नियमों का पालन करने में विफल रहने पर, स्वीकृतकर्ता प्राधिकारी पुनरूद्धार तथा सुधार काव्यय, पट्टा/अनुज्ञा पत्र धारक द्वारा प्रस्तुत वित्तीय आश्वासन से वसूल करेगा।

35. Hence, 34(G)(3)inter alia provides that mining lease holder/permit will take immediate measures to carry out forestation of at least double the number of trees destroyed due to mining activities.

36. Further, Rule 34(I) of the JMCC Rules,2004, states that every holder of a mining lease shall take all necessary measures to avoid air and water pollution and for the conservation of the environment. Rule 34(I) reads a under-

34(I) वायु, जल एवं पर्यावरण प्रदूषण इत्यादि के संबंध में उपाय- खनन पट्टा के प्रत्येक धारक वायु एवं जल प्रदूषण से बचने एवं पर्यावरण के संरक्षण हेतु समस्त आवश्यक उपाय करेंगे और वायु(प्रदूषण निवारण और नियंत्रण) अधिनियम, 1981 (1981 का 14), जल(प्रदूषण निवारण और नियंत्रण) अधिनियम, 1974 (1974 का 6) तथा पर्यावरण(संरक्षण) अधिनियम, 1986 (1986 का 29) तथा उनके अधीन बनाये गये नियमों के अधीन, यदि लागू हो, समस्त आवश्यक सहमति सक्षम प्राधिकारी से प्राप्त करेंगे एवं खनन ओभरवर्डन हटाने के कार्य के दौरान, यथास्थिति, सहमति में उल्लिखित समस्त आवश्यक कदम उठावेंगे/कार्रवाई करेंगे।

37. Hence, Rule 34(I) states that every holder of lease in order to protection of Air, Water pollution and for conservation of environment shall take all measures and will obtain consent to operate from the competent officer under Air, Water Pollution Control and Environment Protection Act, 1986 if there is any provision.

38. Now, reverting to Rule 34E (1) of JMMC Rules, 2004. Rule 34E (1) states that every lease holder/permit holder shall carry the mining activity as per the Standard draft prepared by Indian Bureau of Mines in accordance to Minor Minerals Conservation and Development Rules, 2010.

39. On going through the provisions of standard draft of Minor Minerals Conservation and Development Rules, 2010, we find that its Rule 30 is titled 'Protection of environment'. Rule 30 is quoted herein below-

"30. Protection of environment: - Every holder of a prospecting licence or a lease shall take all possible precautions for the protection of environment and control of pollution while conducting prospecting, mining or processing of minor mineral in the area for which such licence or lease is granted."

40. Further, Rule 34 of Minor Minerals Conservation and Development Rules, 2010, provides 'Precaution against air pollution'. Rule 34 is as under: -

34. Precaution against air pollution: -Air pollution due to dust, exhaust emissions or fumes during prospecting, mining or processing operations for minor mineral and related activities shall be controlled and kept within permissible limits specified under any environmental laws for the time being in force.

41. At this juncture, it would be pertinent to reiterate Rule 34(I) of JMMC Rules,2004, which provides that it is mandatory for each lessee/permit holder to take measure for Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and Environment (Protection) Act, 1986.

42. Hence, it would be pertinent to discuss the above-mentioned laws i.e. Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and Environment (Protection) Act, 1986, enacted by way of the central legislation relating to Environmental protection.

43. The Air (Prevention and Control of Pollution) Act, 1981, was enacted to provide for the prevention, control and abatement of air pollution and for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

44. Further, Water (Prevention and Control of Pollution) Act, 1974 is an an Act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water. Section 2(e) of the Act defines ‘Pollution as-

“2(e) “pollution” means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.”

45. Again, Environment (Protection) Act, 1986, is an act to provide for the protection and improvement of

environment. Section 2(a) of the Act defines “environment” according to which “environment” includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

46. Further, Section 2 (b) of the Environment (Protection) Act, 1986 defines “environmental pollutant” to mean any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment.

47. At this juncture, it would be pertinent to go through the judgments of Hon’ble Apex Court rendered on the issue environment and its protection.

48. The Hon’ble Apex Court in case of *Karnataka Industrial Areas Development Board v. C. Kenchappa*, (2006) 6 SCC 371, has observed that with rapid industrialization taking place, there is an increasing threat to the maintenance of the ecological balance. Hon’ble Apex Court further observed that the primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The Paragraph 41 and 42 of the said judgment are quoted herein below-

“41. With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect

environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public-spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law.

42. As far as this Court is concerned, being conscious of its constitutional obligation to protect the fundamental rights of the people, it has issued directions in various types of cases relating to the protection of environment and preventing pollution. For effective orders to be passed, so as to ensure that there can be protection of environment along with development, it becomes necessary for the court dealing with such issues to know about the local conditions. Such conditions in different parts of the country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater

responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be effected, if the High Courts concerned assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology.

49. The Hon'ble Apex Court reiterated the same view in the case of ***Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371***, and has held that the entire world is facing a serious problem of environmental degradation due to indiscriminate development. Industrialization, burning of fossil fuels and massive deforestation are leading to degradation of environment. Relevant paragraph of this judgment is quoted herein below-

41. Experience of the recent past has brought to us the realisation of the deadly effects of development on the ecosystem. The entire world is facing a serious problem of environmental degradation due to indiscriminate development. Industrialisation, burning of fossil fuels and massive deforestation are leading to degradation of environment. Today the atmospheric level of carbon dioxide, the principal source of global warming, is 26% higher than pre-industrial concentration.

50. Thus, from the aforesaid it is evident that the object and intent of all the above provisions of Act and the ratio as rendered by the Hon'ble Apex Court are more or less similar that is to maintain environmental balance in order to maintain a sustainable development globally. If one part of the globe is

being allowed to be made imbalance without taking protective measure as per the objects and intents of these Acts, then, there would be adverse impact in the whole globe putting in danger to the people at large worldwide.

51. It is evident from the spirit of the aforesaid provisions as quoted and referred herein-above that the statutory mandate is to maintain the environmental balance vis-a-vis the issue of development.

52. Now, this court is proceeding to consider these questions by taking into consideration the arguments of the writ petitioners that extraction of soil is one part where environmental clearance is not required while in the process of manufacturing brick kilns which release smoke having adverse impact in the environment, environmental clearance is required.

53. The learned counsel for the petitioners therefore bifurcated the manufacturing process in two parts i.e. (i) removal of soil from the earth and (ii) process of manufacturing by putting the raw bricks in the kilns, but, we are not in agreement with such submissions due to the reason that manufacturing process means it is to be counted from the stage of collecting the raw materials and herein the raw-material for the bricks are soil which is to be put in kilns for the

purpose of manufacturing of the bricks finally and in absence of the soil there cannot be manufacturing of the bricks.

54. It also cannot be disputed that the soil over the surface of the earth is a part of our environment and to preserve it from so many things like erosion etc. various Acts have been formulated which are referred herein above.

55. The soil being integral part for the manufacturing of brick kilns process, and the brick-kiln in process having adverse impact upon the environment as such the requirement as has been provided in the different statutory provisions under the JMCC Rules, 2004 which has already been quoted and referred hereinabove.

56. Learned counsel for the petitioners has argued that Rule 34(I) is not applicable to removing of soil from the earth as it in no way creating any adverse impact in the environment and, therefore, obtaining environmental clearance is also not necessary.

57. But, ongoing through the various provisions of JMCC Rules,2004, particularly Chapter 4A of the JMCC Rules,2004, which was introduced by virtue of amendment carried out in the said rule in year 2014, and same is the captioned as 'Scientific Mining and Environment Protection'. Rule 34(A)(1) provides that mining work shall be carried out as per approved mining plan/mining scheme.

58. Further, Rule 34E (1) of JMMC Rules, states that every lease holder/permit holder shall carry mining activity in accordance with standard draft of Indian Bureau of Mines in consonance with Minor Minerals Conservation and Development Rules, 2010.

59. Again, Chapter 4B is in respect of 'Conservation of Environment' and its Rule 34F (1) specifically states that holder of mining lease shall take precautions while doing mining activities in order to protect and save the environment and control the pollution. Further Rule 34F (3) inter alia provides the provision related to storage, use and utilization by the lease holder/permit holder. Further, 34(G)(3) cast liability on the mining lease holder/permit holder to plant double the tree as destroyed by them during the mining process.

60. Further, Explanation No.1 of the Rule 30 of the JMMC Rules, 2004, inter alia, provides that business means and includes persons removing brick earth and Explanation No.2 also provides that person removing brick-earth means person who quarry soil for production of brick. Hence, from Explanation No.1 of the Rule 30, it is also clear that business means and includes persons removing soil and hence, removing soil from the earth cannot be segregated from the process of manufacturing of the brick kiln rather if any permission is being granted by the competent authority of the

State Government i.e. for the purpose of manufacturing of the brick kiln which starts from extraction of the soil from the earth and, as such, both process cannot be segregated rather for the purpose of manufacturing the brick kiln, the soil is an integral part as a raw material and, hence, removal of soil from the earth is having adverse impact in the environment and it also creates water pollution and air pollution.

61. Hence, the provisions laid down under JMCC Rules, 2004, which provides the rules to be followed by the lease holder/ permit holder for 'Scientific Mining and Environment Protection', 'Expectations in Mining Plan', 'Conservation of Environment' and standard draft of Indian Bureau of Mines namely Minor Minerals Conservation and Development Rules, 2010, which is provided in Rule 34E(1) of JMCC Rules, 2004, leads this court to infer that to avoid the adverse impact on air and water and to protect environment as a whole, Rule 34(I) of the JMCC Rules, 2004 shall be necessarily followed by the each lessee/permit holder.

62. Accordingly, issue no. (i) is decided against the petitioners.

Re: issue no.(ii)

63. Learned counsel for the petitioners has submitted that brick kiln does not come under the fold of minerals and, as such, no liability can be casted to deposit the amount in the DMFT.

64. On the other hand, learned counsel for the state has submitted that in the manufacturing process of brick kiln, the soil being a natural resource and thus it is being extracted from the earth and, hence, the requirement of depositing the amount in the DMFT fund cannot be disputed.

65. The reason for creating of DMFT is only for the purpose of creating a fund, so as to compensate the loss occurred to the environment due to the mining operation. The mines and minerals are natural resources and the State is the custodian in addition to that it is the accountability and duty of each and every citizen to maintain the environment so as to maintain the sustainable development.

66. The basic underlying object of creation for the purpose of DMFT fund is that if the natural resources are being utilized then the mines operators are obliged to pay something to the society and for this purpose the concept of royalty has come as also has been taken note of by the Constitution Bench of Hon'ble Apex Court in the case of *Mineral Area Development Authority & Anr. Vs. M/S Steel Authority of India & Anr.* 2024 SCC OnLine 1796.

67. Further, Section 9B of Act 1957 provides for establishment of the District Mineral Foundation ["DMF"] in any district to work for the interest and benefit of persons and areas affected by mining related operations. The purpose of Section 9-B and the

object of the DMF is to further the cause of social justice for those affected by mining related operations, such as tribals who may be dislocated or displaced from their habitat. Section 9B (5) provides that the holder of a mining lease shall pay, in addition to the royalty paid under Section 9, an amount which is equivalent to such percentage of the royalty as may be prescribed by the Central Government.

68. It needs to refer herein that in exercise of the powers conferred by Section 15(4) and Section 15 A of the Mines and Minerals (Development and Regulation) Act, 1957 (as amended in 2015), the Government of Jharkhand has made the Jharkhand District Mineral Foundation (Trust) Rules, 2016 and as per Rule 2016, “District Mineral Foundation” means a statutory trust established as a non-profit body by the Government in all districts affected by mining or mining related operations.

69. Now coming to the Rule 29 of the JMMC Rules,2004, which deals with Rent and Royalty.For ready reference, Rule 29 of the JMMC Rules,2004, is quoted as under-

29. लगान एवं स्वामित्व।) जब खनन पट्टा स्वीकृत अथवा नवीकृत किया जाता है-

(क) अनुसूची-1 एवं। (क) में उल्लेखित दर से नियत लगान लिया जाएगा।

(ख) अनुसूची-2 में उल्लेखित दर से स्वामित्व लिया जाएगा।

(ग) लघु खनिज के पट्टेधारियों द्वारा जिला खनिज (न्यास) नियमावली (DMFT) के प्रावधानों के तहत देय राशि का भुगतान करना होगा।

(घ) पट्टेधारी द्वारा उपयोग में लाये गये दखल किए गये भूतल क्षेत्र का भूतल लगान उस दर से देय होगा जो उस क्षेत्र के भू-राजस्व दर से अधिक न हो।

(2) इन नियमों के लागू होने की तिथि से पूर्व में स्वीकृत अथवा नवीकृत खनन पट्टों जिनका अस्तित्व उक्त तिथि को है, पर भी उपनियम(1) का प्रावधान लागू होगा।

(3) यदि खनन पट्टाधारी द्वारा एक से अधिक खनिजों के दोहन की अनुमति एक ही क्षेत्र में दी गयी है तो प्रत्येक खनिज के मामले में अलग-अलग स्वामिस्व अथवा नियत लगान देना होगा।

परन्तु यह कि पट्टाधारी को प्रत्येक खनिज की स्थिति में जो भी अधिक राशि होगी, नियत लगान अथवा स्वामिस्व का भुगतान करना होगा।

(4) यदि पट्टे की शर्तों में कुछ भी अन्तर्विष्ट है तब भी पट्टाधारी को अनुसूची 1 तथा 2 के तहत समय-समय पर निर्धारित दर पर किसी भी लघु खनिज को निकालने तथा हटाने के लिए लगान/ स्वामिस्व का भुगतान करना होगा।

(5) राज्य सरकार, सरकारी राजपत्र में अधिसूचना के द्वारा प्रथम तथा द्वितीय अनुसूची को संशोधित कर सकती है जिससे कि वह दर बढ़ाया या घटाया जा सके जिस पर सरकारी राजपत्र में अधिसूचना के प्रकाशन की तारीख के प्रभाव से किसी भी लघु खनिज के लिए लगान/ स्वामिस्व का भुगतान किया जायेगा।

70. Hence, Rule 29(1) (kh) of the JMMC Rules, 2004, provides that royalty would be payable as per rate prescribed in Schedule

2. Further, Rule 29(1) (ga), provides that lessee of minor mineral

shall make payment as per provisions contained in District Mineral Foundation (Trust) Rules (DMFT).

71. It needs to refer herein that Brick earth has been specifically listed as minor mineral in Schedule 2 at Serial no. 4 of JMCC Rules,2004, according to which rate of royalty per cubic meter is fixed and Rule 29(1) (ga) provides that lessee of the minor minerals has to pay DMFT. So, DMFT is chargeable in respect of minerals falling in Schedule 2 of JMCC Rules,2004.

72. The question of DMFT therefore also comes into play due to removal of soil from the earth and the soil being a part of the natural resources for the purpose of manufacturing the bricks kiln, hence, the manufacturers are liable to make payment in the DMFT fund to achieve the object and intent of the provisions as contained under Sections 9B,15, 15(4) and 15A and of Mines and Minerals (Development and Regulation) Act, 1957 and Rule 29and Schedule-2 of the JMCC Rules,2004.

73. The whole arguments advanced on behalf of the petitioners is that the petitioners are not liable to make payment in the DMFT fund as brick kiln does not come under the fold of minerals, but, as has been considered by this Court herein above, the manufacturing process of bricks where the soil is being used as a raw-material and both cannot be segregated hence, the adverse impact is there in the environment, therefore, requirement to deposit the amount in the DMFT fund cannot be denied.

73. Accordingly, issue no. (ii) is decided against the petitioners.

74. In view of the above facts and circumstances this court is of the view that the writ petition lacks merit and, hence, the same is hereby dismissed.

75. I.A(s), if any, stands disposed of.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

Jharkhand High Court
Date: 15/01/2026
KNR/**AFR**
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