

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 7286 of 2017

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M/s Hindalco Industries Limited	... ..	Petitioner
<i>Versus</i>		
The State of Jharkhand and others	... ..	Respondents
<b>with</b>		
<b>Cont. Case (Civil) No. 43 of 2018</b>		

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Court on its Own Motion	... ..	Petitioner
<i>Versus</i>		
Sunil Kumar Barnwal and others	... ..	Opposite Parties
<b>with</b>		
<b>W.P.(C) No. 7016 of 2017</b>		

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Steel Authority of India Limited	... ..	Petitioner
<i>Versus</i>		
The State of Jharkhand and others	... ..	Respondents
<b>with</b>		
<b>W.P.(C) No. 7219 of 2017</b>		

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M/s Usha Martin Limited	... ..	Petitioner
<i>Versus</i>		
The State of Jharkhand and others	... ..	Respondents
<b>with</b>		
<b>W.P.(C) No. 7318 of 2017</b>		

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M/s Hindalco Industries Limited	... ..	Petitioner
<i>Versus</i>		
The State of Jharkhand and others	... ..	Respondents
<b>with</b>		
<b>W.P.(C) No. 7319 of 2017</b>		

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M/s Hindalco Industries Limited	... ..	Petitioner
<i>Versus</i>		
The State of Jharkhand and others	... ..	Respondents
<b>with</b>		
<b>W.P.(C) No. 7320 of 2017</b>		

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M/s Hindalco Industries Limited	... ..	Petitioner
<i>Versus</i>		
The State of Jharkhand and others	... ..	Respondents
<b>with</b>		
<b>W.P.(C) No. 7321 of 2017</b>		

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M/s Hindalco Industries Limited	... ..	Petitioner
<i>Versus</i>		
The State of Jharkhand and others	... ..	Respondents
<b>with</b>		

**W.P.(C) No. 7322 of 2017**

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M/s Hindalco Industries Limited	... .. Petitioner
<i>Versus</i>	
The State of Jharkhand and others	... .. Respondents
<b>with</b>	

**W.P.(C) No. 7323 of 2017**

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M/s Hindalco Industries Limited	... .. Petitioner
<i>Versus</i>	
The State of Jharkhand and others	... .. Respondents
<b>with</b>	

**W.P.(C) No. 7324 of 2017**

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M/s Hindalco Industries Limited	... .. Petitioner
<i>Versus</i>	
The State of Jharkhand and others	... .. Respondents
<b>with</b>	

**W.P.(C) No. 7325 of 2017**

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M/s Hindalco Industries Limited	... .. Petitioner
<i>Versus</i>	
The State of Jharkhand and others	... .. Respondents
<b>with</b>	

**W.P.(C) No. 7326 of 2017**

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M/s Minerals and Minerals Limited	... .. Petitioner
<i>Versus</i>	
The State of Jharkhand and others	... .. Respondents
<b>with</b>	

**W.P.(C) No. 7327 of 2017**

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M/s Hindalco Industries Limited	... .. Petitioner
<i>Versus</i>	
The State of Jharkhand and others	... .. Respondents

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**CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR**

For the Petitioner(s)	: Mr. M. S. Ganesh, Sr. Advocate Mr. K. Seshachwy, Advocate Mr. Indrajit Sinha, Advocate Mr. Vijay Kant Dubey, Advocate Mr. Ashish Prasad, Advocate Ms. Mukta Dutta, Advocate Mr. Anoop Kumar Mehta, Advocate Mr. Amit Kumar Sinha, Advocate
For the State	: Mr. Ajit Kumar, Advocate-General Mr. Chanchal Jain, J.C. to A.G.
For the UOI	: None

11/21.02.2018 In this batch of writ petitions demand notices issued in the light of judgment in "*Common Cause vs. Union of India and Ors*" reported in (2017) 9 SCC 499 have been challenged.

2. By interim orders dated 04.01.2018 and 12.01.2018 passed in W.P.(C) No. 7286 of 2017 and other writ petitions filed by M/s Hindalco Industries Limited the respondents were directed not to take coercive step pursuant to the demand notices issued to the petitioner-company and the respondents were directed to issue transit challans. In W.P.(C) No. 7016 of 2017 filed by M/s Steel Authority of India Limited an undertaking was given on behalf of the respondents that the transit challans, which were issued by them on 12.01.2018, shall not be stopped without seeking leave of the Court. In the case of M/s Usha Martin Limited [W.P.(C) No. 7219 of 2017] transit challans were issued on 29.01.2018. It is stated that compliance report in all these cases have been filed by the respondents. The Letters Patent Appeal being L.P.A. No. 10 of 2018 filed by the State of Jharkhand challenging order dated 04.01.2018 passed in W.P.(C) No. 7286 of 2017 stood disposed of by the Division Bench of this Court on 17.01.2018. The learned Advocate-General states that other Letters Patent Appeals preferred against the interim order dated 12.01.2018 have also been disposed of in a similar manner and compliance report has been filed by the respondents.

3. Order dated 20.02.2018 records the broad consensus amongst the learned Senior counsel for the petitioner-M/s Steel Authority of India Limited and the learned Advocate-General that this batch of writ petitions involves substantial questions of law and therefore these writ petitions may be referred to the Division Bench of this Court.

4. Argument in the writ petitions filed by M/s Hindalco Industries Limited was heard on 07-08.02.2018. Launching 8-point attack on the legality of the impugned demand notices issued by the respondents, Dr. A. M. Singhvi, the learned Senior counsel for the petitioner-M/s Hindalco Industries Limited questioned the jurisdiction of the respondents to raise the impugned demands on the basis of the judgment in *Common Cause*. It was submitted that the judgment in *Common Cause* is lessee-specific, product-specific and territory-specific and while so, on a priori consideration it cannot be made applicable to the petitioner-company or in the State of Jharkhand which were not parties to the proceeding in *Common Cause*. The impugned demand notices reflect complete non-application of mind and it has been issued in breach of the principles of natural justice, provisions under the MMDR Act, 1957 and the judgments of the Supreme Court including the one in *Common Cause*. One of the contentions raised is that ignoring Section 25 of the MMDR Act under which the provisions under Bihar and Orissa Public Demand Recovery Act, 1914 would apply, the impugned demand notices cannot be issued by the respondents.

5. Mr. M. S. Ganesh, the learned Senior counsel for the petitioner-M/s Steel Authority of India Limited submits that in the garb of the judgment in *Common Cause* rights of the petitioner-company under different Statutes governing the field cannot be fore-closed and without an investigation and inquiry into the factual aspects of the matter the respondents could not have issued the impugned demand notices to the petitioner-company. It is submitted that the judgment in *Common Cause* does not and cannot on its own give rise to a cause of action for the respondents to raise the impugned demands. The learned Senior counsel submits that it is not merely the quantum of the alleged compensation which has been questioned, the method and manner of calculation de-hors the

statutory provisions are also what have been challenged by the petitioner. The specific contention raised by the learned Senior counsel for the petitioner-M/s Steel Authority of India Limited is that the Supreme Court being alive to the various statutory provisions and the judgments of co-ordinate Bench and the larger Bench has rendered judgment in *Common Cause* in the peculiar facts of the case which would not automatically apply to the State of Jharkhand.

6. Reiterating the stand taken in the counter-affidavit, the learned Advocate-General submits that Section 21(5) of MMDR Act, 1957 confers power and jurisdiction upon the State to realise compensation for illegal mining. The judgment in *Common Cause* is an authority on the ambit and scope of illegal mining and the scope of Section 21(5) of the MMDR Act, 1957. It is submitted that in view of the facts flowing from the records there was no requirement of issuing show-cause notice or affording opportunity of hearing to the mining lease holders. The contentions raised by the petitioners on the applicability of other Statutes and limitation have been seriously controverted by the learned Advocate-General.

7. On a careful consideration of the rival contentions and pleadings of the parties, I am of the opinion that this batch of writ petitions involves substantial questions of law. What is substantial question of law has been explained by a Constitution Bench of the Supreme Court in "*Sir Chunilal V. Mehta and Sons Ltd. vs. Century Spinning and Manufacturing Co. Ltd.*" reported in AIR 1962 SC 1314. A question of law of public importance or a question of law which has not been authoritatively decided by the highest Court is a substantial question of law. One of the issues which calls for a decision by this Court is, whether the judgment in *Common Cause* confers power and jurisdiction upon the respondent-State of Jharkhand de-hors the statutory

provisions to raise demand(s) under Section 21(5) of the MMDR Act, 1957. On this a possible argument would be, while exercising powers under Article 32 and 142 of the Constitution of India the Supreme Court may adopt a procedure different from the statutory procedures whether such power is vested in the State to raise the impugned demands [*Samaj Parivartana Samudaya vs. State of Karnataka and Others*” reported in (2013) 8 SCC 154]. It is pertinent to mention here that the judgment in *Common Cause* has been delivered in a writ petition filed under Article 32 of the Constitution of India.

8. In the above facts, while formulating the following questions let this batch of writ petitions be placed before the Division Bench of this Court, after taking permission of Hon'ble the Acting Chief Justice :

(i) Whether the judgment in *Common Cause* confers power upon the State of Jharkhand to recover price for raising minerals without lawful authority under Section 21(5) of MMDR Act, 1957 by adopting a procedure different from the procedure under Section 25 of MMDR Act which provides a mechanism for recovery of any rent, royalty, tax or fee or other sum due to the Government under this Act?

(ii) Whether the mode, method and the manner adopted in *Common Cause* to quantify the price to be recovered under Section 21(5) of MMDR Act, 1957 can be adopted by the State of Jharkhand to recover price under Section 21(5) of MMDR Act for raising minerals without lawful authority?

(iii) Whether the judgment in *Common Cause* confers power and jurisdiction upon the State of Jharkhand, which otherwise are not conferred upon it under MMDR Act, 1957 and other Statutes governing the field, to raise



demands under Section 21(5) of MMDR Act 'towards compensation' for raising minerals without lawful authority?

(iv) Whether the judgment in *Common Cause* is an authority on the power of the Government to recover price under Section 21(5) of MMDR Act, 1957, in breach of the statutory provisions under the Environment (Protection) Act, 1986, Forest (Conservation) Act, 1980, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and other Statutes and the judgments of the Supreme Court, affecting the rights of a mining lessee?

(v) Whether in the facts flowing from the records the judgment in *Common Cause* can be applied by the State of Jharkhand to raise demand under Section 21(5) of MMDR Act in avoidance of the principles of natural justice?

(vi) Whether the ambit of 'illegal mining' as explained in *Common Cause* is the law declared under Article 141 of the Constitution of India for recovery of the price under Section 21(5) of MMDR Act, 1957 for raising minerals without lawful authority and whether it expands the scope of Rule 2(ii-a) of Mineral Concession Rules, 1960?

(vii) Whether the undertaking of the mining lessee at the time of execution of Supplementary Lease Deed *ipso facto* confers power upon the State to recover price under Section 21(5) of MMDR Act, 1957 on the basis of the judgment in *Common Cause*?

(viii) What is the meaning of the expression 'disposed of' in Section 21(5) of MMDR Act, 1957 and whether it would include captive consumption by a mining lessee?

(ix) Whether the expression 'price' is synonymous with 'compensation', an expression not found in Section 21(5)

of MMDR Act, 1957, and whether the impugned demands raised by the Government in the light of the judgment in *Common Cause* 'towards compensation' is towards recovery of 'price' under Section 25 of MMDR Act, 1957 for raising minerals without lawful authority?

9. In view of the interim orders and the compliance reports, during the pendency of these writ petitions transit challans for the petitioner-companies shall not be stopped until the interim orders passed by this Court are varied, modified or recalled.

10. The respondent-Union of India is not represented by its counsel. It has not filed counter-affidavit in the writ petitions. Accordingly, it is ordered that the parties shall complete the pleadings within four weeks.

11. Liberty to mention for early hearing.

**(Shree Chandrashekhar, J.)**

*Tanuj/Sudhir/-*