

Email/Post

Nagpur, Dated 07/03/2022

To,
Shri Vivek Kumar Sharma,
Director,
Govt. of India, Ministry of Mines,
Shastri Bhawan,
New Delhi

Sub : Submission of reply to the statement of articles of charges framed against Shri K.K. Tardia, Regional Controller of Mines, IBM. Nagpur.

Ref: (1) Ministry of Mines, letter no. 34/6/2021-M.III dtd.21/02/2022. —
(2) Ministry of Mines, order no. 34/6/2021-M.III dtd.31/12/2022)

Sir,

In inviting above reference on the subject cited above, I hereby submit the reply to the charges framed vide reference-(1) for your kind consideration and sympathetic order.

It is submitted that factual circumstances have caused the delay of revocation of the subject five graphite mining plans for which undersigned was placed under suspension vide reference (2) and different interpretation of the law from difference quarters, has caused delay in decision making of revocation of subject approval of mining plan which could not be decided before time.


It is also submitted that the reply to the charges with factual developments are matter of records of the office of the RCOM office Guwahati, which could not be submitted as the undersigned headquarter is fixed at Nagpur. Reply of statement of articles of charge is enclosed here with as Annexure -1.


Further, it is submitted that post suspension order, the undersigned has become mentally disturbed and physically sick and need sympathetic consideration for early reinstatement. The undersigned will be highly grateful for such sympathetic consideration, for ends of justice.

With Regards,

Encl- As above.

Yours faithfully,


स्मरजीत कुमार बिस्वास / Smarajit Kumar Biswas
निदेशक / Director
खान मंत्रालय / Ministry of Mines
भारत सरकार / Government of India
नई दिल्ली / New Delhi


(K.K. Tardia)
RCOM, IBM
CCOM (MDR) office, Nagpur
-1/6-

ANNEXURE-1

**REPLY TO THE STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST
SHRI K.K. TARDIA, REGIONAL CONTROLLER OF MINES, INDIAN BUREAU
OF MINES, GUWAHATI.**

ARTICLE - I

1. That the Mines and Minerals (Development and Regulation) Act 1957 (in short MMDR Act 1957) has been amended vide Notification published on 28th March 2021 (No. 16 of 2021) in the Gazette of India Extraordinary, Part II, Section-I as "Mines and Minerals (Development and Regulation) Amendment Act, 2021" thereby all cases covered under Section 10A(2)(b) including pending cases, the right to obtain prospecting license followed by, as the case may be, shall lapse on commencement of MMDR Amendment act 2021.
2. However, despite of MMDR Amendment Act 2021 came in to force with effect from 28.03.2021 and clear cut instructions issued by the Chief Controller of Mines (MDR) that all Mining Plans approved for fresh grant of leases falling under saved cases of erstwhile Section 10A(2)(b) of MMDR Act, 1957 have no relevance, which clearly means that all cases covered under Section 10A(2)(b) including pending cases, wherein mining plan has been approved by the lease deed has not been executed the approval in all such cases shall be revoked immediately or in cases where in either mining plan has not been approved or lease deed has not been executed cannot be processed further.
3. However, Shri K.K.Tardia, Regional Controller of Mines, Guwahati has approved mining plans of five cases of Graphite leases initially provisionally, then accorded final approval which are falling in the ambit of the erstwhile Section 10A(2)(b) of MMDR Act, 1957. By approving the Mining Plan (post amendment on 28.03.2021) of five cases of Graphite deposits falling in the category of erstwhile Section 10A(2)(b) of MMDR Act, 1957, Shri K.K. Tardia, RCOM has acted against the provision of the MMDR Act, 1957 and thus acted against the spirit of law thereby causing loss to the exchequer.

In reply to para 1, 2 & 3 above:

1. That it is fact that MMDR amendment Act 2021 came into force w.e.f. 28.03.2021, item 13 of which prescribed that all cases covered under Section 10A(2)(b) including pending cases, the right to obtain prospecting license followed by, as the case may be, shall lapse on commencement of MMDR Amendment act 2021. The subject cases of five mining plan of Graphite mentioned below table were submitted to IBM, Guwahati Regional Office in the month of February 2021 & March 2021 and same were considered for processing for approval by then Regional Controller of Mines (Additional In charge), Guwahati, predecessor of the undersigned and site inspection of area was carried out by Shri Vikas Kumar, Assistant Controller of Mines, before undersigned took charge of Regional Controller of Mines at Guwahati office on 10/5/2021:

-2/6-

K.K. Tardia

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S.N	Lease Area (in ha)	Date of execution of lease deed	Date of Submission of Mining plan	Date of Site inspection
1	Dodeserum Graphite deposit (183 ha)	29.01.2021	18.3.2021	08.04.2021 & 09.04.2021
2	Bopi Graphite deposit (37 ha)	01.02.2021	18.3.2021	12.04.2021
3	La Lamdak Graphite Deposit (79ha)	29.01.2021	18.3.2021	13.04.2021
4	Doni Graphite Deposit (196 ha)	29.01.2021	18.3.2021	15.04.2021 & 16.04.2021
5	Taliha Graphite Deposit (496ha)	29.01.2021	26.02.2021	23.03.2021

2. That the Chief Controller of Mines vide his letter dated 13/4/2021 instructed that cases wherein mining plan has been approved but lease deed has not been executed, the approval in all such cases shall be revoked immediately. Additionally, in cases wherein either mining plan has not been approved or lease deed has not been executed shall not be processed further.

It is submitted that the then RCOM/ Additional In charge, Guwahati, Shri P.K. Bhattacharjee revoked three mining plans before joining of the undersigned as RCOM of Guwahati Regional Office, i.e. before 10.05.2021; of other minerals and kept these five cases of Graphite mineral under processing without returning these to applicants considering these cases out of preview of section 10A (2) (b) of MMDR Act 1957 as mining leases were already granted and executed in these cases by the State Government of Arunachal Pradesh before MMDR Amendment Act, 2021 came into force w.e.f. 28.03.2021.

3. That meanwhile, undersigned took charge of Regional Controller of Mines, Guwahati on 10/5/2021 and these five cases of mining plan of Graphite were processed and provisionally approved during the lockdown period of pandemic of COVID-19 and finally approved later on considering them out of preview of section 10A(2)(b) of MMDR Act, 1957 as mining lease were already granted and lease deed executed by state government on 29.01.2021 and 01.02.2021 as in tabulated here:-

SN	Lease Area (in ha)	Date of execution of lease deed	Date of provisional approval of mining plan	Date of final approval of mining plan
1	Dodeserum Graphite deposit (183)	29.01.2021	19.5.2021	13.8.2021
2	Bopi Graphite deposit (37 ha)	01.02.2021	19.5.2021	16.8.2021
3	La Lamdak Graphite Deposit (79 ha)	29.01.2021	20.5.2021	16.8.2021
4	Doni Graphite Deposit (196 ha)	29.01.2021	20.5.2021	17.8.2021
5	Taliha Graphite Deposit (496 ha)	29.01.2021	20.5.2021	12.8.2021

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-3/6-

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377
41

Here, all 5 cases were those wherein mining leases have already been granted and executed by the State Government of Arunachal Pradesh before notification of MMDR amendment Act, 2021 i.e 28/3/2021 and accordingly these cases were considered out of preview of the instruction of CCOM letter dated 13/4/2021 and thus, the undersigned has not acted against spirit of law willfully as charges framed.

Not revoking of approved mining plan where mining leases already granted and deed executed by state government, is not an act against spirit of law willfully and undersigned has not caused any loss to exchequer either willfully or inadvertently. Hence article of charge to loss of Exchequer is humbly denied.

In more than 28 years' service period, the undersigned has never acted in contradiction to the spirit of the law and there was no intention to act against the spirit of the law by the undersigned.

ARTICLE - II

1. Charges that Shri K. K. Tardia, RCOM is not conversant with factual provision of Acts and rules or deliberately misinterpreted the rule. This shows that he fails for devotion to his duties as per rule 3(i)(ii) of CCS (Conduct) Rules 1964 and his action are unbecoming to a government servant and caused huge loss to state exchequer as these five leases would otherwise have fetched huge revenue to state government through auction of mining lease.

In reply to para 1 above:

1. The charges are not based on factual fact and figures, just stating that these five leases would otherwise have fetched huge revenue to the state government through auction of mining lease is not correct. The undersigned has not restricted auction of said mining leases in any ways. In fact, mining leases have already been granted and executed by Arunachal State Government on 29/1/2021 & 1/2/2021 before the approval of mining plan by IBM in month of August 2021 and undersigned had no role and authority to grant mining leases.
2. That linking of mining plan revocation with assumed revenue loss is not justified as grant of mining lease depends on much other compliance of rules and regulations apart from an approved mining plan. By not revoking earlier approved mining plan, actually no revenue loss has caused as the State Government has already granted and executed these five mining leases. This is purely an assumption that the actions of undersigned i.e., approval/non-revocation of mining plan has "caused huge loss to state exchequer as these five leases would otherwise have fetched huge revenue to state government through auction of mining lease" as State Government has already granted and executed said mining leases. Alongwith, there is no provision of revocation of approval of mining plan under MCDR 2017 and in similar situation, there are some cases saved under Section 10A(2)(c) of MMDR Act 1957 (amendment 2015) where Letter of Intent (LOI) had been issued before 12/1/2015 and mining plans were approved by IBM but leases not executed within two years i.e upto 11/01/2017 and in such cases mining plans approved by IBM have not been revoked.

Signature

Signature

-4/6-

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372
42

Therefore, the charges alleged are purely on hypothetical assumptions and allegation that by not revoking the approval of approved mining plan has caused huge losses to state government exchequer is not true, is based on assumptions only and humbly denied.

ARTICLE - III

1. In spite of clear advice, Shri K.K. Tardia vide his letter no. IBM/GHY/41Tech/2010-11/-Vol-II dated 31.12.2021 has not taken any remedial measures including revoking of approval of mining plan, but only struck to justification of his act of approving five number of mining plans post execution of mining lease deeds. Thus, Shri K.K. Tardia, Regional Controller of Mines has willfully disobeyed the directives of higher authorities and shown insubordination. Therefore, Shri K.K. Tardia, RCOM failed to maintain devotion to his duties and behaved in a manner unbecoming of a government servant in contravention of Rule 3(1)(ii) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Reply to charge of article -III

1. That undersigned had no iota of intension to disobey the instruction /order of higher authorities. The undersigned has always performed his duties obeying the directives of senior officers and in the interest of the department and Union. Also, the undersigned has followed every instruction of all seniors including the Controller of Mines, The Chief Controller of Mines and Controller General, IBM in past 28 years of service and throughout clean service records show the dedication and discipline of the undersigned. The undersigned has never denied revocation of said mining plans, however, was going through the provisions, court orders (including Judgment of Apex Court) and letter received from the State Government regarding non-applicability of Section 10 of the MMDR Act'1957 in the NE States.

2. As undersigned received communication from the State Govt. of Meghalaya regarding non-applicability of Section 10 of the Act in NE Hill Districts of Meghalaya wherein the mineral vest in private person and not in Government, enclosing therewith judgments and directions of Hon'ble High Court and Hon'ble Supreme Court. In the judgment dated 03.07.2019 pronounced by Hon'ble Apex Court passed in Civil Appeal No. 10720 of 2018 State of Meghalaya vrs. All Dimas Students Union, Dima-Hasao District Committee and Ors. with connected appeals. (2019) 8SCC 177, particularly para 191.4 thereof, it is stated that "*according to the land tenure system as applicable in the Hills Districts of State of Meghalaya, the most of the lands are either privately or community owned in which State does not claim any right. The private owners of the land as well as community owners have both the surface right as well as sub-soil rights*". In light of The Arunachal Pradesh (Land Settlement and records) (Amendment) Bill'2018 (later Act'2020), most of the lands in Arunachal Pradesh were community land and also, as the lease deed was already executed in all cases, undersigned was only going through the matter to avoid any legal complications in future which was nowhere in the intention of disobeying any directives. All the actions were done only in good faith to save the interest of the department. (Copies of High Court Judgment and Arunachal Pradesh (land Settlement and record Bill 2018 are enclosed for kind reference).

K. K. Tardia

[Signature]

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-5/6-

378
4B

3. That earlier not revoking mining plan was only due to difference in the interpretation of certain provision of the MMDR Act with respect to NE Hill district as per the judgment of Apex Court and not more than this. Undersigned has due respect to the application of service rule position but the difference has occurred due to the interpretation of law.

4. That there was no intention of undersigned to disobey any direction of the authority but due to frequent change in the provisions of applicable laws, undersigned was taking some time for understanding the legal status of provisions applicable to the cases under reference vis a vis direction of the Apex Court due to which revocation of mining plan was delayed, which was construed as willful disobey the directives. Therefore, the allegation of willful disobey and failed to maintain the devotion cannot be framed and the behavior cannot be construed as unbecoming of Govt. servant in contravention of Rule 3(1)(ii) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 and the charges are humbly denied.

5. The advice received by the Chief Controller of Mines, were to take "remedial measures", however, it was not clearly mentioned that the mining plans for the said cases need to be revoked immediately. Further, due to several legal complications applicable to NE states, undersigned has to go through several statutory provisions and directions/judgment of various courts to save the interest of the department/union and to avoid any legal complications in future. Thus, the lack of clarity in the provisions and instructions may not be designated as intentional disobedience.

The undersigned is not a legal expert and was considering the revocation of approved mining plans also but could not do within time as expected by higher authorities due to the facts mentioned herein above. Before giving any opportunity, one sided action in form of suspension of undersigned was taken which is against the principles of natural justice. Thus, it is once again humbly requested to consider re-instating undersigned. The undersigned assure you of no such instances in future and apologize for the delay occurred in following the instructions as per the expectations. The undersigned shall always maintain integrity and dignity of the department as undersigned has done in his more than 28 years' service in past.

In view of above clarification of the charges, it is most humbly and sincerely requested to your kind authority to kindly consider my submission sympathetically and re-instate undersigned. The undersigned will be grateful forever to you for this act of kindness.

Yours faithfully,

K.K. Tardia
07/03/2022
(K.K. Tardia)
RCOM, IBM
CCOM (MDR) office, Nagpur

Smajit Kumar Biswas
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-6/6-

Serial No. 01
Regular List

**HIGH COURT OF MEGHALAYA
AT SHILLONG**

PIL. No. 11 of 2021

Date of Order :26.10.2021

Miss. N.D.Rumnong

Vs.

Union of India & Anr.

Coram:**Hon'ble Mr. Justice Ranjit More, Chief Justice****Hon'ble Mr. Justice H.S.Thangkhiew, Judge****Appearance:**

For the Petitioner/Appellant(s) : Mr. A.A.Mir, Adv.
Mr. B.B. Baruah, Adv.

For the Respondent(s) Dr. N.Mozika, ASG with
Ms. L.Jana, Adv.
Ms. A.Mozika, Adv. for R 1.
Mr. A.Kumar, AG with
Mr. S.Saraogi, GA.
Ms. R.Colney, GA for R 2.

- i) Whether approved for reporting in Law journals etc: Yes/No
- ii) Whether approved for publication in press: Yes/No

Per R.More, (CJ)

1. Heard Mr. A.A.Mir, learned counsel for the petitioner and Mr. A.Kumar, learned AG for the respondent No. 2.
2. The petitioner in the present Public Interest Litigation seeks the following reliefs:

"A. Declare the impugned first proviso newly inserted in Section 10A(2)(b) of the Act, vide Section 13(i) of the Amendment Act, 2021, as ultra vires of the Constitution of India for being discriminatory and manifestly arbitrary on the vice of Article 14 of the Constitution of India and against public interest, and/or

B. To save the said impugned first proviso from being rendered unconstitutional, this Hon'ble Court

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375
45

may please expound the scope of the same in such manner in public interest so that apart from pending applications, it would also nullify and render void all such Orders which had allowed pending applications saved by clause (b) of sub-section (2) of Section 10A and grant a prospecting licence or a mining lease prior to the commencement of the said Amendment Act, 2021, but a licence is yet to be issued or a mining lease deed is yet to be executed and registered as per the Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016."

3. The petitioner has preferred the instant Public Interest Litigation in the interest of the general public of Meghalaya and of most people who are affected by the impugned order/notification who are unable to approach this Hon'ble High Court for personal reasons.


4. Mr. A.Kumar, learned AG challenged the maintainability of the instant PIL in Meghalaya High Court on the ground that Section 10A (2)(b) of the Mines and Minerals (Development and Regulation) Act, 1957 is not applicable in the State of Meghalaya by virtue of the provision of Section 10 of the said Act. He also relied upon a decision of the Hon'ble Apex Court passed in Civil Appeal No. 10720 of 2018 *State of Meghalaya vrs. All Dimas Students Union, Dima-Hasao District Committee and Ors. with connected appeals* (2019) 8SCC 177, particularly para 195.4 and para 195.7 thereof.

5. Having perused the provision of Section 10 of the said Act coupled with the decision of the Hon'ble Apex Court in *State of Meghalaya (supra)*, we are of the view that Section 10A(2)(b) is not applicable to the State of Meghalaya. Public Interest Litigation is accordingly dismissed.

(H.S.Thangkhiew)
Judge

(R. More)
Chief Justice

Meghalaya
26.10.2021
"Samantha PS"


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376
46

The Arunachal Pradesh Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 84, Vol. XXV, Naharlagun, Tuesday, March 13, 2018 Phalguna 22, 1939 (Saka)

ARUNACHAL PRADESH
LEGISLATIVE ASSEMBLY SECRETARIAT
ITANAGAR

The 9th March, 2018

No. LA/Bill-4/2018.—The following Bill introduced in the Arunachal Pradesh Legislative Assembly on the 6th March, 2018 is published under Rules 73 of the Rules of Procedure and Conduct of Business in Arunachal Pradesh Legislative Assembly for general information.

BILL NO. 6 OF 2018

THE ARUNACHAL PRADESH (LAND SETTLEMENT AND RECORDS) (AMENDMENT)
BILL, 2018.

A BILL

to amend the Arunachal Pradesh (Land Settlement and Records) Act, 2000 (Act No. 10 of 2003).

BE it enacted by the Legislative Assembly of Arunachal Pradesh in the Sixty-ninth Year of the Republic of India as follows, -

1. (1) This Act may be called the Arunachal Pradesh (Land Settlement and Records) (Amendment) Act, 2018. Short title, extent and commencement.
- (2) It shall extend to the whole of the State of Arunachal Pradesh.
- (3) It shall come into force on the date of its publication in the Official Gazette.
2. In the Arunachal Pradesh (Land Settlement and Records) Act, 2000 (Act No. 10 of 2000), (hereinafter referred to as the Principal Act), in section 88, after sub-section (1), the following Sub-Section shall be inserted, - Amendment of section 88.

"(1A) Every person, who holds valid land possession document issued by the competent authority, outside notified forest shall be entitled to be conferred ownership rights on such terms and conditions, as may be prescribed".
3. (1) In the Principal Act, in section 90, for sub-section (1), the following shall be substituted, - Amendment of section 90.

"(1) Subject to the provisions of this Act or any other law for the time being in force, a land owner may lease out his land to another person or entity for the permissible land use on such terms and conditions as may be agreed upon between him and such person or entity for such period not exceeding thirty three years".

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 खान मंत्रालय / Ministry of Mines
 भारत सरकार / Government of India
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377
47

2 The Arunachal Pradesh Extraordinary Gazette, March 13, 2018

(2) In section 90, for sub-section (2), the following shall be substituted:-

"(2) Every lease of land made after the commencement of this Amendment Act shall be for a period, not exceeding thirty three years and at the end of the said period, the same can be renewed for a period not exceeding thirty three years on such modified terms and conditions as may be agreed between both the parties".

Dated Itanagar,
theMarch, 2018.

M. Lasa
Secretary,
Legislative Assembly,
Arunachal Pradesh,
Itanagar.


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