

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1161 of 2017

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Sharda Mica Mining Co., At & PO- Jhumari Telaiya, District Kodarma (Jharkhand), through its authorised and managing partner Sri Mukul Modi, son of Late Mahendra Prasad Barnwal, resident of Village Jhumari Telaiya, P.O. and P.S. Jhumari Telaiya, District- Kodarma, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar, through its Chief Secretary.
2. Department of Mines and Geology, Government of Bihar, New Secretariat, Off Bailey Road, Patna through its Principal Secretary.
3. Joint Secretary-cum-Director, Mines and Geology Department, Government of Bihar, Patna.
4. Assistant Director Mines Nawada, Bihar.
5. Department of Environment and Forest, Government of Bihar, Sichai Bhawan, Patna.
6. Principal Chief Conservator of Forest, Environment and Forest Department, Government of Bihar, Patna.
7. Divisional Forest Officer, Forest Division, Nawada.
8. Ministry of Environment and Forest, Government of India, New Delhi through its Secretary.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Adv. Mr. Abhimanyu Vats, Adv. Mr. Rajni Kant Singh, Adv. Mr. Prince Kumar Mishra, Adv.
For the Respondent-State:		Mr. Bipin Kumar, AC to SC-3
For the Respondent/s	:	Mr. Naresh Dixit, Adv. Mr. Lalan Kumar, Adv.
For the Respondent-UOI	:	Mr. S.D. Sanjay, Addl. Sg. Mr. A.B. Mathur, CGC

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT

Date : 28-02-2019

This writ petition filed under Article 226 of the Constitution of India prays for issuance of a writ in the nature of certiorari for quashing the letter dated 15.11.2016 issued under the signature of the Joint Secretary cum Director, Department of Mines and Geology, Government of Bihar, Patna, whereby the



petitioner has been intimated that his application for renewal of the mining lease in respect of mica mines in Mauza Chatkari, District- Nawada admeasuring 501 acres has been rejected. A copy of the order is impugned at Annexure 12 to the writ petition.

The petitioner alongside prays for a direction in the nature of mandamus to command the respondents to act in accordance with the amended provisions of section 8A of the Mines and Minerals (Development and Regulation) (Amendment) Act, 2015 (hereinafter referred to as the 'Amendment Act, 2015'), whereby the lease of the petitioner stood extended for a period of 50 years.

The petitioner also seeks a declaration that it would be entitled to carry on the mining activities on getting necessary statutory clearances as required under the Environment Impact Notification, 2006.

Before I would be dealing with the arguments advanced on behalf of the parties in context with the issue raised, I deem it proper to make reference to some dates which I find relevant for the purpose of disposal of the present writ petition and is reflected from the pleadings on record.

1949 : The first lease for mica mining in the district of



Nawada was granted to M/s Chatturam Horilram (P) Ltd., Jhumari Telaiya.

1969 : The lease granted to M/s Chatturam Horilram (P) Ltd. was renewed for another period of 30 years.

1982 : The lessee M/s Chatturam Horilram (P) Ltd. surrendered the lease.

12.01.1982: The Government of Bihar in its Cabinet meeting resolved to hold that no prior sanction (NOC) was required from the Central Government for granting mining lease in respect of a mining area lying in forest land where the mining operation was being done by M/s Chatturam Horilram (P) Ltd. long before the Forest (Conservation) Act, 1980 came into force.

14.03.1984: Following the Cabinet resolution that offers were invited in respect of mining area earlier held by M/s Chatturam Horilram (P) Ltd. vide Annexure 1 at page 30.

05.03.1986: A registered lease-deed was executed in between the Governor of Bihar and the petitioner represented through its partner for a period of 20 years under the Mineral Concession Rules, 1960



vide Annexure 2 at page 33.

30.04.1991: The petitioner surrendered 341 acres out of the 842 acres leased out in favour of the petitioner.

04.12.1991: The Collector, Nawada accepted the application vide order dated 23.11.1991 which was communicated through order dated 04.12.1991.

03.02.2005: Since the lease period of 20 years was to expire on 05.03.2006 in terms of Mineral Concession Rules, 1960, the petitioner filed application for renewal of the mining lease by way of first renewal.

18.07.2014: Rule 24A(6) of the Mineral Concession Rules, 1960 was amended with effect from 18.07.2014 whereby the lease renewal applications filed within time and remained pending, was given deemed extension for two years or until the State Government passes order thereon.

12.01.2015: Section 8A was added vide Mines and Minerals (Development and Regulation) (Amendment) Act, 2015 and under sub-section (6) thereof, the lease granted in favour of a firm would be extended up to the period ending 31.03.2020 or



till completion of the renewal period or for a period of 50 years from the grant of such lease whichever is later.

10.02.2015: Vide notification No.423 dated 10.02.2015 'Mica' was declared as a 'Minor Mineral'.

21.07.2016: The petitioner applied for 'environmental clearance' before the Ministry of Environment and Forest, Government of India and the Expert Appraisal Committee directed the petitioner to satisfy certain conditions after recording Terms Of Reference for a period of 3 years which is valid until 28.11.2019.

15.11.2016: The impugned order was passed.

29.11.2016: The petitioner was granted Terms Of Reference which is valid for 3 years for submission of EIA/EMP reports.

Mr. Mrigank Mauli, learned counsel has appeared for the petitioner along with Mr. Abhimanyu Vats, the Advocate on Record, the State in its Department of Mining represented through Mr. Lalan Kumar, learned Assisting Counsel to Mr. Naresh Dikshit and the Union of India is represented through Mr. A.B. Mathur, learned Central



Government Counsel.

According to Mr. Mauli, the lease executed in favour of the petitioner on 05.03.1986 vide Annexure 2 was valid until 05.03.2006 and 12 months prior to the expiry the petitioner in conformity with rule 24A of the Mineral Concessions Rule, 1960 (hereinafter referred to as the 'M.C. Rules') applied for renewal and which renewal application remained pending until rule 24A was amended vide amendment notification dated 18.07.2014 whereby pending renewal application(s) were granted extension of 2 years or until any adverse order was passed by the licensing authority i.e. the State Government.

It is the argument of Mr. Mauli that while the lease enjoyed a deemed renewal under the amended provisions of rule 24A(6) of the 'M.C. Rules' that section 8A was incorporated by way of amendment in the Act vide 'Amendment Act, 2015' whereby the mining lease was to be granted for a period of 50 years and all pending lease where the mineral was used, other than for captive purpose, got deemed extension up to the period 31.03.2020 with effect from the date of expiry of the period of renewal last made or till completion of the renewal period, if any, or a period of 50



years from the date of grant of such lease whichever is later subject to the compliance of the terms and conditions of lease.

According to Mr. Mauli, that the renewal application remained pending since 03.02.2005 with no order passed on the first renewal, as per the stipulation present in section 8A of 'the Amendment Act, 2015', the lease of the petitioner got extended until the year 2036 under section 8A(6) thereof.

It is the argument of Mr. Mauli that since on the date when the petitioner filed his application for renewal i.e. 03.02.2005, there were no complaint of violation of any condition of lease by the petitioner, the lease period got extended by operation of law until the year 2036.

Learned counsel in support of his argument has relied upon a judgment of the Supreme Court reported in **2016(4) PLJR (SC) page 1 (Common Cause vs. Union of India)** and in particular reference to the opinion expressed at paragraph 32(iv) he submits that the case of the petitioner is covered by the conclusion drawn by the Supreme Court in respect of the issue which falls for consideration in the present case as well.

Learned counsel has next referred to a judgment of



the Jharkhand High Court rendered in a case arising from **W.P. (C) No.2027 of 2016 (M/s Shah Brothers vs. The Union of India)** which was heard analogous with **W.P.(C) No.2207 of 2016 and W.P. (C) 2515 of 2016**. Learned counsel in particular reference to the opinion expressed by the learned Single Judge of the Jharkhand High Court at paragraphs 72 to 84 has submitted that the learned Single Judge placing reliance on the judgment of the Supreme Court rendered in **Common Cause** (supra) has concluded in paragraph 84 that the State in such situation has no jurisdiction to refuse extension of the mining lease.

It is the submission of Mr. Mauli that apart from the fact that the order impugned is not sustainable on merits it is also fit to be set aside on grounds that it has been passed without any opportunity of hearing to the petitioner rather it is on mere self satisfaction that an extreme action has been taken by the department which is communicated through letter of the Joint Secretary cum Director, Department of Mines and Geology, Government of Bihar, Patna which neither encloses any such decision of the department nor the letter of the Collector, Nawada dated 05.05.2014 referred to at paragraph 6 of the impugned communication recommending a refusal for



renewal so prayed, was handed over to the petitioner.

The arguments of Mr. Mauli has been contested by learned counsel appearing for the respondent-State in its Mining Department as well as the Union of India who have chosen to defend the order impugned at Annexure 12 on grounds that sufficient reasons existed for refusal of renewal and since the petitioner was found wanting in compliance to the pre-requisites for such renewal viz obtaining 'No Objection' from the Central Government as the mining area fell in forest area; the petitioner did not produce 'environmental clearance' from the Ministry of Environment and Forest nor has produced any 'No Dues Certificate' for such renewal, that it was rejected.

Mr. Lalan Kumar, learned counsel appearing for the Mining Department has in reference to the judgment of the Supreme Court in the case of **Common Cause vs. Union of India** reported in **(2017)9 SCC 499** has submitted that production of 'environmental clearance' is a condition precedent for such renewal and that the petitioner has failed to produce the same, there is no occasion to interfere with the order impugned in the writ petition.

It is further the argument of Mr. Lalan Kumar that



since during the pendency of the matter, 'mica' is now declared a 'minor mineral' regulated under the provisions of the Bihar Minor Mineral Concession Rules, 1972 as amended from time to time, it is the provisions present thereunder which would regulate the issue of renewal and the reliance by the petitioner on the provisions is of no avail.

I have heard learned counsel for the parties and I have perused the records.

The relevant facts I have already placed on record in reference to the dates and sequence of events and thus I do not deem it necessary to engage in any further discussion with the factual aspect of the matter.

The lease executed by the Governor of Bihar in favour of the petitioner on 05.03.1986 vide Annexure 2 was valid until 05.03.2006 and 12 months prior thereto a renewal application was filed by the petitioner on 03.02.2005 vide Annexure 3. According to Mr. Mauli, since no action was taken by the respondent-department on the application of renewal filed by the petitioner, the legal fiction created under rule 24A of the 'M.C. Rules' gave a deemed extension to the lease for a further period of 2 years or till the State Government in its Mining Department passed any order



thereon.

It is undisputed that until the filing of the renewal application on 03.02.2005 neither any complaint were made against the petitioner of violation of any terms and conditions of lease or of any statutory violation nor any order was passed on the renewal application. It is again not in dispute that the renewal application was filed 12 months in advance of the expiry. With these conditions being satisfied, the provisions of rule 24A(6) of the 'M.C. Rules' as it stood amended vide 'Amendment Act 2014' effective from 18.07.2014, gave the lease, a deemed extension for next 2 years or till the State Government chose to pass any order thereon.

The impugned order came to be passed only on 15.11.2016 but much prior thereto, the 'Amendment Act, 2015' came into force incorporating section 8A to 'the Act' which gave all leases, a validity period of 50 years and in so far as the renewal applications are concerned, sub-sections (5) and (6) thereof which relate to leases for captive/non-captive purposes respectively, the amended provision allows extension until 31.03.2030/31.03.2020 or till the period of renewal or in case of first renewal, until a period of 50 years from the date of 1st grant of such lease, whichever is later.



Obviously, the petitioner seeking a first renewal to his lease executed on 05.03.1986 was awaiting renewal since its filing on 03.02.2005 and thus sailed into the legal fiction created under the amended provisions of Rule 24A(6) of the 'M.C. Rules' initially on 18.07.2014 followed by section 8A(6) incorporated vide 'Amendment Act, 2015' and consequentially the lease got a deemed extension until 05.03.2036 i.e. the period of 50 years since its execution on 05.03.1986.

Since the judgment rendered by a learned Single Judge of the Jharkhand High Court in the case of **Shah Brothers** (supra) relied by Mr. Mauli places heavy reliance on the judgment of **Common Cause** (supra), I am persuaded to reproduce paragraph 32(iv) which draws the contest in favour of the petitioner and runs under:

“32. Based on the considerations recorded above, we summarise our conclusions as under:-

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... ..

(iv) A leaseholder who has moved an application for “first renewal” of the original mining lease, at least twelve months before the original lease was due to expire, and such application has not been rejected, will be considered to be a valid leaseholder having a subsisting right to carry on mining operations, till the expiry of two years after 18.7.2014, i.e. up to 17.7.2016, as is apparent from a conjoint reading of the unamended and amended Rule 24-A of the Mineral Concession Rules. Such



leaseholder would have the benefit of sub-sections (5) and (6) of Section 8-A of the amended MMDR Act.

Now in view of the legal position so well settled where the lease of the petitioner got deemed extension initially under rule 24A(6) of the 'M.C. Rules' followed by section 8A(6) of the 'Amendment Act, 2015', with effect from 12.01.2015, I fail to appreciate as to how the Notification No.423 dated 10.02.2015 whereby 'mica' was notified as a 'minor mineral' for its regulation under the Bihar Minor Mineral Concession Rules, 1972, made any difference to the status of the lease which had already got extended much prior thereto for a period of 50 years by legal fiction.

No doubt section 8A(6) of the 'Amendment Act, 2015' granted deemed renewal to all leases subject to compliance of the terms and conditions of lease but then a plain reading of the impugned communication nowhere shows any default by the petitioner in complying with the conditions of lease.

This matter was earlier heard by this Court on 15.12.2017 and it is because the counter affidavit was yet to be filed by the concerned respondents that the matter got adjourned but the issues that find noted in the order dated



15.12.2017 were by itself sufficient to allow the writ petition because there can neither be a contest on the statutory position explained above nor in the nature of communication impugned at Annexure 12 issued under the signature of the Joint Secretary cum Director, Department of Mines and Geology, Government of Bihar there is anything left for speculation that it was passed without due opportunity of hearing to the petitioner.

It is in the process of completion of pleadings that sufficient time has lapsed but even the filing of the counter affidavit(s) by the Union of India or the State Government in its Mining Department does not alter the position or changes the course of the writ petition which as per the discussions above is already a forgone conclusion.

In so far as the 6 objections which have been raised in the impugned communication for refusing a renewal is concerned, I am of the view that item nos.1 and 2 are situations which were much available to the respondent-department when the lease was executed in the year 1986 or even before and when the items mentioned therein was, taken care of, as manifest from the Gazette Notification inviting applications for settlement of lease as well as in the lease



document itself.

Demonstrably, that mining operations were being carried out in the area since 1949 with no objections forthcoming either from the Central Government or the State Government and in such circumstance the objections at item no.1 and 2 have no legs to stand as evident from the recitals to the lease deed. In fact a plain reading of the Gazette Notification dated 14.03.1984 in so far as it relates to the present issue appearing at running page 32 of the pleadings would confirm that the State Government in reference to the previous lease executed in favour of Chatturam Horilram (P) Ltd. which, as explained above, was surrendered in 1982 decided to again settle under the Mineral Concession Rules and invited applications following such decision.

It is difficult to comprehend that where the State Government after having satisfied itself as to the nature and character of the mining area, had thrown it open for settlement on 14.3.1984 which was followed by execution of a formal lease deed by the Governor of Bihar in favour of the petitioner on 05.03.1986 there would remain any occasion for raising objection of the present kind.

In so far as furnishing of 'environmental clearance'



is concerned, the petitioner having applied for 'environmental clearance' on 21.07.2016, has been granted Terms Of Reference by the Ministry of Environment through letter dated 29.11.2016 which is valid for 3 years as manifest from Annexure 8 for submission of EIA or EMP report and thus even on such account the renewal could not have been refused.

In so far as 'No Dues Certificate' is concerned, according to the petitioner, it was attached with the renewal application and which shows that the order was passed without application of mind.

Although the petitioner has individually dealt with the issues raised in the impugned communication dated 15.11.2016 whereby the decision of the State Government was communicated, the decision of the State Government is yet to be placed on record of the proceeding although counter affidavit has been filed by the respondent-State in its Mining Department. Even otherwise I am of the considered opinion that the issues noted in the impugned communication cannot lay a foundation for refusal of renewal which the petitioner had already obtained by virtue of the 'Amendment Act, 2015.

The discussions above are sufficient to strike down



the order impugned in this writ petition at Annexure 12 for it is neither sustainable on the statutory prescriptions underlying 'the Act' and the 'M.C. Rules' nor it is sustainable on the compliance of the principles of natural justice.

The issue is what happens next because a deemed renewal does not *ipso facto*, entitle the petitioner to operate the mines unless the lease-holder has been able to obtain statutory clearance/approval from the concerned authority in the Government of India in its Ministry of Environment and Forest.

A somewhat similar situation was posed before the learned Single Judge of the Jharkhand High Court in the case of **M/s Shah Brothers and others** (supra) and since Mr. Mauli so heavily relied on the said judgment to espouse the cause of the petitioner herein, I am tempted to reproduce some of the extract of the judgment which deals with this consequential part of the contest and reads under:

“80. The case of all the writ petitioners are of first renewal. Respondent-State in its counter affidavit have not refuted that these lease holders had made a valid application 12 months before the date of expiry of the lease period in their case. The application for renewal were admittedly not rejected before 12.1.2015 i.e. coming into force of the Amended Act, 2015. In that way, the application for renewal made before the State Government on the part of individual writ petitioners/lessees for first renewal were



admittedly pending as on 12.1.2015 i.e. cut off date. It is also undisputed that in none of these cases, the lease of the writ petitioners/lessees were 'terminated' or were 'determined' or were declared as 'lapsed' by an express order passed by the State Government. None of the conditions stipulated under Section 8(A)(9) therefore applied to the case of the writ petitioners/lessees to exclude their cases from the cover of the provisions under Section 8 A (3), (5) and (6) of the Amended Act. Therefore in view of the ratio rendered by the Apex Court in the case of **Common Cause** (supra), the State Government could not have assumed an authority and jurisdiction to deny extension to the individual writ petitioners/lessees under the provisions of Section 8A of the M.M.D.R. Act, 1957.

81. However, having said that it is equally imperative to remember the caveat laid down by the Apex Court at Para 27 of the judgment in the case **Common Cause** (supra), quoted in the earlier part of the judgment as well. The benefit of extension of lease period postulated under Section 8A of the M.M.D.R. Act is applicable subject to a further overriding condition namely that all the terms and conditions of the lease have been complied with. The lease holder who does not satisfy any of the required conditions of the lease, such as postulated clearance/approval/consent would not be entitled to benefits extended under Sub-section 5 and 6 of the 8A of the M.M.D.R. Act. It is therefore clear that none of the lessees who have not complied with the terms and conditions of the lease or have failed to obtain postulated clearance/approval/consent would be entitled to benefit of the extension period.

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87. Having held as above, it is at the same time clarified in unambiguous terms that no such lessee including the writ petitioners who have not complied with the terms and conditions of the lease or have failed to obtain statutory clearances/compliance/consent to operate shall be entitled to carry out mining operations and avail of the benefits of deemed extension. The writ petitioners on the one hand and the State



Government on the other hand have through their affidavits sought to counter each other on the question of compliance of the terms and conditions of the lease or in the matter of obtaining statutory clearances. The State Government being the lessor, shall without any delay undertake the exercise by giving opportunity to the individual lessees/writ petitioners to satisfy that the terms and conditions of the lease have been complied with and that all postulated statutory clearances/compliances/consent has been obtained by them for carrying out the mining operations.

88. Writ petitioners in WPC Nos. 2027/2016 & 2207/2016 shall therefore satisfy the lessor i.e. State Government regarding the compliance of the terms and conditions of the lease and that all the statutory clearances/compliances/consent has been obtained, within a period of eight weeks from the date of receipt of such notice. As per the assertion of the writ petitioner in WPC No. 2515/2016, it has not obtained the mandatory statutory clearances and was not carrying out mining operations. By the interim order dated 20.05.2016, it was also restrained from carrying out mining operations. It is also required to satisfy the State Government regarding compliance of the terms and conditions of the lease and that it has obtained the statutory clearances/compliances/consent similarly within the period of eight weeks from the date of receipt of such notice. Only if it is able to satisfy the State Government that such compliances/clearances/consent has been done/obtained, that it shall be allowed to commence the mining operations thereafter.

89. In view of the observations made by the Hon'ble Supreme Court at Para-27 of the judgment rendered in the case of **Common Cause** (Supra), such lease holders who does not satisfy any of the required conditions of the lease and have not obtained the postulated clearances/approval/consent, would not be entitled to the benefits of deemed extension. Such lessee would therefore be not entitled to operate the mines till such statutory clearances are obtained and terms and conditions of the lease are satisfied. The State Government and the Statutory authorities are



obliged in law to examine any/all such instances relating to compliance of terms and conditions of the lease or any breach thereof and satisfaction of statutory clearances/compliance/consent by the individual lessees before carrying out the mining operations. In case of any such instances being noticed, the State Government and the Statutory authority are required to act in accordance with law and as per the procedure prescribed under the M.M.D.R Act, M.C.R., 1960, M.C.D.R., 1988, Forest (Conservation) Act, 1980, The Environment (Protection) Act, 1986, The Water (Prevention and Control of Pollution) Act, 1973 and The Air (Prevention and Control of Pollution) Act, 1981 as well as any other Enactment/Statute/Notification applicable to such lessees. The State Government and/or such other authorities may also direct stoppage of mining operations pending such decision in case of such violations or failure to comply the terms and conditions of the lease within the time stipulated or failure to obtain the statutory clearances/compliances/consent. It is important to state here that no such lessee seeking the benefit of deemed extension under amended Section 8A should be granted an indefinite period of time to ensure compliance of terms and conditions of the lease or to obtain such mandatory statutory clearances/compliance/consent. A reasonable period up to a maximum of 6 months at the most can be stipulated for any such lessee to obtain the statutory clearances/compliance/consent. Any such lessee is required to remedy the breach and comply the terms and conditions of the lease within the time stipulated under the M.C.R. 1960, failing which, the State Government should proceed to determine the lease of such lease holder in accordance with law and the procedure prescribed under the M.C.R., 1960. The intention of the parliament by introducing the amended provisions under Section 8A cannot be defeated by defaulting lease holders by having a lease for an indefinite length of time thereby denying the opportunity to open the lease hold land for auction through a competitive bidding in the larger interest of the State and the Public Exchequer as conceived under Section 8A(4) of the amended Act.”



The reason why I have extracted the part of the judgment so relied upon by Mr. Mauli is, because of the consequential relief so prayed in the writ petition. There is a subtle distinction between 'an extension' and 'a renewal' of a lease. In my opinion even if the petitioner has been able to sail past the obstruction put up by the State Government to grant renewal relying upon the amended provisions of the 'M.C. Rules' and 'the Act', it yet does not entitle him to carry out mining operations until they obtain statutory clearance/ approval from the authorities connected therewith.

No doubt the petitioner has applied for clearance before the Ministry of Environment and Forest, Government of India who have also granted Terms Of Reference on 29.11.2016 but then the statutory clearance is yet awaited and thus until such time that the petitioner obtains such clearance, certainly he cannot be permitted to carry on the mining operations.

In result, the order of the State Government as communicated through letter dated 15.11.2016 issued under the signature of the Joint Secretary cum Director, Department of Mines and Geology, Government of Bihar, Patna cannot be upheld and is accordingly set aside.



The matter is remitted to the Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna to consider the matter afresh and in the light of the discussions above and whereafter to pass appropriate orders on the renewal application in accordance with law, with due opportunity of hearing to the petitioner, which order be passed within six weeks of receipt/production of a copy of this judgment.

It goes without saying that while the State in its Mining Department is under an obligation to proceed in the matter in tune with the statutory provisions, if the petitioner wants to initiate this mining operations it needs to satisfy the department on the issue of statutory clearance/approval.

The writ petition is allowed with the directions/ observations above.

(Jyoti Saran, J)

skpathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.03.2019
Transmission Date	NA

