

Rural Litigation and Entitlement Kendra

Vs

State of U. P. and Others.

Civil Miscellaneous Petition No. 26198 of 1988

(Ranganath Misra, M. N. Venkatachaliah JJ)

16.12.1988

ORDER

1. On August 30, 1988 the connected writ petitions bearing nos. 8209 and 8821 of 1983 were disposed of by this Court. The court observed (SCC p. 534, para 58) that : 'There is no dispute that continuance of mining operations affects environment and ecology adversely and at the same time creates a prejudicial situation against conservation of forests', and held : (SCC p. 515, para 16)

The writ petitions before us are not inter-partes disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live, in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court. Even if it is said that there was a final order, in a dispute of this type it would be difficult to entertain the plea of res judicata.

The court ultimately came to hold that mining activity in the area has to be stopped but taking into consideration the adverse consequences of total stoppage immediately, it observed : (SCC pp. 529-530, para 45)

It is the accepted position by all parties that low silica content limestone is necessary for manufacturing class steel. The earlier LD process is being abandoned by new factories and even some are switching over to new methods but for quite some time there would be demand for low Silica content limestone for manufacture of steel by the LD process. The alternate source which has been indicated in these two affidavits of the Union of India is not readily available to the fullest extent. The Gotan-Jaisalmer belt has to be worked out in full swing and that would take some time. The main difficulty for the Jaisalmer production to reach the consumers is the location of the mining area. It has no broad gauge rail connection and admittedly the location is in the interior. The consumer would immediately face transport difficulty until there is conversion of the railway track to broad gauge and surface transport facility improves. Even if these facilities are made available, the distant location is bound to reflect itself in the cost factor.

Keeping these aspects in view the court permitted the three ongoing mines covered by lease nos. 94, 72 and 96 to continue mining till their original leases expired subject to the conditions indicated in the judgment.

2. The court proceeded to hold : (SCC pp. 531-532, paras 52-53)

Apart from the three working mines specified above where the original lease period is yet to expire, there are six other A category mines with valid leases which are not working now as per particulars below :

#-----	S. No.	Names of the lessee
Lease No. Valid up to-----	1.	New Era Minerals 4 February 25, 19902. U.P. Minerals 8 April 10, 19943. Rajgiri Minerals 9 November 24, 19924. Anand Brothers 67 February 15, 19925. Uttrakhand Minerals 98 December 12, 19896. Vijayashree Minerals 99 March 20, 1990-----
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These mines are not operating at present for one reason or the other. On May 12, 1985, the mines within the municipal limits of Mussoorie were directed to close down until they were cleared by the Bandyopadhyay Committee and that Committee did not clear any. So far as the first five mines are concerned, they are either within the municipal limits or within the forest area. We do not think it appropriate to allow them to operate until their lease periods lapse particularly when we have reached the conclusion that mining operation in this area should close down. An exception has to be made in the case of the mine being lease no. 99 where the lease period has to expire in 1990. The lease is of 15 acres of land and another 100 acres are from some private source. Mr. Jain appearing for the lessee had undertaken before us that over the 100 acres, there would be no mining operation and the lessee would immediately restore vegetation over the area and full forest growth will be available in regard to the 100 acres. The mine is neither within forest for municipal area and minerals from this area would be removed not through the city limits. He has also assured as that immediately after the lease period is over, which would be about a year and half from now, the 15 acres would also be subject to reforestation by the lessee. He has agreed to file an undertaking in this Court which we direct him to do within four weeks hence. On the undertaking being filed this mine, as a special case, shall be permitted to operate until the expiry of the lease. The Committee appointed under this order shall supervise the reforestation programme undertaken by the lessee of lease no. 99 and in case it is of the view that the undertaking is not being properly worked out, on the report of the Committee to that effect, permission to work the lease may be varied.

3. The subject matter of this miscellaneous petition at the instance of the original petitioner is to modify the ultimate part of the judgment and direct the closing down of the mine in lease no. 99.

4. We have heard counsel for the petitioner, the State of Uttar Pradesh which supports the application of the petitioner through Mr. Sibal and Mr. Asoke Sen for the lessee. We have also perused the report of the Committee.

5. The mining lease no. 99 is admittedly within the municipal limits of Mussoorie. As has been indicated in the judgment, as early as in 1985, all mining leases situated within the municipal limits had been closed down until mining was cleared by the Bandyopadhyay Committee. But none of such mines was cleared. The location of this lease is also not far away from the heart of Mussoorie town. Mr. Sen has emphasised upon the fact that the mine of the UPSMDC which has been permitted to operate is similarly situate as lease no. 99. The judgment gives special reasons as to why the three ongoing mines were permitted to continue mining activities till the expiry of their original lease periods. Similarly located mines as mine no. 99 having been closed down, there appears to be no real justification to make an exception in case of mining lease no. 99 except the assurance of reforestation of the 100 acres of private land acquired by the lessee and a further assurance that after the lease period is over in 1990, the 15 acres over which mining would be done

would also be reafforested. Further material has been placed before us to show that the transport of the limestone has to be through the city and on a reconsideration of the material we really do not find any difference of substance between lease no. 99 and the other leases situated within the municipal limits.

6. It would be appropriate that all the lessees similarly situate should have the same treatment and the court did not intend discrimination. Taking a broad view of the matter we are of the opinion that lease no. 99 should be subjected to the same direction as the similarly situated mines have been by the judgment and mining activities should be stopped. We accordingly direct that mining in lease no. 99 shall also be closed down and this direction shall be operative with effect from December 31, 1988. If there be any limestones collected before that date the lessees shall be permitted to remove the same but from January 1, 1989 there would be no further mining in this area.

7. Workmen and transport operators working in this mine appeared through separate counsel to support continuity of mining. Similar was the position in regard to all other mines which have closed down under orders of the court. We do not think this move from the two sources can make any difference in the matter of reaching the ultimate conclusion.

8. Objection has been raised by Mr. Sen that the request for modification in the present form was not maintainable and if at all a review petition should have been filed. We have already indicated the view expressed by this Court in the judgment, namely, that this is not a dispute inter-party and the court would not be technical in dealing with a matter of this magnitude. We have, therefore, entertained the miscellaneous petition.

9. The petitioner as also the State of Uttar Pradesh took the stand that this property has been acquired by the State for development of tourism and relied upon a notification under Section 4(1) of the Land Acquisition Act, 1894 and a receipt showing that the Land Acquisition Officer had taken possession and made over the same to the Tourism Department of the State of Uttar Pradesh. The mine owner did not accept the fact that possession has been taken and maintained that he has been in possession and operating the mine. We have, therefore, not examined the correctness of the stand of the State of Uttar Pradesh that it has taken possession under the Land Acquisition Officer and has made over possession to the Department of Tourism of the State Government. The stand of the State was that possession had been taken on June 3, 1988. It is, however, not disputed that the lessee has been operating the mine at present. In such circumstances we have not relied upon the claim of acquisition as relevant to the making of our order.

10. Pursuant to our Judgment of August 30, 1988, a Committee has been constituted by the Government of India in the Department of Environment, Forests & Wildlife on September 14, 1988 for purposes of monitoring with Shri Geethakrishnan, Secretary in the Ministry of Environment as Chairman. The Chairman of Oil & Natural Gas Commission and the Commandant of the Indian Military Academy, Dehradun are Members of the Committee. The report indicates that they are not attending the meetings but are deputing subordinates to participate in the proceedings. That was not the intention of the court while directing that the Committee may be constituted including these two officers. The Chairman of the Committee shall now find out whether the Chairman of the Oil & Natural Gas Commission and the Commandant of the Academy, would like to personally participate in the working of the Committee and in case they are not prepared to do so, they may be dropped from the Committee. One or two local people from Dehradun and Mussoorie could be associated with the Committee and the Chairman shall be entitled to co-opt. The Chairman of the Committee shall be notified about this order.

11. The civil miscellaneous petition is allowed and the direction contained in the judgment permitting the lessee of mining lease no. 99 to operate till the lease expires in 1990 is modified. The lessee is discharged from his undertaking to the court with effect from December 31, 1988. There shall be no order as to costs.

12. The report of the Committee set up for the rehabilitation of the displaced mine lessees be placed for directions on January 9, 1989.

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