Government of Jharkhand to Consider Dhibra as a ‘Forest Produce’
Government of Jharkhand to Consider Dhibra\(^1\) as a ‘Forest Produce’

A Context of Appeal

Post Forest Conservation Act, 1980, when mica mining was banned in forest areas, dhibra became the prime source of household income for close to 3 lakh people in Koderma and Giridih districts. There are more than 800 villages in these two districts where poor people survive on dhibra collection. Hours of hard work from sunrise to sunset hardly fetches them a dollar per day, making dhibra a distress livelihoods option. But because of no other additional livelihoods options in these largely remote and backward areas, it is dhibra alone that has sustained tens of thousands of poor and marginalised families.

- Since close to 80% of dhibra is collected from forest areas, the local dhibra trade is considered illegal and theoretically non-existent, whereas the actual trade on ground is vibrant and clandestine.
- A clandestine trade like dhibra has created its own set of administrative, managerial and financial issues that adversely impacts collection and trade.

\(^1\) Dhibra is a local name for mica scrap or waste mica available in the dumpsites of the mica belts of Koderma and Giridih districts
• While there is regular collection from dumpsites, sale, processing and export, state government is yet to recognise the existence of the trade.

• While the state government loses out on its legitimate revenue share, the most significant adverse impact has been stagnation of sale price of dhiba at Rs.10/ per kg as the state Government plays no role in price fixation.

• Continued meagre returns from dhiba has encouraged children to accompany their mothers to dhiba dumpsites as additional hands creating acute health and life risks.

B Key Issues and Challenges

Being largely an unregulated trade, none of the players – state Government, traders and the dhiba pickers – have benefitted much in terms of revenue, profit and household income over the years. The primary reason for dhiba trade not getting the required attention has been the ‘official’ perception of it being a mining activity inside forest areas that attracts stringent legal restrictions under Forest Conservation Act. Over the years, there have been several efforts, including several by the state Government, that questioned ‘whether dhiba collection is a mining operation’. Till today, there is no clarity whether dhiba is a mineral or non-mineral, its trade legal or illegal.

The key questions that have not been answered as yet are;

• Legal status of dhiba: The Bihar Mica Act, 1947 that is the guiding legal framework for mica specifies a size for mica that is 6 sq.inches or more, and makes no mention about dhiba.

• The dominant perception and understanding within the Department of Mines and Geology, Government of Jharkhand is that dhiba is a non-mineral at the point of collection and assumes the legal status of mica once processed and made tradable.

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2 In 1987, the then Chotanagpur Development Commissioner, Hazaribag, held that dhiba collection is a subsistence activity and not a commercial one. Therefore, local dhiba pickers should be allowed to carry 50 kg on head load. It remained only as a wishful thinking and didn’t move beyond Hazaribag.
C  Growth in Demand for Dhibra

In the meantime, mica market space has been taken over by dhibra bringing in technological innovations and product development, thereby, increasing the demand for dhibra. While India produced large quantities of sheet mica from dhibra and exported it to China, using the same raw mica sheets Chinese value added products invaded south and south-east Asian markets, including the huge Indian market. The irony is when both in the domestic and overseas markets dhibra have been experiencing a high demand; its sale price at the primary pickers’ level has stagnated for decades.

D  State Government may Consider the Following

Minor Minerals as Forest Produce

Under section 2(4) of the Indian Forest Act, 1927, the legal definition of forest produce includes -

- whether found inside or brought from a forest or not;
  - timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, myrobalans, mahua flowers, trees and leaves, flowers and fruit, plants (including grass, creepers, reeds and moss)

- when found inside or brought from a forest, among other things
  - wild animals, skins, tusks, horns, bones, cocoons, silk, honey, wax, other parts or produce of animals, and also includes peat, surface soil, rocks and minerals etc.

It is also important to mention here that the words ‘brought from forests’, means that the forest produce originated from the forest. This implies that for any produce to be forest produce under section 2(iv) (b) of the IFA 1927, the forest has to be the starting point of transit and not in transit.

On the 15th of September 2017, Hon’ble Supreme Court delivered a judgement in the State of Uttarakhand vs Kumaon Stone Crusher case deciding the issue of levy of transit fee on forest produce arising out of the States of
Uttar Pradesh, Uttarakhand and Madhya Pradesh, and observed that ‘the term found in in Section 2 (iv) (b) of the 1927 Act refers to things growing in a forest like timber trees, fuel trees, fruits, flowers, etc or mineral deposits or stones existing in the forest.

The expression ‘brought from’ also alludes to the source of the thing so brought being within the area of forest. The Apex Court also observed that ‘if the processing of the forest produce does not result in bringing out a new commodity but preserves the same and renders it fit for markets, it does not change its character; hence, it remains forest produce.

E Appeal to state Government

It is a pity that the legal status of the raw material for a million dollar industry is yet to be defined. It is high time the state government understands the significance of domestic trade reforms not only to benefit the government or the private sector but as a smart poverty alleviation strategy as millions of poor families are dependent on industrial raw materials of forest and mineral origin. Formalisation of dhibra trade would suo moto increase household income of hundreds of thousands of poor pickers.

Therefore, our sincere appeal to Government of Jharkhand is;

- Since dhibra is found inside and brought from the forests, it should be declared as a ‘forest produce’ under section 34 of Bihar Forest Produce (Regulation of Trade) Act, 1984³.

- Using the above provision, allow collection of dhibra from inside the forests as a conservation strategy with the condition that such operations must not damage tree crops.

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³ Bihar Forest Produce (Regulation of Trade) Act, 1984 still applicable in Jharkhand
Annexure

In the event of conflicts in transit and transport of minor minerals, following are some cases in different Courts in India referring to the definition of forest produce as given in the Indian Forest Act 1927. The interpretations and orders have largely followed on the basis of minerals being a forest produce.

Sri Rohit Newar And Ors. Etc. vs State Of Assam And Ors. on 5 May, 2004

With regard to the authority of the State government’s power to collect any royalty on river silt, question before the Hon’ble High Court was, whether “earth is a minor mineral and hence a forest produce under the Assam Forest Regulation, 1891”. The Court after holding that “earth” is a minor mineral held that the same couldn’t be subjected to the levy if it is not removed from forest. In other words if the earth is removed from a forest, it being a “Minor Mineral”, removal therefrom would attract the levy.

NTPC Limited & Another vs State Of U.P. & Others on 11 November, 2011

The U.P. Minor Mineral (Concessions) Rules, 1963 provide that any mineral can be transported in U.P on form MM-11 as provides that if the mineral is forest produce as defined under Section 2 (4) (b) of the Indian Forest Act, 1927, the transit fee is leviable irrespective of the fact, whether the same is being transported on Form MM-11. The minor mineral/major mineral (product of mines or quarries) is a forest produce. The words ‘brought from’ used in definition under Section 2 (4) (b) also connotes the meaning if transported through forest would amount to a forest produce as held in Kumar Stone’s case.

National Mineral Development ... vs The State Of Karnataka, By Its ... on 24 May, 2004

The Forest Act clearly indicates that the Act intends to protect, preserve all the forest product, growth and development of various types of forest produces in the State. In view of the declaration made under Section 2 of the MMRD Act, it is clear that the Union of India has taken under its control the regulation of mines and development of minerals to the extent it provided is under the Act.
In our considered opinion…..the inclusion of definition of forest produce set out under Section 2(7)(b)(iv) of the Forest Act, in our considered view, does not in any manner operate in conflict with the provisions contained in MMRD Act. The definition of forest produce under 2(7)(b)(iv) of the Forest Act has to be understood only for the purpose of giving effect to the regulatory measures provided under the Act and the Rules framed thereunder. The object of the said Rules is only to control or regulate the movement or the activities of the people who deal with the forest produce, so that by virtue of the licence or lease obtained by them to remove minerals, they do not indulge in any other activity which would affect the other forest produce.

Under these circumstances when they are given permission to exploit the minerals in an area where forest wealth, in the form of various types of forest produce is located, we do not find anything wrong or unreasonable on the part of the State Government providing for a law which obliges the person who exploits the minerals by virtue of the leases taken from the Government to obtain the transport or movement passes for the purpose of transportation of minerals exploited by him.

The object of the MMRD Act and the Forest Act and the Rules framed thereunder are quite different and distinct and there is no conflict between the two. The Court was of the view that Section 2(7)(b)(iv) of the Act and Rules 144-148 of the Rules cannot be struck down on the ground that the State legislature, by giving expanded definition of forest produce under Section 2(7)(b)(iv) of the Act so as to include Minerals also which has been provided under Section 3(a) of the MMRD Act has encroached upon the field occupied by the Central Government.

The observation made by the Supreme Court in the decisions referred to above by us also fully supports the view we have expressed above. Therefore, we do not find any merit in the first submission made by the learned Counsel for the appellants that the State has by including ‘minerals’ in the definition of ‘forest produce’ under Section 2(7) of the Act and the Rules made under the Act referred to earlier, has encroached upon the field occupied by the law made by the Parliament.