

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Original Application No.68/2023/EZ
(Earlier O.A. No.437/2023/PB)

IN THE MATTER OF:

In Re: News item published in NDTV dated
09.06.2023 “Child among 3 killed as illegal
Coal Mine Collapses near Dhanbad” ...Applicant(s)
Versus

1. Member Secretary,
Jharkhand State Pollution Control Board

2. Deputy Commissioner/Deputy Magistrate,
Dhanbad, Jharkhand

3. State Disaster Management Department, Jharkhand

4. The Member Secretary,
Central Pollution Control Board

5. Bharat Coking Coal Limited (BCCL)
Dhanbad, Jharkhand ...Respondent(s)

Date of hearing: 09.02.2024

**CORAM: HON’BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON’BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s) : *Suo Motu*

For Respondent(s): Mr. Surendra Kumar, Advocate for R-1,
Ms. Aishwarya Rajyashree, Adv. for R-2 & 3 (in Virtual Mode)
Mr. Ashok Prasad, Advocate for R-4,
Mr. Arik Banerjee, Advocate, (in Virtual Mode) a/w
Mr. Saptarshi Mukherjee, Advocate (in Virtual Mode)
& Mr. Tirthankar Nandi, Advocate for R-5,

ORDER

1. The present Original Application No.437/2023 was taken-up *Suo Motu* by New Delhi Bench of the National Green Tribunal on the basis of news item in NDTV dated 09.06.2023 “**Child among 3 killed as illegal Coal Mine Collapses near Dhanbad**”. Thereafter, the records of the case were transferred to the Eastern Zone Bench

at Kolkata and the said Original Application has now been registered as Original Application No.68/2023/EZ.

2. The Respondent No.2, Collector & District Magistrate, Dhanbad, has filed affidavit dated 03.07.2023 wherein it is stated that the Joint Inspection Report has been submitted by the Circle Officer, Jharia and Sub Divisional Police Officer, Sindri dated 10.06.2023. Copy of the Report has been filed along with the affidavit wherein it is mentioned that at the site where the incident occurred there was fencing which had been broken. In the Mining Project Area, 3-4 security staff are always present to look after the mine; there is no CCTV Camera in that area; there is only one entry and exit for vehicles inside the mine area; the security staff have been provided fluorescent jackets. The letter of the Project Director dated 10.06.2023 is also on record, page no.101 of the paper-book, that in the mine area concerned other than illegally mined material being present, nothing else was recovered. However, around 1:30PM, it was informed that near the gate of the Area Office some persons have collected carrying a dead body and are protesting and claiming that a body has been recovered from under the debris. Thereafter, around 03:30PM everybody went away from the Area Office gate carrying the dead body and thereafter, FIR was lodged.
3. One Rameshwar Prasad, Safety Officer, Bhowra South Colliery, E.J. Area, gave his statement that at about 10:30 AM on 09.06.2023, he received information that some persons have been injured near 12 no. Basti. After receiving the information, he informed the Area Security Officer, EJA about the same and rushed towards 12 no. Basti and found that some local villagers have gathered there.

Thereafter, one shovel machine was deployed for searching for the injured persons, if any, but nothing was found in the search.

4. One Saroj Yadav father of Arjun Yadav has given his statement dated 10.06.2023 (page no.111 of the paper-book), stating that on 09.06.2023 at about 10:00 AM his 16 year old son had gone towards the Project Mine for grazing his buffalos and fell into the mine resulting in his death. He has also stated that he has no information that any other person has died in the accident.
5. Arjun Yadav has also given his statement dated 10.06.2023 (page no.112 of the paper-book) which mentions that his grandson Jitender Kumar Yadav age about 9-10 years had strayed near the mine while playing and fell into it resulting in his death and other than that he has no information that any other person may also have been injured or have died.
6. The Respondent No.3, State Disaster Management Department, Jharkhand, has filed affidavit dated 04.08.2023 stating therein that the incident at Bhowra Colliery of M/s Bharat Coking Coal Limited, was got enquired by a two member committee comprising the Circle Officer, Jharia and Sub Divisional Police Officer, Sindri. It is also stated that as per Standard Operating Procedure (SOP) prepared by the BCCL, access control to the lease area and to prevent unauthorized entry in the lease area and action in this regard, is the responsibility of the lessee (BCCL) and its outsourcing agency/MDO.
7. The Respondent No.1, Jharkhand State Pollution Control Board has filed affidavit dated 05.08.2023. Along with this affidavit, an Inspection Report of an inspection carried out on 27.07.2023 has been filed. The Inspection Report reads as under: -

“Inspection Report on News item published in NDTV 09.06.2023 “Child among 3 killed as illegal coal mines Collapses near Dhanbad” in the light of direction issued by Hon’ble NGT in O.A. No. -68/2023/EZ Versus Jharkhand State Pollution Control Board & Ors.

In the light of HQ letter Ref. No.- 1792 Ranchi, Dated: 18.07.2023 regarding compliance of directions issued by the Hon’ble NGT Eastern Bench in order Dated: 04/07/2023 in O.A. No. 68/2023/EZ, M/s Bharat Coking Coal Limited, Eastern Jharia Area was inspected on 27.07.2023 by Sri Ram Pravesh Kumar, Regional Officer along with Sri Ashutosh Anand, Consulting Executive, Regional Office Dhanbad.

During the inspection Sri Nirjhar Charkarborty, General Manager, Eastern Jharia Area, Sri Ratnesh Kumar Rai, Manager, Bhowra, Sri Pradeep Raghote, Area Safety Officer, Sri Rameshwar Prasad, Safety Officer from Cluster –X Coal Mines with Sudamdih Washery, Eastern Jharia Area M/s Bharat Coking Coal Limited (B.C.CL.) were present.

The above matter is related to news item published by NDTV and in Social Media regarding fall of some people into Overburden collapse during illegal mining at Bhowra South, 3 pit Old Mines near 12 no. Basti on 09.06.2023. The officials of BCCL have informed that the above mentioned mining patch where the incident of collapse had happened is severely affected by Mine Fire. The site was then inspected along with officials of M/s B.C.C.L. Eastern Jharia Area.

During the site inspection of affected area following observation were made:-

- 1. The affected area lies in Bhowra sough OCP which falls under Cluster –x Coal Mines with Sudamdih Washery of in Eastern Jharia area of M/s B.C.C.L.*
- 2. The incident area (23.682585, 86.396114) is towards east side of Bhowra south OCP. 12 nos. Basti is situated just about 20-30 mtrs away from the mining edge where collapse had happened.*
- 3. Representative of BCCL informed that they had received news of collapse due to illegal mining. The officials of BCCL along and Circle Officer, Jharia both had inspected the site on 09.06.2023. They had deployed one shovel to excavate loose Over Burden but nothing was found. The representatives have provided one incident Site Inspection Report in this regard.*
- 4. A committee was also constituted by General Manager, Eastern Jharia Area to submit its report about the incident. The committee comprise of following members:-*
 - a) Shri Binod Kumar Panda, Project Officer, Bhowra South*
 - b) Shri Rameshwar Prasad, Colliery Manager/ Safety Officer*
 - c) Shri Pradeep Raghote, Area Safety Officer, Eastern Jharia Area.*

The Committee had inspected the affected area on 09.06.2023 and found that the Old Fencing was damaged at the site and many people including Men, women & children had gathered near the area. After discussing with gathered people one Shovel machine was engaged in removing loose Overburden but nothing was found trapped in loose overburden. The Committee has submitted its report vide Ref. No. EJ Area/General manager/Secretary/2023/D/523 Dated. 10.06.2023.

5. *Representative of BCCL has informed that the damaged fencing had been repaired and provided a photo of the affected area of Date : 27.07.2023.*
6. *BCCL has provided action taken report to prevent Coal pilferage from Mines and Coal Dump has been provided. As per action taken report BCCL has provided fencing around the mines along with Danger/Prohibited sign to prevent unauthorized entry of person inside mines and other measures being taken to prevent Coal Pilferage. (Copy enclosed)*
7. *12 Nos. Basti which is situated very close to affected area is in a very risky Zone. The area is already affected by subsidence and smoke from old galleries of underground mines. BCCL has provided EVICTION Notice Under Section 4 of PP Act 1971 Bhowra (South) Colliery, 12 No. Subsidence Zone to about 130 people. (Copy enclosed)*
8. *However, only 14 nos. of people have been shifted to safe area from 12 nos. Basti as per document provided by BCCL. (Copy enclosed)*

Recommendation:-

On the basis of above facts General Manger, Eastern Jharia may be directed to provide barbed wire fencing towards 12 Nos. Basti to prevent any future incidents and ensure no people enter into the mines for illegal mining by deputing security at the 12 nos. Basti side and ensure timely eviction of people from 12 nos. Basti to safer place. Drone surveillance should be done regularly for identification of sites where illegal mining is active and accordingly installation of CCTV camera, Boom Barriers around the identified sites shall be done to prevent any future incident.”

8. The Government of Jharkhand, Home, Prison and Disaster Management Department (Disaster Management Division) has filed Resolution dated 25.10.2018 (page no.184 of the paper-book). Paragraph-7 of this Resolution reads under: -

“7. In the above perspective, after due consideration the following decisions have been taken by the State Government:-

- i. *The incidents of heavy rains (More than normal rainfall), snakebite, mining related disaster, radiation related disaster, boat accident, drowning in rivers/dobha/waterfall, stampede and gas leaked disaster is declared as State Specific Local*

Disasters to provide the ex-gratia amount to the affected person for the loss of life and property.

- ii. *In the light of the requisition proposal received from the concerned Deputy Commissioner regarding the loss of life and property on account of heavy rains (more than normal rainfall), snakebite, mining related disaster, radiation related disaster, boat accident, drowning in rivers/dobha/waterfall, stampede and gas leaked disaster, the amount will be allocated by the Home, Prison and Disaster Management Department as per the rules according to the concerned District Deputy Commissioner. The dependents of the affected person will be paid ex-gratia amount directly into their bank accounts through Direct benefit Transfer (DBT).*
- iii. *Ex-gratia amount will not be admissible by the department in case of illegal mining and persons living illegally in mining areas.*
- iv. *In case of death of persons covered by the Employees Compensation Act, 1923 the ex-gratia amount will not be admissible by the department in general. Considering the seriousness of the incident, if the Honourable Chief Minister of Jharkhand announces special ex-gratia granted in the form of additional amount, then in the light of the said sub para-(i). Under Specific Local Disaster of the state, will be allocated to the concerned Deputy Commissioner according to the items and norms of the State Disaster Response Fund (SDRF).*
- v. *60% of the annual earmarked amount of 10% of State Disaster Response Fund (SDRF) for drinking water crisis due to scanty rainfall and 40% of the remaining 10% for other Specific Local Disaster [heavy rains (More than normal rainfall), Snakebite, mining related disaster, radiation related disaster, boat accident, drowning in rivers/dobha/waterfall, stampede and gas leaked disaster] will be spent.*
- vi. *In case of above-mentioned disasters, fund will be allocated under the budget head mentioned below :-*

Major Head	-	2245	-	Relief on Account of Natural Calamities
Sub Major Head	-	80	-	General
Minor Head	-	102	-	Management of Natural Disaster, Contingency Plans in Disaster prone Areas
Sub Head	-	01	-	Management of Natural Disaster, Contingency Plans in Disaster Prone Areas
Detailed Head	-	07	-	Other Expenditure
		59	-	Other Charge

- vii. *Ex-gratia amount will be admissible only for the disaster occurring in the geographical area of Jharkhand State.*
- viii. *Ex-gratia amount will be made available to the affected person due to mentioned disaster under 10% of the annual earmarked amount of State Disaster Response Fund (SDRF) of the Government of India. Expenditure, more than this, will be borne by the State Government's treasury.*

ix. *Guidelines for expenditure accruing of mentioned Specific Local Disaster of the State and the guidelines related to the items and norms of the State Disaster Response Fund (SDRF) issued by the Government of India will be same."*

9. A perusal of the above extract of the Resolution would show that incident of heavy rains (more than normal rainfall), snakebite, Mining Related Disaster, radiation related disaster, boat accident, drowning in rivers/dobha/waterfall, stampede and gas leaked disaster is declared as State Specific Local Disasters to provide ex-gratia amount to the affected person for loss of life and property. Paragraph-7 (iii) specifically states that **"Ex-gratia amount will not be admissible by the department in case of illegal mining and persons living illegally in mining areas"**.
10. The Respondent No.5, Bharat Coking Coal Limited (BCCL), Dhanbad, Jharkhand, has filed counter-affidavit dated 22.11.2023 stating that there is a Standard Operating Procedure (SOP) dated 16.02.2022 for preventing unauthorized entry into the mining premises. As per SOP at every point, the BCCL has put up signboards which are printed with red florescent paint bearing signs such as "No Entry", "unsafe to enter" and "stay out". The sign boards also mention that if there is any unauthorized entry by any person, they will be prosecuted in law. It is also stated that the Project Officer, Bhowra Colliery, Eastern Jharia Area, has also issued a Standard Operating Procedure (SOP) for prevention of Unauthorized Entry into mines dated 06.04.2023 wherein certain guidelines have been given (page no.226 of the paper-book).
11. The SOP at Item No.12 thereof mentions that if an unauthorized entry is confirmed, security personnel will take appropriate action, including notifying law enforcement agency, if necessary. Item No.11 mentions that any suspected unauthorized entry must be reported immediately to the security personnel or management. Photographs have been filed

to show wire fencing having been installed as well as sign board erected against entry into the Mine Area.

12. The Senior Superintendent of Police, Dhanbad, Jharkhand, has filed affidavit dated 18.01.2024 stating that on the report submitted by one Binod Kumar Pandey, Project Officer, Bhoura (South Colliery), an FIR being Jorapokhar P.S. Case No.121/2023, under Section 379, 511, 304, 34 IPC has been registered and investigation of the case has been taken up. It is stated that from the case diary, it appears that a secret information was received that a dead body of a minor boy dying due to landslide into an old mine was brought near Bhoura High School by his relatives and villagers and accordingly station Diary No.16/2023 dated 10.06.2023 was entered into the police station records and when the police went near Bhoura High School, they found that a dead body was lying on a cot and some people were also present there.
13. One Arjun Yadav identified himself as grandfather of the deceased boy who stated that the boy had died as a result of fall into the mine. The boy's name was identified as Jitendra Kumar aged about 10 years, son of Saroj Yadav. After inquest the body was sent for postmortem to the S.N.M.M.C. Hospital, Dhanbad.
14. The Deputy Commissioner, Dhanbad has also filed his affidavit dated 08.02.2024 stating that in pursuance of the order of the Tribunal dated 30.11.2023 to verify as to whether any dead body of Jitendra Kumar Yadav has been recovered and what is the outcome of the FIR, a report was sought from the Senior Superintendent of Police, Dhanbad, vide letter dated 03.01.2024 of the District Mining Officer, Dhanbad. In response thereof, the Senior Superintendent of Police, Dhanbad, has submitted a report dated 08.01.2024 (Annexure-B to the affidavit). This Report mentions that a secret information was received in the police station, it mentioned that the dead body of a

minor boy has been recovered from the mine and taken to the Boura High School where it has been kept and some persons are also present there. One elderly person named Arjun Yadav identified himself as the grandfather of the deceased child who stated the child had died as a result of fall in the mine due to a landslide. The statement of the father of Arjun Yadav grandfather and Saroj Yadav father of the deceased child was recorded, name and age of the deceased child has been disclosed as Jitender Kumar aged about 10 years and thereafter, the body has been sent for postmortem.

15. From a perusal of the documents on record, the facts which are not in dispute are that the body of a child named Jitender Kumar aged about 10 years son of Saroj Yadav and grandson of Arjun Yadav has been sent for postmortem. The statements of persons are that the death has occurred as a result of the child slipping in a landslide and falling into the mine pit.
16. The Inspection Report mentions that the old fence at the mine site was damaged and many people had gathered in the area. The damaged fence has since been repaired. The BCCL provided Action Taken Report to prevent Coal Pilferage from Mines and Coal Dump has been provided. It is stated that 12 No. Basti is stated to be located very close to the affected area and situated in a very Risky Zone. The area is already affected by subsidence. The BCCL has also provided eviction notice under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 to about 130 persons of 12 No. Basti and 13 people have been shifted to a safe area from 12 No. Basti.
17. The Committee has recommended timely eviction of people from 12 No. Basti to a safer place and installation of CCTV Cameras at the site.

18. The documents on record however, mention that there are about 3-4 security staff present in the Mining Project Area, fencing is also provided.
19. We find that there is nothing on record at present to show that the body was recovered from the Mine to suggest that the death of the child, Jitendra Kumar Yadav, occurred as a result of falling into the Mine.
20. On the compliant of the Project Director, FIR has been lodged and the matter is under investigation. In the circumstances, since the matter is still under investigation and liability, responsibility and culpability for offence, if any, is yet to be determined, it cannot said that the Respondent-BCCL is responsible for payment of compensation.
21. So far as payment of Ex-gratia is concerned, in our opinion, the same would be dependent upon the outcome of the enquiry and if is found that the death of the child has actually occurred as a result of falling into the mine pit and it is a State Specific Local Disaster, the State Government would be liable for payment of Ex-gratia.
22. With the aforesaid directions, the Original Application No.68/2023/EZ is disposed of accordingly.
23. I.As., if any, stand disposed of accordingly.
24. There shall be no order as to costs.

.....
B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

February 09, 2024,
Original Application No.68/2023/EZ
(Earlier O.A. No.437/2023/PB)
MN