

IN THE COURT OF DEPUTY COMMISSIONER, KODERMA

Confiscation case 46/2021

State through District Mining Officer, Koderma..... petitioner

Vrs

Abhishek Sharma..... Opp. party

Order

Present proceeding has been initiated upon the proposal for confiscation of Mica Mineral seized at Mica Godown of respondent(s) submitted by the District Mining Officer, Koderma.

According to petitioner, a raid was conducted on 27.06.2021 at Mica Godown run by respondent(s) at Barwadih (Gumo), beside Ghajandi Road in Koderma Block, by a team constituted under the chairmanship of Sub Divisional Officer, Koderma by the order of Deputy Commissioner, Koderma vide his memo no. 425/M Koderma, dated 13.06.2020. The members of the team were Sub Divisional Officer, Koderma, District Mining Officer, Koderma, Circle Officer, Koderma, Sub Divisional Police Officer, Koderma, and Officer Incharge Tilaya Thana. Within the godown, team found following materials viz. 1. Mica Flakes 320 Bag (50 Kg Per Bag), 2. Mica 50 Tonne, 3. Mica 100 Bag (40 Kg per Bag) 4. Mica 250 Bag (50 Kg Per Bag) 5. Mica 850 Bag (40 Kg Per Bag), 6. Mica 250 Bag (40 Kg Per Bag), 7. Mica 30 Tonne. Dealer's registration license and document regarding the validity of mica stored was demanded by the inspection team and since the respondents did not possess a mineral dealer license as required under The Jharkhand Minerals (Prevention of Illegal Mining, Transportation and



Storage) Rules, 2017 and failed to produce relevant document(s) to prove the validity of minerals, entire stocked mica mineral was seized by the inspection team as per rule 11(i) and a seizure list was made in terms of rule 11(iv) of the aforesaid rules. The seized minerals were handed over to Sunny Kumar S/O- Arun Kumar Singh Vill- Teilaya basti staff of Abhishek Sharma on *zimmanama* and subsequently, mica godown was also sealed by the team.

As per the District Mining Officer, Koderma the respondent(s) do not possess the necessary Mineral Dealer's License as prescribed under the rules and *prima facie* it appears that the seized minerals were illegally procured and stored by the respondent(s). Therefore, prayer for confiscation of seized materials under rule 11(v) of The Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 has been done before the court. Accordingly, confiscation proceeding was initiated by serving notice to the respondent(s).

That respondent Mr. Abhishek Sharma through his learned advocate filed a written reply on 05.08.2021 which states " *That, the respondent Abhishek Sharma @ Monty is he proprietor of M/s Sharma Brothers at the address given here in above with a valid factory license for the same.*

That, the respondent is a bonafide law abiding businessman adhering to all rules and norms applicable for doing business of mica products. He also possesses a valid Registration with department of labour for carrying out business of processing and trading of mica.

That, M/S Sharma Brothers has been licensed to and is engaged in manufacture of mica-flakes and mica-powder even before Jharkhand, as a state, came in. to existence and thus precedes the subsequent enactments. When the trade/transport/dealing in mica and all its associated forms were then governed by the Bihar Mica Act, 1947 wherein all splitting/chillas or mica below six (square) inches were exempted from the act (section 03).



That, the state of Jharkhand even after coming into existence has not made any laws/rules relating to mica and mica was declared to be a minor mineral only as late as 2015. Jharkhand Minor Mineral Concession Rules, 2004 did not prescribe any regulation relating to "Mica" per se and thus the trade has continuously been suffering from a "policy paralysis" with regard to mica.

That, the seizure list prepared in this case shows "Mica Flakes", "Mica-dust" which are value-added manufactured items and not "Minerals" and hence do not come within the preview of Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 thus rendering the prosecution under the "Act" illegal and void ab initio.

That item no. 2 to 7 in the seizure list show only 'mica dust' which has no commercial value unless processed. 'Dust' in neither defined in the act nor it's possession could be termed illegal by any stretch of imagination fit to be penalised. These units are making 'value cut of waste' and ought to be promoted rather than penalised.

That, the state of Jharkhand is in the process of formulating a policy to revive, protect and promote the mica industry and is soliciting suggestions for the same to promote the mica industry which has been the pride and major foreign exchange earner of this mineral rich state. These units in no manner deplete the forest resources or have any adverse impact on the environment.

That M/S Sharma Brothers is a bonafide concern licence to deal in mica and mica products and has always been abiding by the relevant rules under the minor mineral (Development and Regulation) Act 1957 it possessed a valid Dealers Licence to do trading in mica/mica products.

That, while the state of Jharkhand is doing all it can to regulate, revive and promote the mica industry, a major foreign exchange earner for the country, such arbitrary and knee-



jerk oppressive actions go against the ethos and spirit of promoting enterprise at one hand and mica industry on the other.

That, Lalit Kumar the then Deputy Director, Mines (Mica) in his letter dated 06.12.2017 has specifically stated that "Dhibra" is no included in and schedule of minerals the procurement of Dealer/Stock license is not a necessity.

That, the respondents are law abiding, taxpaying entrepreneurs and have done nothing illegal to warrant such harsh and penal actions against them. They are engaged in creating value from waste as they their raw material. Moreover, the principal raw material of the unit viz. Mica-waste-scrap (Dhibra) is not considered as a minor mineral in its unprocessed form ever by JSMD, State govt undertaking in charge of controlling mica trade.

That, the respondents have procured the raw material mainly mica-waste-scrap from dealers from outside Jharkhand where the trade is legal.

That though the respondents possesses all the necessary compliances and certificates/licences he is willing and prays to get instant case compounded Under Section 23-A of the Minor Minerals (Development and Regulation) Act 1957.

That, the factory has not been running for the last several months due to pandemic (Covid-19) lockdowns and as such locking such factory does not appear equitable or in the interest of justice.

That, the confiscation of non-minerals like mica flakes, silver mica etc. (factory produce) is not within the perview of Jharkhand Minerals the (Illegal mining, transportation and storage) Rules, 2017.

That, the respondents are law abiding businessmen and ready to abide by any/all directions of this learned court."



The District Mining Officer, Koderma appeared himself on the behalf of state and stated that *"the respondent(s) do not have dealer's registration under The Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 which authorize a person, to store and engage in the transaction to buy or sell and transport minerals.*

Whether any material is a mineral or a non-mineral can only be tested under Section 3(aa) of the Mines and Minerals (Development and Regulation) Act, 1957 and not under The Bihar Mica Act, 1947, and further entry no 11 of schedule 2ka of Jharkhand Minor Minerals Concession Rules, 2004 includes Mica in any form as a mineral. There does not remain any doubt regarding applicability of The Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 on Mica Mineral. Also, JSMDC is a company incorporated under the Companies' Act is not a competent authority to define what is mineral and what is not. Furthermore, as per explanation part of rule 2 (1)(l) of The Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 – 'Any mineral shall remain a mineral by reason of being subjected to any process like crushing, burning, breaking, drying, cutting, polishing, pulverizing, or any other procedure intended to make the mineral fit or suitable for sale or consumption.' and hence the respondent have violated the provisions of the said rules and is liable to be penalised as per rules."

Meanwhile, the respondent through their learned advocate have pleaded for mercy and said that any offence, if any, that has been done by them was not intentional and rather was due to the ambiguity related to the applicability of The Bihar Mica Act, 1947 and/or The Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017. Furthermore, the respondent has pleaded for the compounding of their offence, if any, in terms of section 23A of the MMDR Act, 1957 and subsequent rules made thereunder as the violation was done in oblivion. That the respondent has also prayed for unsealing of the campus on the grounds that there is no such provision of sealing under The Jharkhand Minerals (Prevention of Illegal



Mining, Transportation and Storage) Rules, 2017 and such sealing have restricted the respondents to enjoy their constitutional rights over their property.

After hearing both the parties, I am of the considered view that violation of various provisions of The Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 has been done by the respondents. That rule 07 of The Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 states that "*No person other than a dealer or a mining lease holder shall buy or store or sell or offer for sale or engage in any transaction of buying, selling, processing any mineral at any place or transport mineral for commercial gain without being registered as a dealer*". The respondents have failed to produce enough evidence regarding the validity of seized minerals and have engaged in transaction of buying, selling, processing minerals in contravention of rule 07 of the aforesaid rules. That, rule 13 of The Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 deals with penalties and as per rule 13(i) "*Any person, who contravenes any of the provision of these rules, or buys or sells or store minerals except under and in accordance with the terms and conditions of dealers registration or who transports the minerals except as mentioned in the transport challan or transport minerals without transport challan shall be punishable as per provision made under JMMC Rule, 2004 and as amended from time to time*", the penal provisions are directed within the purview of Jharkhand Minor Minerals Concession Rules, 2004 and hence, the District Mining Officer, Koderma is hereby directed to proceed as per the provisions of the said rules.

As far as the matter of sealing of premises is concerned, rule 11 of The Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 provides for the seizure of minerals and materials only, and hence, the premises of the respondents shall be unsealed in the presence of the Sub Divisional Officer, Koderma and the District Mining Officer, Koderma, With the condition that the respondent(s) shall obtain all necessary statutory



clearance(s) as required under the relevant acts and rules before indulging in any transaction of mica mineral. Further SDO, Koderma and DMO, Koderma shall verify the stock that was seized earlier and given on *zimmenamma*. Meanwhile, the seized minerals shall remain in proper seizure till further orders of competent authority.

Hence, the matter is remanded as above, and this case is disposed off accordingly.

Communicate this to the Sub Divisional Officer, Koderma and the District Mining Officer, Koderma for information and needful.

Dictated and corrected by me



Deputy commissioner,

Koderma.

Deputy commissioner,

Koderma.