

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 2761 of 2014

M/s R.D.S. Bricks through its proprietor Sunil Kumar Singh
 Petitioner

Versus

The State of Jharkhand & Ors. Respondents

with

W.P.(C) No. 2740 of 2014

M/s Dinkar Bricks through its proprietor Sunil Kumar Singh
 Petitioner

Versus

The State of Jharkhand & Ors. Respondents

with

W.P.(C) No. 2742 of 2014

Amitava Sen Petitioner

Versus.

The State of Jharkhand & Ors. Respondents

with

W.P.(C) No. 2744 of 2014

Arun Kumar Petitioner

Versus.

The State of Jharkhand & Ors. Respondents

with

W.P.(C) No. 2746 of 2014

Shri Narayan Singh Petitioner

Versus.

The State of Jharkhand & Ors. Respondents

with

W.P.(C) No. 2750 of 2014

M/s Sona Bricks through its proprietor Bipendra Singh

..... Petitioner

Versus.

The State of Jharkhand & Ors. Respondents

with

W.P.(C) No. 2751 of 2014

M/s G.S. Enterprises through its partner Sunit Ghosh
 Petitioner

Versus.

The State of Jharkhand & Ors. Respondents

with
W.P(C) No. 2752 of 2014

Shan Bricks through its proprietor Ram Bijay Singh
..... Petitioner

Versus.

The State of Jharkhand & Ors. Respondents

with
W. P. (C) No. 2758 of 2014

Pawan Kumar Singh Petitioner

Versus

The State of Jharkhand & Ors. Respondent

For the Petitioners : Mr. V.P. Singh, Sr. Advocate
 : Mr. S. L. Agarwal, Advocate
For the Respondents : Mr. Ajit Kumar, A.A.G.
 : Mr. Md. Shamim Akhtar, S.C. (Mines)
 : Mr. Saket Upadhyay, J. C. to A.A.G.
 : Ms. Sunita Kumari, J.C. to Sr. S.C.-I

CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

Order No. 06

Dated: 16.09.2014

It is agreed by the counsel for the petitioner (s) and the counsel appearing for the respondent-State of Jharkhand that the common issue involved in all the writ petitions is, “whether in view of the notification dated 29.03.2012 issued under Section 3 (2) (v) of the Environment (Protection) Act,1986, the respondent-State of Jharkhand has power to order closure of the petitioners' unit operating prior to 29.03.2012.”

2. Mr. V. P. Singh, the learned Senior counsel appearing for the petitioner in W.P.(C) No. 2761 of 2014 refers to order

dated 23.07.2014 passed by this Court wherein it is stated thus:

“In all these cases common question which is involved is as to whether notification issued by the Central Government on 29.03.2012 by virtue of the provision as contained in Section 3 (2) (v) of the Environment (Protection) Act which does stipulate that no new industry would be established within 0-5 k.m. from the outer limit of the area of Dalma Wildlife Sanctuary, would be applicable in the case of old industry/brick kiln established before 29.3.2012 ? Further question would arise as to whether there has been any Zonal/Master Plan as contemplated in paragraph 2 of the said notification to decide the fate of the industry, factory etc ? ”

3. Considering the above submission of the counsel appearing for the parties, all the writ petitions are being disposed of by this common order.

FACTS:

W. P (C) No. 2761 of 2014 - M/s R.D.S. Bricks through its proprietor Sunil Kumar Singh

4. The petitioner M/s R.D.S. Bricks is engaged in the business of manufacturing bricks in the District of East Singhbhum since 2000. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimneys. Thereafter, the petitioner installed fixed chimney, after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 and invested more than

Rs. 10 lacs for constructing fixed chimney. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. After the Central Government issued notification dated 29.03.2012, the Forester, Bhadudih, Jamshedpur issued closure notice dated 05.11.2012 directing the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972. The letter dated 05.11.2012 has been challenged by the petitioner in W.P.(C) No. 7657 of 2012. While W.P.(C) No. 7657 of 2012 remained pending in this Court, vide letter dated 20.02.2014 the Deputy Forest Conservator and Zonal Inspector, Elephant Project, Jamshedpur-cum-Coordinator, Monitoring Committee, Eco-sensitive Zone, Jamshedpur directed the petitioner to close down the brick kiln. Letter dated 20.02.2014 is said to have been issued in view of the decision of the Monitoring Committee, in its meeting dated 12.11.2013.

W.P.(C) No. 2740 of 2014 - M/s Dinkar Bricks through its proprietor Sunil Kumar Singh

5. The petitioner M/s Dinkar Bricks is engaged in the business of manufacturing bricks in the District of East Singhbhum. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimneys after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor

Mineral Concession Rule, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. After the Central Government issued notification dated 29.03.2012, the Forester, Bhadudih, Jamshedpur issued closure notice dated 05.11.2012 directing the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972. The letter dated 05.11.2012 has been challenged by the petitioner in W.P.(C) No. 7729 of 2012. While W.P.(C) No. 7729 of 2012 remained pending in this Court, vide letter dated 20.02.2014 the Deputy Forest Conservator and Zonal Inspector, Elephant Project, Jamshedpur-cum-Coordinator, Monitoring Committee, Eco-sensitive Zone, Jamshedpur directed the petitioner to close down the brick kiln. Letter dated 20.02.2014 is said to have been issued in view of the decision of the Monitoring Committee, in its meeting dated 12.11.2013.

W.P.(C) No. 2742 of 2014 - Amitava Sen

6. The petitioner Amitava Sen is engaged in the business of manufacturing bricks in the District of East Singhbhum. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimneys after taking permission from the

Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. After the Central Government issued notification dated 29.03.2012, the respondents orally directed the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972. The said action of the respondents has been challenged by the petitioner in W.P.(C) No. 7913 of 2012. While W.P.(C) No. 7913 of 2012 remained pending in this Court, vide letter dated 20.02.2014 the Deputy Forest Conservator and Zonal Inspector, Elephant Project, Jamshedpur-cum-Coordinator, Monitoring Committee, Eco-sensitive Zone, Jamshedpur directed the petitioner to close down the brick kiln. Letter dated 20.02.2014 is said to have been issued in view of the decision of the Monitoring Committee, in its meeting dated 12.11.2013.

W.P.(C) No. 2744 of 2014 - Arun Kumar

7. The petitioner Arun Kumar is engaged in the business of manufacturing bricks in the District of East Singhbhum. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimney after taking permission from the

Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rules, 2004 and invested more than Rs. 10 lacs for constructing fixed chimneys. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. After the Central Government issued notification dated 29.03.2012, the respondents orally directed the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972. The said action of the respondents has been challenged by the petitioner in W.P.(C) No. 7715 of 2012. While W.P.(C) No. 7715 of 2012 remained pending in this Court, vide letter dated 20.02.2014 the Deputy Forest Conservator and Zonal Inspector, Elephant Project, Jamshedpur-cum-Coordinator, Monitoring Committee, Eco-sensitive Zone, Jamshedpur directed the petitioner to close down the brick kiln. Letter dated 20.02.2014 is said to have been issued in view of the decision of the Monitoring Committee, in its meeting dated 12.11.2013.

W.P.(C) No. 2746 of 2014 - Shri Narayan Singh

8. The petitioner Shri Narayan Singh is engaged in the business of manufacturing bricks in the District of East Singhbhum. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner

installed fixed chimneys after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rules, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. After the Central Government issued notification dated 29.03.2012, the respondents orally directed the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972. The said action of the respondents has been challenged by the petitioner in W.P.(C) No. 7801 of 2012. While W.P.(C) No. 7801 of 2012 remained pending in this Court, vide letter dated 20.02.2014 the Deputy Forest Conservator and Zonal Inspector, Elephant Project, Jamshedpur-cum-Coordinator, Monitoring Committee, Eco-sensitive Zone, Jamshedpur directed the petitioner to close down the brick kiln. Letter dated 20.02.2014 is said to have been issued in view of the decision of the Monitoring Committee, in its meeting dated 12.11.2013.

W.P.(C) No. 2750 of 2014 - M/s Sona Bricks through its proprietor Bipendra Singh

9. The petitioner M/s Sona Bricks is engaged in the business of manufacturing bricks at Nutandih Village in Chandil since 1999-2000. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999,

the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimneys after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rules, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. After the Central Government issued notification dated 29.03.2012, the Forester, Bhadudih, Jamshedpur issued closure notice dated 27.10.2012 directing the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972. The letter dated 27.10.2012 has been challenged by the petitioner in W.P.(C) No. 7721 of 2012. While W.P.(C) No. 7721 of 2012 remained pending in this Court, vide letter dated 20.02.2014 the Deputy Forest Conservator and Zonal Inspector, Elephant Project, Jamshedpur-cum-Coordinator, Monitoring Committee, Eco-sensitive Zone, Jamshedpur directed the petitioner to close down the brick kiln. Letter dated 20.02.2014 is said to have been issued in view of the decision of the Monitoring Committee, in its meeting dated 12.11.2013.

W.P.(C) No. 2751 of 2014 - M/s G.S. Enterprises through its partner Sunit Ghosh

10. The petitioner M/s G.S. Enterprises is engaged in the business of manufacturing bricks in the District of East Singhbhum since 2005-2006. Prior to 1999 mobile chimneys were installed for

manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimneys after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rules, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. After the Central Government issued notification dated 29.03.2012, the Forester, Bhadudih, Jamshedpur issued closure notice dated 05.11.2012 directing the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972. The letter dated 05.11.2012 has been challenged by the petitioner in W.P.(C) No. 7668 of 2012. While W.P.(C) No. 7668 of 2012 remained pending in this Court, vide letter dated 20.02.2014 the Deputy Forest Conservator and Zonal Inspector, Elephant Project, Jamshedpur-cum-Coordinator, Monitoring Committee, Eco-sensitive Zone, Jamshedpur directed the petitioner to close down the brick kiln. Letter dated 20.02.2014 is said to have been issued in view of the decision of the Monitoring Committee, in its meeting dated 12.11.2013.

W.P.(C) No. 2752 of 2014 - Shan Bricks through its proprietor Ram Bijay Singh

11. The petitioner Shan Bricks is engaged in the business of manufacturing bricks in the District of East Singhbhum. Prior to

1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimneys after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rules, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. After the Central Government issued notification dated 29.03.2012, the respondents orally directed the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972. The said action of the respondents has been challenged by the petitioner in W.P.(C) No. 7730 of 2012. While W.P.(C) No. 7730 of 2012 remained pending in this Court, vide letter dated 20.02.2014 the Deputy Forest Conservator and Zonal Inspector, Elephant Project, Jamshedpur-cum-Coordinator, Monitoring Committee, Eco-sensitive Zone, Jamshedpur directed the petitioner to close down the brick kiln. Letter dated 20.02.2014 is said to have been issued in view of the decision of the Monitoring Committee, in its meeting dated 12.11.2013.

W.P.(C) No. 2758 of 2014 - Pawan Kumar Singh

12. The petitioner Pawan Kumar Singh, who is a proprietor

of M/s Kanak Bricks, is engaged in the business of manufacturing bricks in the District of East Singhbhum. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimneys after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rules, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. After the Central Government issued notification dated 29.03.2012, the respondents orally directed the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972. The said action of the respondents has been challenged by the petitioner in W.P.(C) No. 7700 of 2012. While W.P.(C) No. 7700 of 2012 remained pending in this Court, vide letter dated 21.02.2014 the Deputy Forest Conservator and Zonal Inspector, Elephant Project, Jamshedpur-cum-Coordinator, Monitoring Committee, Eco-sensitive Zone, Jamshedpur directed the petitioner to close down the brick kiln. Letter dated 21.02.2014 is said to have been issued in view of the decision of the Monitoring Committee, in its meeting dated 12.11.2013.

SUBMISSIONS :

13. Mr. V. P. Singh, the learned senior counsel advanced argument on behalf of the petitioner in W.P.(C) no. 2761 of 2014 and the same has been adopted by the counsel appearing for the petitioner(s) in other writ petitions. It is submitted that the notification dated 29.03.2012 issued by the Ministry of Environment and Forest, Government of India prohibits activities in the area within 5 k.m. from the boundary of the protected area of the Dalma Wildlife Sanctuary after 29.03.2012 however, it does not expressly prohibits operation of industries running prior to 29.03.2012 and therefore, the State of Jharkhand cannot implement the notification dated 29.03.2012 from a retrospective date. It is further submitted that it is abundantly clear from the notification dated 29.03.2012 that after the publication of the said notification in the official gazette, even new industry can be allowed to be set-up within Eco-sensitive Zone and nowhere it is indicated in notification dated 29.03.2012 that the industries running for years prior to 29.03.2012 shall be closed down. The letter dated 20.02.2014 issued by the Deputy Forest Conservator and Zonal Inspector, Elephant Project, Jamshedpur-cum-Coordinator, Monitoring Committee, Eco-sensitive Zone, Jamshedpur has been assailed on the ground that it is in teeth of notification dated 29.03.2012 issued by the Ministry of Environment and Forest, Government of India and the said letter is

without jurisdiction and therefore, liable to be quashed. It is further submitted that the composition of Monitoring Committee as provided in the notification dated 29.03.2012 indicates that the Monitoring Committee shall consist of as many as 14 members whereas, the decision dated 12.11.2013 taken by the Monitoring Committee has been signed by 3 members only and therefore, it has no sanctity or binding effect. It is thus submitted that the letter dated 20.02.2014 allegedly issued on the recommendation of the Monitoring Committee is therefore, liable to be quashed.

14. Per contra, Mr. Ajit Kumar, the learned Additional Advocate General has submitted that the notification dated 29.03.2012 itself provides that the activities within the Eco-sensitive Zone around the Dalma Wildlife Sanctuary have to be examined in the light of prohibition contained in Annexure-3 to the said notification. Since, earthen soil is required for manufacturing bricks, the activity carried on by the petitioner(s) falls under commercial mining which is a “prohibited activity” in Annexure-3 and therefore, it can neither be permitted nor regulated in terms of notification dated 29.03.2012. It is further submitted that only non-polluting, non-hazardous small scale industries, agriculture, floriculture, horticulture and agro-based industries producing product from indigenous goods from the Eco-sensitive Zone and which do not have adverse impact on environment may be permitted in the Eco-sensitive Zone. However, with respect to crushing and mining

activities it has abundantly been made clear in notification dated 29.03.2012 that no mining activity except for bonafide domestic use of local residents or crushing activity shall be allowed within the Eco-sensitive Zone.

15. Taking objection to the maintainability of the writ petition, Mr. Ajit Kumar, the learned A.A.G. has submitted that the writ petition is not maintainable and the petitioner (s) should have approached the Green Tribunal. Referring to the judgment of the Hon'ble Supreme Court in "*Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India*" reported in (2012)8 SCC 326, the learned counsel has submitted that it has been categorically held by the Hon'ble Supreme Court that all the matters instituted after coming into force of NGT Act, and which are covered under the provision of the NGT Act and/or Schedule (1) shall stand transferred to NGT and can be instituted only before the NGT.

16. In reply, the learned Senior counsel for the petitioner submitted that no Zonal plan has been prepared by the respondents and in the counter-affidavit, it has been admitted that new activity can be permitted after the proposals are scrutinized and approved by the Monitoring Committee. It is thus submitted that once it is admitted that new activity can be permitted, there is no reason why the existing units cannot be permitted/regulated by the respondents. The action by the respondents are definitely arbitrary and illegal and therefore, liable to be quashed.

17. The learned Senior counsel has referred a decision of the Hon'ble Supreme Court in “*M/s Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others*” reported in (1989) 4 SCC 378 to contend that the schedule would not control the main provision of the Act/Rule/Notification and in case of any inconsistency or ambiguity the provision in the notification dated 29.03.2012 has to be given effect to. It is submitted that since the notification dated 29.03.2012 provides that approval for new units can be granted however, Annexure-3 of the notification is inconsistent with the main provision of the notification dated 29.03.2012 therefore, Annexure-3 cannot be given effect.

Discussion

18. It is an admitted position that the notification dated 29.03.2012 issued by the Ministry of Environment and Forest, Government of India is not under challenge. The importance of Dalma Wildlife Sanctuary has been noticed in the notification dated 29.03.2012 thus:

“AND WHEREAS, the Asian Elephant is the species of vital importance in Dalma Wildlife Sanctuary, besides, some of the most endangered species like Ratel, Wild Dog, Mouse Deer, Indian Giant Squirrel, Python, Pangolin, Serpent Eagle, etc; are also found in this Sanctuary;

AND WHEREAS, the forests of this Sanctuary intercept rainfall and help recharge ground water aquifer and protect rivers and streams against siltation by minimizing soil erosion and the Sanctuary has a well knit network of 159 streams spreading throughout the Sanctuary, out of which 82 are perennial or serai perennial and the rest 77 streams are of seasonal nature. Subranarekha River, Subarnarekha Canal and Dimna Lake are fed by these

stream;

AND WHEREAS, it is necessary to conserve and protect the area around the protected area of Dalma Wildlife Sanctuary as Eco-sensitive Zone from ecological and environmental point of view”

19. It appears that a draft notification was published in the Gazette of India on 05.04.2011 inviting objections and suggestions from all persons likely to be affected thereby. After considering the objections/suggestions received in response to the draft notification, the Central Government notified the area upto 5 k.ms. from the boundary of the protected area of the Dalma Wildlife Sanctuary in the State of Jharkhand as the “Eco-sensitive Zone.” Accordingly, an area of 522.98 Sq. k.m. in East Singhbhum and Saraikella-Kharswan district has been notified and declared as Eco-sensitive Zone. The power of the Central Government declaring the area around Dalma Wildlife Sanctuary as “Eco-sensitive Zone” is also not under challenge. In fact the petitioner (s) has/have accepted the validity of notification dated 29.03.2012. In all fairness, Mr. V.P. Singh, the learned Senior counsel confined his argument only to the question of validity of letter dated 20.02.2014 and the decision taken by the Monitoring Committee in its meeting dated 12.11.2013 being arbitrary, illegal without jurisdiction and contrary to the notification dated 29.03.2012.

20. Though, in notification dated 29.03.2012 specifically it is not mentioned that all existing industries falling within the

Eco-sensitive Zone must be closed down, it does not appeal to reason that an existing industry, even if a polluting one, can be continued, after the area upto 5 k.ms. from the boundary of Dalma Wildlife Sanctuary has been declared as the “Eco-sensitive Zone”. With respect to industrial units, the notification dated 29.03.2012 provides as under:

“Industrial Units:

(a) On or after the publication of this notification in the Official Gazette, no new polluting industries shall be allowed to be setup within the Eco-sensitive Zone;

(b) any non-polluting, no-hazardous, small-scale and service industry, agriculture, floriculture, horticulture or agro-based industry producing products from indigenous goods from the Eco-sensitive Zone, and which do not cause any adverse impact on environment, may be permitted in the Eco-sensitive Zone;

(c) no establishment of new wood based industry shall be permitted within the limits of Eco-Sensitive Zone.”

21. The activity carried by the petitioner (s) is commercial mining activity and a perusal of Annexure-3 to notification dated 29.03.2012 makes it abundantly clear that it falls under the “prohibited activity.” It is true that the notification which has not been expressly made retrospective cannot be given a retrospective operation however, I am of the opinion that the activity which has been categorized as “prohibited activity” in notification dated 29.03.2012, even though operating prior to 29.03.2012, cannot be permitted to continue. In “*T.N. Godavarman Thirumulkpad Vs. Union of India and Others*”, reported in (1997) 2 SCC 267, the Hon'ble Supreme Court issued directions for closure of all ongoing

activity within the forest throughout the country and it has been ordered that no activity is permissible without prior approval of Central Government and must stop forthwith.

22. In the counter-affidavit filed on behalf of the respondent-State of Jharkhand it is stated that notification dated 29.03.2012 empowers the Chairman and the Convener of the Monitoring Committee to take action under Section 19 of the Environment (Protection) Act, 1986 against any person, contravening the provision of the said notification. The activity which falls under the “prohibited” category which is definitely deleterious and polluting cannot be permitted in the Eco-sensitive Zone. After issuance of notification dated 29.03.2012, the activities carried by the unit(s) involved in mining of earth, discharge of smoke and dust, discharge of solid waste etc. in terrestrial area causing soil, water pollution, commercial use of fire wood for ignition are also prohibited activities. The Ministry of Environment and Forest, Government of India vide letter dated 24.06.2013 clarified that burrowing /excavation of earth within 1 k.m. of the boundary of National Park and Wildlife Sanctuary shall not be permitted. In most of the cases, the mining lease has expired and none of the units had obtained mandatory environment clearance under the Environment (Protection) Act, 1986.

Conclusion:

23. Letter dated 20.02.2014 issued by the Deputy Forest

Conservator and Zonal Inspector, Elephant Project, Jamshedpur-cum-Coordinator, Monitoring Committee, Eco-sensitive Zone, Jamshedpur cannot be said to be illegal or arbitrary or without jurisdiction. A notice was issued to the petitioner (s) immediately after the notification dated 29.03.2012 was issued by the Ministry of Environment and Forest, Government of India. No material has been brought on record to establish that decision dated 12.11.2013 of the Monitoring Committee is *corum non judice*. I do not find any provision either in the Environment (Protection) Act, 1986 or in the notification dated 29.03.2012 where-under the existing units falling under the category “prohibited activity” are saved/protected. There is no inconsistency in the main provision of notification dated 29.03.2012 vis-a-vis Annexure-3 to the said notification.

24. It is true that “prohibition” is not the answer to the environmental issues rather, “regulation” is also one of the preferred modes to control environment degradation and therefore, a balance is required to be maintained for the environment protection and development. Therefore, though all the writ petitions are dismissed, a liberty is granted to the petitioner(s) to approach the State Government which would explore the possibility of re-location of units of the petitioners. The State Government may take suggestions of the Monitoring Committee, State of Jharkhand in this regard. The State of Jharkhand should

take all necessary steps in the matter, within 3 months from receiving recommendation of the Monitoring Committee.

(Shree Chandrashekhar, J.)

Satyarthi/-