

Rural Litigation and Entitlement Kendra, Dehradun and Others

Vs

State Of U.P. and Others

And

Devaki Nandan Pandey

Vs

Union of India and Others

Writ Petitions Nos. 8209 and 8821 of 1983

(A. P. Sen, Ranganath Misra, P. N. Bhagwati, JJ)

12.03.1985

ORDER

1. This case has been argued at great length before us not only because a large number of lessees of lime stone quarries are involved and each of them has painstakingly and exhaustively canvassed his factual as well as legal points of view but also because this is the first case of its kind in the country involving issues relating to environment and ecological balance and the questions arising for consideration are of grave moment and of significance not only to the people residing in the Mussoorie Hill range forming part of the Himalayas but also in their implications to the welfare of the generality of people living in the country. It brings into sharp focus the conflict between development and conservation and serves to emphasise the need for reconciling the two in the larger interest of the country. But since having regard to the voluminous material placed before us and momentous issues raised for decision, it is not possible for us to prepare a full and detailed judgment immediately and at the same time, on account of interim order made by us, mining operations carried out through blasting have been stopped and the ends of justice require that the lessees of lime stone quarries should know, without any unnecessary delay, as to where they stand in regard to their lime stone quarries we propose to pass our order on the writ petitions. The reasons for the order will be set out in the judgment to follow later.

2. We had by an Order dated August 11, 1983 appointed a Committee consisting of Shri D. N. Bhargav, Controller General, Indian Bureau of Mines, Nagpur, Shri M. S. Kahlon, Director General of Mines Safety and Col. P. Mishra, Head of the Indian Photo Interpretation Institute (National Remote Sensing Agency) for the purpose of inspecting the lime stone quarries mentioned in the writ petition as also in the list submitted by the Government of Uttar Pradesh. This Committee which we shall hereinafter for the sake of convenience refer to as the Bhargav Committee, submitted three reports after inspecting most of the lime stone quarries and it divided the lime stone quarries into three groups. The lime stone quarries comprised in category A were those where in the opinion of the Bhargav Committee the adverse impact of the mining operations was relatively less pronounced; category B comprised those lime stone quarries where in the opinion of the Bhargav Committee the adverse impact of mining operations was relatively more pronounced and category C covered those

lime stone quarries which had been directed to be closed down by the Bhargav Committee under the orders made by us on account of deficiencies regarding safety and hazards of more serious nature.

3. It seems that the Government of India also appointed a Working Group on Mining of Lime Stone Quarries in Dehradun-Mussoorie area, some time in 1983. The Working Group was also headed by the same Shri D. N. Bhargav who was a member of the Bhargav Committee appointed by us. There were five other members of the Working Group along with Shri D. N. Bhargav and one of them was Dr. S. Mudgal who was at the relevant time Director in the Department of Environment, Government of India and who placed the Report of the Working Group before the Court along with his affidavit. The Working Group in its Report submitted in September 1983 made a review of lime stone quarry leases for continuance or discontinuance of mining operations and after a detailed consideration of various aspects recommended that the lime stone quarries should be divided into two categories, namely category 1 and category 2; category 1 comprising lime stone quarries considered suitable for continuance of mining operations and category 2 comprising the lime stone quarries which were considered unsuitable for further mining.

4. It is interesting to note that the lime stone quarries comprised in category A of the Bhargav Committee Report were the same lime stone quarries which were classified in category 1 by the Working Group and the lime stone quarries in categories B and C of the Bhargav Committee Report were classified in category 2 of the Report of the Working Group. It will thus be seen that both the Bhargav Committee and the Working Group were unanimous in their view that the lime stone quarries classified in category A by the Bhargav Committee Report and category 1 by the Working Group were suitable for continuance of mining operations. So far as the lime stone quarries in category C of the Bhargav Committee Report are concerned, they were regarded by both the Bhargav Committee and the Working Group as unsuitable for continuance of mining operations and both were of the view that they should be closed down. The only difference between the Bhargav Committee and the Working Group was in regard to lime stone quarries classified in category B. The Bhargav Committee Report took the view that these lime stone quarries need not be closed down, by it did observe that the adverse impact of mining operations in these lime stone quarries was more pronounced, while the Working Group definitely took the view that these lime stone quarries were not suitable for further mining.

5. While making this Order we are not going into the various ramifications of the arguments advanced before us but we may observe straight away that we do not propose to rely on the Report of Prof. K. S. Valdia, who was one of the members of the Expert Committee appointed by us by our Order dated September 2, 1983, as modified by the Order dated October 25, 1983. This Committee consisted of Prof. K. S. Valdia, Shri Hukum Singh and Shri D. N. Kaul and it was appointed to enquire and investigate into the question of disturbance of ecology and pollution and affectation of air, water and environment by reason of quarrying operations or stone crushers or lime stone kilns. Shri D. N. Kaul and Shri Hukum Singh submitted a joint report in regard to the various aspects while Prof. K. S. Valdia submitted a separate report. Prof. K. S. Valdia's report was confined largely to the geological aspect and in the report he placed considerable reliance on the Main Boundary Thrust (hereinafter shortly referred to as M.B. T.) and he took the view that the lime stone quarries which were dangerously close to the M.B.T. should be closed down, because they were in this sensitive and vulnerable belt. We shall examine this Report in detail when we give our reasons but we may straight away point out that we do not think it safe to direct continuance or discontinuance of mining operations of lime stone quarries on the basis of the M.B.T. We are therefore not basing our conclusions on the Report of Prof. K. S. Waldia but while doing so we may add that we do not for a moment wish to express any doubt on the correctness of his Report.

6. We shall also examine in detail the question as to whether lime stone deposits act as aquifers or not. But there can be no gainsaying that lime stone quarrying and excavation of the lime stone deposits do seem to affect the perennial water springs. This environmental disturbance has however to be weighed in the balance against the need of lime stone quarrying for industrial purposes in the country and we have taken this aspect into account while making this order.

7. We are clearly of the view that so far as the lime stone quarries classified in category C in the Bhargav Committee Report are concerned which have already been closed down under the directions of the Bhargav Committee, should not be allowed to be operated. If the lessees of these lime stone quarries have obtained any stay order from any court permitting them to continue the mining operations, such stay order will stand dissolved and if there are any subsisting leases in respect of any of these lime stone quarries they shall stand terminated without any liability against the State of Uttar Pradesh. If there are any suits or writ petitions for continuance of expired or unexpired leases in respect of any of these lime stone quarries pending, they will stand dismissed.

8. We would also give the same direction in regard to the lime stone quarries in the Sahasradhara Block even though they are placed in category B by the Bhargav Committee. So far as these lime stone quarries in Sahasradhara Block are concerned, we agree with the Report made by the Working Group and we direct that these lime stone quarries should not be allowed to be operated and should be closed down forthwith. We would also direct, agreeing with the Report made by the Working Group that the lime stone quarries placed in category 2 by the Working Group other than those which are placed in categories B and C by the Bhargav Committee should also not be allowed to be operated and should be closed down save and except for the lime stone quarries covered by mining leases Nos. 31, 36 and 37 for which we would give the same directions as we are giving in the succeeding paragraphs in regard to the lime stone quarries classified as category B in the Bhargav Committee Report. If there are any subsisting leases in respect of any of these lime stone quarries they will forthwith come to an end and if any suits or writ petitions for continuance of expired or unexpired leases in respect of any of these lime stone quarries are pending, they too will stand dismissed.

9. So far as the lime stone quarries classified as category A in the Bhargav Committee Report and/or category 1 in the Working Group Report are concerned, we would divide them into two classes, one class consisting of those lime stone quarries which are within the city limits of Mussoorie and the other consisting of those which are outside the city limits. We take the view that the lime stone quarries falling within category A of the Bhargav Committee Report and/or category 1 of the Working Group Report and falling outside the city limits of Mussoorie, should be allowed to be operated subject of course to the observance of the requirements of the Mines Act, 1952, the Metalliferous Mines Regulations, 1961 and other relevant statutes, rules and regulations. Of course when we say this, we must make it clear that we are not holding that if the leases in respect of these lime stone quarries have expired and suits or writ petitions for renewal of the leases are pending in the courts, such leases should be automatically renewed. It will be for the appropriate courts to decide whether such leases should be renewed or not having regard to the law and facts of each case. So far as the lime stone quarries classified in category A in the Bhargav Committee Report and category 1 in the Working Group Report and falling within the city limits of Mussoorie are concerned, we would give the same direction which we are giving in the next succeeding paragraph in regard to the lime stone quarries classified as category B in the Bhargav Committee Report.

10. That takes us to the lime stone quarries classified as category B in the Bhargav Committee Report and category 2 in the Working Group Report. We do not propose to clear these lime stone

quarries for continuance of mining operations nor to close them down permanently without further enquiry. We accordingly appoint a high powered Committee consisting of Mr D. Bandyopadhyay, Secretary, Ministry for Rural Development as Chairman and Shri H. S. Ahuja, Director General, Mines Safety, Dhanbad, Bihar, Shri D. N. Bhargav, Controller General, Indian Bureau of Mines, New Secretariat Building, Nagpur and two experts to be nominated by the Department of Environment, Government of India within four weeks from the date of this Order. The lessees of the lime stone quarries classified as category A in Bhargav Report and/or category 1 in the Working Group Report and falling within the city limits of Mussoorie as also the lessees of the lime stone quarries classified as category B in the Bhargav Committee Report will be at liberty to submit a full and detailed scheme for mining their lime stone quarries to this Committee (hereinafter called the Bandyopadhyay Committee) and if any such scheme or schemes are submitted, the Bandyopadhyay Committee will proceed to examine the same without any unnecessary delay and submit a report to this Court whether in its opinion the particular lime stone quarry can be allowed to be operated in accordance with the scheme and if so, subject to what conditions and if it cannot be allowed to be operated, the reasons for taking that view. The Bandyopadhyay Committee in making its report will take into account the various aspects which we had directed the Bhargav Committee and the Kaul Committee to consider while making their respective reports including the circumstance that the particular lime stone quarry may or may not be within the city limits of Mussoorie and also give an opportunity to the concerned lessee to be heard, even though it be briefly. The Bandyopadhyay Committee will also consider while making its report whether any violations of the provisions of the Mines Act, 1952, the Metalliferous Mines Regulations, 1961 and other relevant statutes, rules and regulations were committed by the lessee submitting the scheme or schemes and if so, what were the nature extent and frequency of such violations and their possible hazards. The Bandyopadhyay Committee will also insist on a board plan of exploitation coupled with detailed mining management plans to be submitted along with the scheme or schemes and take care to ensure that the lime stone deposits are exploited in a scientific and systematic manner and if necessary, even by two or more lessees coming together and combining the areas of the lime stone quarries to be exploited by them. It should also be the concern of the Bandyopadhyay Committee while considering the scheme or schemes submitted to it and making its report, to ensure that the lime stone, on exploitation, is specifically utilised only in special industries having regard to its quality and is not wasted by being utilised in industries for which high grade lime stone is not required. The necessary funds for the purpose of meeting the expenses which may have to be incurred by the members of the Bandyopadhyay Committee will be provided by the State of Uttar Pradesh including their travelling and other allowances appropriate to their office. The State of Uttar Pradesh will also provide to the members of the Bandyopadhyay Committee necessary transport and other facilities for the purpose of enabling them to discharge their functions under this order. If any notices are to be served by the Bandyopadhyay Committee the District Administration of Dehradun will provide the necessary assistance for serving of such notices on the lessees or other interested parties. The Bandyopadhyay Committee will also be entitled before expressing its opinion on the scheme or schemes submitted to it, to hear the petitioners, the interventionists in this case and such other persons or organisations as may be interested in maintenance and preservation of healthy environment and ecological balance. The Indian Bureau of Mines will provide secretarial facilities to the Bandyopadhyay Committee. The report submitted by the Bandyopadhyay Committee in each case will be considered by the Court and a decision will then be taken whether the lime stone quarry or quarries in respect of which the report has been made should be allowed to be operated or not. But until then these lime stone quarries will not be allowed to be operated or worked and the District Authorities of Dehradun will take prompt and active steps for the purpose of ensuring that these lime stone quarries are not operated or worked and no mining activity is carried on even

clandestinely. This order made by us will supersede any stay or any other interim order obtained by the lessee of any of these lime stone quarries permitting him to carry on mining operations and notwithstanding such stay order or other interim order or subsisting lease, the lessees shall not be entitled to carry on any mining activity whatsoever in any of these lime stone quarries and shall desist from doing so. The lessees of these lime stone quarries will also not in the meanwhile be permitted to rectify the defects pointed out in the orders issued by the District Mining Authorities but they may include the proposal for such rectification in the scheme or schemes which they may submit to the Bandyopadhyay Committee. We may however make it clear that non-rectification of the defects pursuant to the notices issued by the District Mining authorities shall not be taken advantage of by the State of Uttar Pradesh as a ground for terminating the lease or leases.

11. We may point out that so far as the lime stone quarries at Sl. Nos. 17 to 20 in category B in the Bhargav Committee Report are concerned we are informed that they have already been closed down and no further direction therefore is necessary to be given in regard to them save and except in regard to removal of the lime stone, dolomite and marble chips which may have already been mined and which may be lying at the site for which we are giving separate directions if one of the succeeding paragraphs in this Order.

12. The consequence of this Order made by us would be that the lessees lime stone which have been directed to be closed down permanently under this Order or which may be directed to be closed down permanently after consideration of the Report of the Bandyopadhyay Committee, would be thrown out of business in which they have invested large sums of money and expended considerable time and effort. This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safe-guarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment. However, in order to mitigate their hardship, we would direct the Government of India and the State of Uttar Pradesh that whenever any other area in the State of Uttar Pradesh is thrown open for grant of lime stone or dolomite quarrying, the lessees who are displaced as a result of this order shall be afforded priority in grant of lease of such area and intimation that such area is available for grant of lease shall be given to the lessees who are displaced so that they can apply for grant of lease of such area and on the basis of such application, priority may be given to them subject, of course, to their otherwise being found fit and eligible. We have no doubt that while throwing open new areas for grant of lease for lime stone or dolomite quarrying, the Government of India and the State of Uttar Pradesh will take into account the considerations to which we have adverted in this order.

13. We are conscious that as a result of this Order made by us, the workmen employed in the lime stone quarries which have been directed to be closed down permanently under this Order or which may be directed to be closed down permanently after consideration of the Report of the Bandyopadhyay Committee, will be thrown out of employment and even those workmen who are employed in the lime stone quarries which have been directed to be closed down temporarily pending submission of scheme or schemes by the lessees and consideration of such scheme or schemes by the Bandyopadhyay Committee, will be without work for the time being. But the lime stone quarries which have been or which may be directed to be closed down permanently will have to be reclaimed and afforestation and soil conservation programme will have to be taken up in respect of such lime stone quarries and we would therefore direct that immediate steps shall be taken for reclamation of the areas forming part of such lime stone quarries with the help of the already available Eco-Task Force of the Department of Environment, Government of India and the workmen who are thrown out of employment in consequence of this Order shall, as far as

practicable and in the shortest possible time, be provided employment in the afforestation and soil conservation programme to be taken up in this area.

14. There are several applications before us for removal of lime stone, dolomite and marble chips mined from the quarries and lying at the site and these applications also are being disposed of by this Order. So far as lime stone quarries classified as category A in the Bhargav Committee Report and/or category 1 in the Working Group Report and falling outside the city limits of Mussoorie are concerned, we have permitted the lessees of these lime stone quarries to carry on mining operations and hence they must be allowed to remove whatever minerals are lying at the site of these lime stone quarries without any restriction whatsoever, save and except those prescribed by any statutes, rules or regulations and subject to payment of royalty. So far as the other lime stone quarries are concerned, whether comprised in category A of Bhargav Committee Report or category 1 of the Working Group Report and falling within the city limits of Mussoorie or falling within Category B or category C of the Bhargav Committee Report or category 2 of the Working Group Report, there is a serious dispute between the lessees of these lime stone quarries on the one hand and the petitioners and the State of Uttar Pradesh on the other as to what is the exact quantity of minerals by the lessees and lying at the site. We had made an order on December 15, 1983 requiring the District Magistrate, Dehradun to depute some officer either of his Department or of the Mining Department to visit the site of these lime stone quarries for the purpose of assessing the exact quantity of lime stone lying there and to report in this connection. The District Magistrate, Dehradun deputed the Sub-Divisional Magistrates of Mussoorie and Dehradun and Tehsildar (Quarry) Dehradun to inspect the 20 lime stone quarries comprised in category C of the Bhargav Committee Report which had been ordered to be closed down under the directions of the Bhargav Committee and an affidavit was filed on behalf of the District Magistrate, Dehradun, by Kedar Singh Arya, Tehsildar (Quarry) Dehradun, annexing a chart showing the details of the minerals mined by the lessees of those lime stone quarries and lying at the site. Thereafter, when again the case came up for hearing before us on January 5, 1984, we, in order to allay any apprehensions on the part of the lessees that the District Authorities had not done their job correctly in assessing the quantity of minerals lying at the site, appointed a Committee of two officers, namely, Shri D. Bandyopadhyay and Director of Geology (Mines), Lucknow for the purpose of visiting the lime stone quarries which had been directed to be closed down and to assess the quantity of minerals lying on the site of those lime stone quarries after giving notice to the concerned lessees as also to the District Magistrate, Dehradun and the representatives of the petitioners. Pursuant to this order made by us, Shri D. Bandyopadhyay and the Director of Geology (Mines), Lucknow visited the lime stone quarries comprised in category C in the Bhargav Committee Report and directed to be closed down and assessed the quantity of minerals lying at the site of each of these lime stone quarries. The quantity of minerals lying at the site, according to Shri D. Bandyopadhyay and the Director of Geology (Mines), was very much less than what was claimed by the lessees and it does appear that though these lime stone quarries were directed to be closed down, illegal mining was being carried on clandestinely, because otherwise it is difficult to understand how the figures of the quantity of minerals lying at the site as assessed in December 1983 by the District Authorities became inflated when Shri D. Bandyopadhyay and Director of Geology (Mines) made their assessment in January 1984 and thereafter the figures again got inflated if the quantity now claimed by the lessees as lying on the site as correct. We do not, however, propose to go into the question as to what is the precise quantity of minerals mined by the lessees of these lime stone quarries and lying at the site at the time when these lime stone quarries were closed down under the directions of the Bhargav Committee. We would permit the lessees of these lime stone quarries to remove whatever minerals are found lying at the site or its vicinity, provided of course such minerals are covered by their

respective leases and/or quarry permits. Such removal will be carried out and completed by the lessees within four weeks from the date of this Order and it shall be done in the presence of an officer not below the rank of Deputy Collector to be nominated by the District Magistrate, Dehradun, a gazetted officer from the Mines Department nominated by the Director of Mines and a public spirited individual in Dehradun, other than Mr Avdesh Kaushal, to be nominated by Shri D. Bandyopadhyay. These nominations shall be made within one week from today and they may be changed from time to time depending on the exigencies of the situation. Notice of intended removal of minerals lying at the site shall be given by the lessees to the District Magistrate, Dehradun, Director of Mines, Dehradun and the person nominated by Shri D. Bandyopadhyay. No part of the minerals lying at the site shall be removed by the lessees except in the presence of the above mentioned three persons. The lessees will on the expiry of the period of four weeks submit a report to this Court setting out the precise quantities of minerals removed by them from the site of pursuant to this Order made by us. The lessees shall not be entitled to remove any minerals after the expiration of the period of four weeks.

15. Before we close we wish to express our sense of appreciation for the very commendable assistance rendered to us by Shri Pramod Dayal, learned advocate appearing on behalf of some of the lessees. He undertook the responsibility of arranging the various affidavits and written submissions in a proper and systematic manner and we must confess that but for the extremely able assistance rendered by him, it would not have been possible for us to complete the hearing of this case satisfactorily and to pass this order within such a short time. We would direct that the Government of India and the State of Uttar Pradesh should each pay a sum of Rs. 5000 to Shri Pramod Dayal for the work done by him. We may point out that this payment to Shri Pramod Dayal is not in lieu of costs but is an additional remuneration which we are directing to be paid in recognition of the very valuable assistance rendered by him to the Court.

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