

Tarun Bharat Sangh, Alwar

Vs

Union of India and others

I.As. Nos. 2 and 3 of 1991 in Writ Petn. (C) No. 509 of 1991

(M. N. Venkatachaliah, K. Jayachandra Reddy JJ)

11.10.1991

ORDER

1. The petitioner. Tarun Bharat Sangh, Alwar, stated to be a Social Action Group concerned with and working for the protection of Environment and preservation of Wild Life, has brought this public interest action for the enforcement of certain statutory notifications promulgated under the Wild Life, Environmental Protection and Forest Conservation Laws in areas declared as a Reserved Forest in Alwar District of the State of Rajasthan. Issue rule nisi.
2. The area, now popularly known as the "Sariska Tiger Park" was, it would appear, an exclusive hunting forest of the Rulers of the Quondam, Alwar State. The area has since been declared as a 'Game Reserve' under the Rajasthan Wild Animals & Birds Protection Act, 1951. The area is also notified pursuant to the Notification dated 1-1-1975, under Sections 29 and 30 of the Rajasthan Forest Act, 1953, as a Reserved Forest. The area is again declared as a sanctuary under Section 35 of the Wild Life Protection Act, 1972. The direct effect of these, it is averred, is to impose restrictions on the carrying on of any activity in the protected area which would impair Environment and Wild Life. It is averred that the express and avowed intendment and effect of the notification of the area as a reserved forest is that- no mining activity shall be permitted in the protected area. It is, accordingly, further contended that any mining activity in the area would also be inconsistent with and impermissible under the Forest (Conservation) Act, 1980 and that even under the relevant mining laws any grant of mining privileges in the area would be bad.
3. The petitioners allege that despite these notifications and the clear mandate against carrying on of mining operations in this Protected Area both units core and buffer zones, Government of Rajasthan has, illegally and arbitrarily, issued about 400 mining privileges to various persons enabling them to carry on mining operations of lime and dolomite stones inside the protected area and that consequently deep-cast mines are operated to extract Marble by blasting, drilling, chiselling etc. which in the very process of their execution and the deep scars on the landscape they leave behind tend to degrade and diminish the ecology of the area, besides constituting a threat to the habitat of Wild Life. The petitioners rely upon the reports of environmental researchers of the Indian Institute of Public Administration, New Delhi in this behalf. Petitioners, accordingly, seek an interlocutory interdiction of the mining operations in the protected area during the pendency of this writ petition.
4. The State of Rajasthan in its counter feebly endeavoured to suggest that the grant of the mining privileges might possibly be the result of some confusion as to the exact boundaries of the "reserved-forest" and the "National-Park" and the exact location of the areas of the mining operations. But the State ultimately seems to acknowledge that the mining areas are within the protected area and that appropriate action to enforce the statutory notifications is necessary. This is

what the State Government, inter alia, says:

"It is respectfully submitted that irrespective of the facts that the areas under notifications have been declared as sanctuary, national Park, Tiger Project Sariska and the reserved and Protected forest, mining leases were granted more particularly in the villages namely Kalwar, Mallana, Tilwar, Tilwari, Palpur, Baldeo Garh, Jaisinghpura, Bairley which fall in the protected forest blocks called Kalwar, Gordhanpura (covering Mallana, Jaisingpura Bairley) Berwa Doongri, Baldeo Garh, Tilwari, Tilwar-D, (covering Palpur Tilwar.)"

"..... However it has now come to the knowledge of the answering respondents that these areas fall within the protected zone. Proper action is being taken to strictly comply with the provisions of the Forest Conservation Act and other relevant rules and regulations.

The respondents are extremely keen to protect the entire protected forest and reserved forests and Tiger Project Sariska area and have been doing their level best to see that the environment and ecology is not adversely affected by exploiting the order through illegalities."

The position that emerges is that, prima facie, there has been a violation of the notification and their salutar statutory objectives.

5. In these proceedings, the "Zila Khaniz Udyog Sangh" said to be a representative body of the mining operations of the area has sought impleadment. We allow its application for such impleadment and implead the said Sangh as an additional party-respondent. The stand of the Zila Khaniz Udyog Sangh seems to be that the notification under S. 29(3) of the Rajasthan Forest Act, 1953, declaring Sariska as a protected forest itself contemplates doubts as to the statutory entitlement of the State to promulgate such notification without an enquiry as to "the nature and extent of the rights of the State Government and of private persons in or over the forest land or waste land comprised therein", that the notification dated 1-1-1975 itself provides that it is issued subject to and pending such inquiry and that till such inquiries are completed no prohibition sought in the interlocutory prayer could be granted.

6. We have heard Sri Rajeev Dhawan, learned counsel for the petitioner; Sri Aruneshwar Gupta for the State of Rajasthan, and Sri Arun Jaitley for the Zila Khaniz Udyog Sangh.

We might, at the outset, clear some misconceptions about the inquiry contemplated by the notification under the Rajasthan Forest Act, 1953. That inquiry has nothing to do with the mining privileges claimed by the members of the Zila Khaniz Udyog Sangh. Indeed, none of them asserts any private rights in or over the forest land. They, to the extent they derive their rights under a grant from the State subsequent to 1-1-1975, cannot claim any private rights in or over the Forest land and the inquiry envisaged under sub-s. (3) of S. 29 has nothing to do, with mining privileges derived by them from the State.

7. The purpose of the notification declaring the area as a Game Reserve under the Rajasthan Wild Animals and Birds Protection Act, 1951; or the declaration of the area as a sanctuary under the Wild Life (Protection) Act, 1972 and the notification dated 1-1-1975 declaring the area as a protected forest under the Rajasthan Forest Act, 1953 is to protect the Forest Wealth and Wild Life of the area.

It is, indeed., odd that the State Government while professing to protect the environment by means of these notifications and declarations should, at the same time, permit degradation of the environment by authorising mining operations in the protected area.

Indeed, referring to the high purpose of the measures for protection of environment and ecology, this court said:

"The State to which the ecological imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect a last ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilised man is that "Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee".

In his foreword to International Wild Life Law, H.R.H. Prince Philip, the Duke of Edinburgh said:

Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that ..... As usual with all legal systems, the crucial requirement is for the terms of the conventions to be widely accepted and rapidly implemented. Regrettably progress in this direction is proving disastrously slow ...

"Environmentalists' conception of the ecological balance in nature is based on the fundamental concept that nature is "a series of complex biotic communities of which a man is an interdependent part" and that it should not be given to a part to trespass and diminish the whole. The largest single factor in the depletion of the wealth of animal life in nature has been the "civilised man" operating directly through excessive commercial hunting or, more disastrously, indirectly through invading or destroying natural habitats."

See State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655 at pp. 660-61 : (AIR 1989 SC 1 at pp. 3-4).

8. This litigation should not be treated as the usual adversarial litigation. Petitioners are acting in aid of a purpose high on the national agenda. Petitioners concern for the environment, Ecology and the Wild Life should be shared by the Government. No oblique motives are even suggested to the petitioner's motivation in this litigation. It is of utmost importance that the law sought to be effectuated through these notifications should be enforced strictly. We were initially of the opinion that we should forthwith interdict any further mining operations in the protected area. But there are certain minor problems and controversies which might have to be resolved on the spot. It is possible that some of the mining operators carry on their operations in such close proximity of the protected area that it may be difficult, at first sight, to determine whether they fall within or without the

prohibitory interlocutory orders. It might equally be possible, as predicted by Sri Jaitley, that a part of the mining area in particular case might fall within the prohibited area and the rest outside it. These are matters to be sorted out on the spot with reference to the revenue records and the relevant notifications. It is difficult for this Court to decide these disputes on the basis of affidavits alone.

9. Having regard to all the circumstances of the case, we think it is necessary to appoint a Committee consisting of the authorities of the field under the Chairmanship of a retired Judge. The task of the Committee primarily is to ensure the enforcement of the notifications and the orders of this Court, and to prevent devastation of the environment and wild life within the protected area. We have discussed the Constitution and the composition of the Committee with the learned counsel. The composition is, by and large, on the basis of their suggestions and advice.

The Committee shall consist of the following members : (1) Mr. Justice M. L. Jain, former Chief Justice of the High Court of Delhi, (2) The Chief Conservator of Forest and Wild Life Warden, Government of Rajasthan (3) Additional Director of Mines, Udaipur; (4) Collector, Alwar District, and this interlocutory order banning mining (5) Dr. Anil Agrawal of the Centre for science and Environment, New Delhi. The Chairman of the Committee shall convene, preside over and conduct the meetings and deliberations of the Committee.

10. The Committee shall have its first meeting preferably within two weeks from today, and shall meet as often as the exigencies of its business require. The Committee shall ensure that appropriate authorities of the Government of Rajasthan enforce the notifications issued under the various laws for the protection of the forest and wild life in the protected area strictly. The Committee shall have, through the appropriate officers and authorities of the Government of Rajasthan the boundaries of the protected area and more particularly such boundaries in relation to the areas over which mining leases are granted and where mining operations are said to be going on, precisely demarcated. This shall be done as expeditiously as possible and, in any case, not later than 15-12-1991. The Zila Khaniz Udyog Sangh shall file before the Committee within two weeks from today the names of all the mining licensees or lessees of the area together with all the particulars of their grants. The Sangh shall also furnish a map of the area in which its members are said to be carrying on their mining operations or claim to be entitled to carry on such operations. The Committee shall also independently gather such information from the records of the concerned Departments of the Government of Rajasthan.

11. We make an interlocutory direction that no mining operation of whatever nature shall be carried on within the protected area. The Committee shall ensure the obedience, enforcement and implementation of this order by all the concerned authorities. However in order that the problems and controversies turning on the precise demarcation of the protected area are sorted out and that the rights and interests of those mining privilege-holders who are not carrying on their operations within the protected area are not adversely affected, till the demarcation of the area we direct that the prohibition under operations in the protected area be strictly enforced with effect from 31-12-1991.

12. The Committee shall well before 31-12-1991 prepare, with reference to the records to be submitted by the Zila Khaniz Udyog Sangh as well as the records of the Department of the Mines of the State of Rajasthan, a list of mining leases and mining lessees the grants in whose favour fall within the protected area so as to be able to make for effective implementation of the ban on mining operations in the Protected Area.

13. The Committee in cases in which it thinks it proper may recommend to the State Government grant, elsewhere in the State of Rajasthan, alternative mining areas for the unexpired period of the leases to those mining lessees whose grants fall within the protected area and who, by virtue of this order, shall be prevented from carrying on their operations if the Committee is of the view that they were bona fide grantees and would be exposed to hardship owing to the termination of their operations in the Protected Area. Government shall, of course, be at liberty to examine such cases even independently.

14. The Committee shall assess the damage done to the environment, ecology and Wild Life by the mining activity carried on in the protected area and make appropriate recommendation to this Court as to the remedial measures, including measures for restoring the land to its original form and for reforestation and the like, and shall also make its assessment and recommendations as to the possible financial outlays necessary for such restorative and reforestation schemes and the agencies through which such schemes should be implemented.

15. All the concerned authorities of the State of Rajasthan and of the Union of India are directed to co-operate with the Committee and afford all assistance to it and generally act in aid of its deliberations.

16. The Committee may, wherever it finds it so necessary, invite the representatives of the petitioner-organisation as also of Zila Khaniz Udyog Sangh to assist the Committee in its deliberations.

17. In the meanwhile, during the pendency of the writ petitions or until further orders, as the case may be, the State of Rajasthan is prohibited from granting any mining leases or renewals thereof in respect of the protected area.

18. Appropriate directions shall be issued to the State Government in regard to funding the expenses of the Committee.

Ordered accordingly.

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