

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

Original Application No. 108/2015/EZ

**NIRANJAN SHARMA & ORS
Vs
MINISTRY OF ENVIRONMENT, FOREST
& ORS.**

CORAM: **Hon'ble Mr. Justice S.P.Wangdi, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member**

PRESENT:

Applicants	: Mr. Debashis Sarkar, Advocate
Respondent No.1	: Ms. Subarna Roy, Advocate For Mr. Gora Chand Roy Choudhury, Advocate
Respondent Nos. 2 to 5	: Mr. Rajesh Kumar, Advocate Mr. Binod Kumar Gupta, Advocate
Respondent No. 6	: Mr. Ashok Prasad, Advocate On behalf of Mr. Bhanu Kumar, Advocate
Respondent Nos. 10	: Mr. Surendra Kumar, Advocate
Other respondents	: None

Date & Remarks	Orders of the Tribunal
Item No. 12 11th April, 2017.	<p style="text-align: center;">Affidavit filed today on behalf of the Respondent No.2, i.e., the State of Jharkhand, placing on record the Jharkhand Minor Mineral Concession Amendment Rules, 2017 duly gazetted is ordered to be taken on record.</p> <p>On our perusal of the Rules, which are said to be in conformity with the directions issued by the Hon'ble Supreme Court in <i>Deepak Kumar Vs. State of Haryana and Ors, (2012) 4 SCC 629</i>, it appears that the amended Rules deal with the mining lease over government land and tenancy land above 5 Ha. It is needless to state that by decision in <i>Deepak Kumar Vs.</i></p>

State of Haryana and Ors, environmental clearance is essential to be obtained for all mining leases irrespective of the area even if the area of mining lease is less than 5 Ha.

Although in Section 1(ii) 6(b) of the amendment Rules it has been stated that “the area of mining of a mining lease shall not be preferably less than 5 Hectare” with a proviso thereto permitting grant of mining lease of less than 5 Hectare, but the necessity of obtaining environmental clearance for areas less than 5 Ha has not been made in the amended Rules.

For the aforesaid reasons, we are prima facie of the view that the Rules are not in consonance with the directions in **Deepak Kumar case**.

However, in order to ascertain this fact, we direct the State Environment Impact Assessment Authority (SEIAA), i.e., Respondent No. 6, to examine the amended Rules and ascertain as to whether our views indicated above are correct or not. They shall also indicate if the Rules are in conformity with the directions of the Hon’ble Supreme Court in **Deepak Kumar** case and also in accordance with the various provisions contained in the MoEF notifications.

We also direct the Respondent No. 2 to examine the amended rules and confirm on the aspect that we

have indicated above.

Liberty is granted to the applicant also to examine the amended rules and file an affidavit in that regard.

In view of our prima facie opinion recorded above, we direct the State of Jharkhand not to give effect to the notification until it reaches its finality after we have considered the affidavit that shall be filed by the SEIAA.

The other aspect dealt in the affidavit pertains to action being taken against the officers who have been found guilty of having violated the rules. Further affidavit on the action taken shall be filed in terms of our above directions.

List on 11.05.2017.

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Justice S.P.Wangdi, JM
11-4-2017

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Prof. (Dr.) P. C. Mishra, EM
11-4-2017

