
(2010) 09 SHI CK 0223
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 767 of 2008

Aswhani Kumar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 10-09-2010

Acts Referred:

Environment (Protection) Act, 1986 — Section 5

Citation : (2010) 09 SHI CK 0223

Hon'ble Judges : Sanjay Karol, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—In this petition petitioner has effectively prayed for the following relief:

(i) That renewal of licence lease for mining being under process before respondents 1 to 4 qua respondent No. 5 may very kindly be set aside by issuing directions to respondents 1 to 4 not to renew the same being contrary to the provisions of the Act, Rules and Policy(s) of the State of HP and further being contrary to the interests of the public at large and furthermore as vested rights of the petitioner are being infringed. The renewal as is being processed being at the back of the inhabitants of the illaqua and just being the result of manipulations of respondent No. 5 with respondents 1 to 4 and further only a paper work, without recourse of law is null and void, as such cannot be allowed to be renewed. Therefore, the impugned acts of the respondents 1 to 4 being totally the result of executive inaction, favouritism and nepotism in law are unsustainable are liable to be quashed and set aside.

2. The challenge is on the ground that with respect to part of the land auctioned by respondents No. 1 to 3, in which petitioner was declared as a successful bidder, respondent No. 5 is seeking renewal of mining lease granted by the appropriate authority in his favour. The challenge is also on the ground that the

stone crusher set up by respondent No. 5 is contrary to the guidelines issued by the State of Himachal Pradesh by virtue of powers u/s 5 of the Environment (Protection) Act, 1986 (hereinafter referred to as the Act) as also River/Stream Bed Mining Policy Guidelines for the State of H.P. (for short, guidelines). It is alleged that from the place where the stone crusher is established National Highway is at a distance of 220 meters, Abadi is at a distance of 200 meters and source of water is at a distance of 300 meters. Traditional rights of usage of the inhabitants are also violated.

3. There is no dispute that in an auction which took place on 23.10.1997, petitioner was declared to be the highest bidder. There is also no dispute that 25% of the security amount and the first installment of the auction money stands paid by the petitioner. However, it would not be correct to contend that land comprised in Khasra No. 505, 506, 517, 498, 518, 502 min, 516 and 2133/543 of village in question was put to auction. Respondents have clarified that only certain area from Village Prumb to Indora by stating physical points was put to auction. Auction was also subject to obtaining no objection certificates from the forest department as also private land owners, if any.

4. Now, there is nothing on record to prove the fact that Khasra numbers mentioned hereinabove actually formed part of the land which was put to auction.

5. Respondent No. 5 was granted mining lease with respect to Khasra Nos. 505, 506 and 517 for a period of five years w.e.f. 15.11.2000 upto 14.11.2005. Thereafter he sought renewal for which joint inspection was carried by the Sub Divisional Level Committee on 9.3.2006. Similarly, respondent No. 5 sought renewal of mining lease with respect to other Khasra numbers 498 and 518 for which also a joint inspection was carried out by the committee on 9.3.2006. The said respondent had also established a stone crusher on Khasra No. 502 min. The inspection of this stone crusher was carried out by the B.C. Negi Committee constituted appointed by this Court in terms of in its order dated 17.12.2003 passed in CWP No. 228 of 2002. The Committee fully examined all aspects of the matter and found that distance of the National Highway to be 300 meters and the village Abadi Deh to be at a distance of 600 meters from the place where the stone crusher is established. There is nothing on record to doubt the same. Further with respect to Khasra No. 516 and 2133/543, it is the stand of the respondents-authorities that no permission has been sought by respondent No. 5.

6. Even though vehemently argued, but, however, from the record it could not be pointed out as to in what manner the respondents-authorities violated the provisions of the Act, Guidelines and Policy(ies) or order passed by this Court.

7. It is pertinent to point out that on 9.7.2010, petitioner was permitted to file rejoinder subject to payment of costs. Neither costs were paid nor was the rejoinder filed. Thereafter on 30.7.2010 subject to payment of further costs again last opportunity was granted for filing rejoinder. Since the orders were not complied, therefore, right to file the rejoinder was closed on 17.8.20010.

8. For all the aforesaid reason, it cannot be said that any legally enforceable right of the petitioner stand violated. There is no merit in the petition and the same is accordingly dismissed.