

(2022) 03 SC CK 0003

In the Supreme Court Of India

Case No : Civil Appeal Nos. 1627-1628 Of 2022

Binay Kumar Dalei & Ors.

APPELLANT

Vs

State Of Odisha & Ors.

RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:

Environment (Protection) Rules, 1986 — Section 5(3)
Wildlife (Protection) Act, 1972 — Section 3(1), 3(2)(v), 3(xiv), 3(3), 18(2), 27(2),
27(3), 27(4), 30, 32, 33(b), 33(c), 36, 36A

Citation : (2022) 5 SCC 33 : (2022) 3 JT 472 : (2022) 4 Scale 297

Hon'ble Judges : L. Nageswara Rao, J;B.R. Gavai, J

Bench : Division Bench

Advocate : Ramesh P. Bhatt, Kali Prasanna Mishra, Biswanath Patnaik, Arunav Patnaik, Bhabna Das, Ratnakar Dash, G.Sivabalamurugan, Selvaraj Mahendran, P. Shankar, Ashok K. Parija, Gaurav Khanna, Arnav Behera, Sadhvi Swarup, Aishwarya Bhati, Archana Pathak Dave, Ruchi Kohli, Manisha Chava, G.S. Makker, Ashok Kumar Panda, Tejaswi Kumar Pradhan, Manoranjan Paikaray, Shashwat Panda, Michelle Ishita Gomes, Mukul Kumar

Final Decision : Disposed Of

Judgement

L. Nageswara Rao, J

1. Rural Organisation for Social Empowerment - Respondent No.8 herein, filed Original Application No. 02 of 2019 before the National Green Tribunal, Principal Bench, New Delhi (hereinafter, 'the NGT') for a direction to the opposite parties therein to cancel the stone quarry leases granted pursuant to an advertisement dated 17.08.2017. Respondent No.8 also sought for a direction that no further lease shall be granted in the Kuldiha Wildlife Sanctuary and the eco-sensitive zone lined to it, as were notified in the notification dated 09.08.2017. It was further prayed that an enquiry should be conducted into the illegal and unlawful advertisement for long term leases in the wildlife sanctuary. During the pendency of the Original Application, the NGT vide orders dated 22.01.2019 and 12.03.2019 called for a report from the Principal Chief Conservator of Forests,

Head of Forest Force (hereinafter 'PCCF (HoFF)') after conducting an inspection of the Eco-Sensitive Zone surrounding the Kuldiha Wildlife Sanctuary. Based on the report submitted by the PCCF (HoFF), the NGT by an order dated 16.10.2019 directed the State Government to take steps for bringing the entire corridor within the ambit of eco-sensitive zone and prohibit ingress into the eco-sensitive zone. Pursuant to this order of the NGT, Tehsildar Khaira directed the stoppage of operations of stone quarries in the Sarisua Hills. Aggrieved thereby, the Appellants, who were the lease holders of these stone quarries, filed an application for impleadment which was rejected by the NGT on 04.12.2019. On 18.02.2020, the NGT disposed of the Original Application by directing that no mining activity shall be permitted within and in the vicinity of Simlipal - Hadagarh - Kuldiha - Simlipal elephant corridor. The Tribunal ordered completion of the process under Section 36 of the Wildlife (Protection) Act, 1972 (hereinafter, 'the Act') for declaration of conservation reserve in respect of the elephant corridor within a period of three months. The Appellants have filed this appeal assailing the correctness of the orders passed by the NGT.

2. By a notification dated 29.01.2001 issued by the Government of Odisha, Forest and Environment Department, area comprising of portions of Mayurbhanj, Balasore, Bhadrak and Keonjhar was declared as an elephant reserve - Mayubhanj (Similipal-Kuldiha-Hadgarh) Elephant Reserve, under the Central Scheme "Project Elephant". The total area of the elephant reserve was shown as 3213.81 sq. kms and the core area was 845 sq. kms of the existing Similipal Sanctuary. With respect to the taking up of non-forestry activities in wildlife habitats, the Government of India, Ministry of Environment and Forests (Wildlife Division) issued a guideline document on 15.02.2011. It was mentioned in the said document that environmental clearances for any project that falls within 10 kms boundary of the National Parks and Sanctuaries will be subject to the recommendations of the Standing Committee of National Board for Wildlife (hereinafter 'NBWL'). The user agency/project proponent has to seek prior permission from the Standing Committee of the NBWL before seeking environmental clearance in case the concerned project is located within the eco-sensitive zone or within 10 kms in absence of delineation of such a zone from the boundaries of National Parks, Wildlife Sanctuaries or is an Elephant Reserve/Tiger Reserve and/ or important corridors of wildlife movement.

3. In order to operate certain stone quarries near Kuldiha Wildlife Sanctuary, the State of Odisha submitted a proposal to the Standing Committee of NBWL. In its 40th meeting held on 03.01.2017, the Standing Committee of NBWL considered the proposal of the State of Odisha involving operation of 97 Nos. of stone quarries at a distance of 2 kms from the boundary of Kuldiha Wildlife Sanctuary. After due deliberations, the Standing Committee agreed to recommend the proposal subject to the implementation of a Comprehensive Wildlife Management Plan in the region, for mitigation of impact which would be caused by operation of all quarries and transportation of materials.

4. Subsequently, a Comprehensive Wildlife Management Plan for mitigation of impact which would be caused by operation of stone quarries in Khaira Tehsil near Kuldiha Wildlife Sanctuary, Balasore was prepared by the Divisional Forest Officer, Wildlife Division, Balasore and was approved by the Government of Odisha. It was noted in the said plan that 97 stone quarries are located immediately south to the Hadgarh Kuldiha Elephant Corridor which is a part of the traditional Similipal – Hadgarh - Kuldiha Elephant Corridor. It was also stated that the corridor between Hadgarh and Kuldiha is used round the year for movement of elephant, herbivores and cats. On-site and off-site environmental affects that can be generated by quarrying through blasting, excavation, crushing, screening, stockpiling and transporting of aggregate were also recognised in the plan. It was mentioned that the environmental effects of quarrying, primarily includes the disturbance of land and vegetation, dust, vibration, noise, traffic, visual effects, impact on cultural and historical values, the discharge of contaminants into the air, water and land. Methods to manage noise issues, dust and air quality issues, traffic issues, and water quality issues have also been suggested in the Comprehensive Wildlife Management Plan.

5. On 09.08.2017, a notification was issued by the Ministry of Environment and Climate Change, Government of India in exercise of powers conferred by sub-section (1) and clauses (v) and (xiv) of Sub-Sections (2) and (3) of Section 3 of the Act read with Sub-Rule 3 of Rule 5 of the Environment (Protection) Rules, 1986. By the said notification, the area with an extent varying from zero (along with urban areas/NAC areas adjoining the boundary on Eastern side), 500 metres on South-Eastern side, 7 kms on Western Side up to Keonjhar District to 2 kms around Kuldiha Wildlife Sanctuary in the State of Odisha was notified as Kuldiha Wildlife Sanctuary eco-sensitive zone. The notification clarified that the Eco-Sensitive Zone of Kuldiha Wildlife Sanctuary included the corridor linking Kuldiha wildlife Sanctuary of Balasore district and Hadgarh Wildlife Sanctuary of Keonjhar district. According to the notification, all activities in the eco-sensitive zone were to be governed by the provisions of the Act and the Rules made thereunder.

6. It was only after this notification, that the Tehsildar Khaira had issued an advertisement on 17.08.2017, inviting applications from interested persons for long-term lease of Sarisua Kapilajhari Bandhanata - 97 Sairat Source (Minor Minerals) for a period of five years from the year 2017-18 to 2021-22. Environmental clearances were granted by the District Environmental Impact Assessment Authority (DEIAA) for the stone quarries on recommendation of the DEAC, pursuant to which quarrying operations were started by the Appellants and other lease holders in March, 2018.

7. In light of the controversy that arose before the NGT, it is necessary to quote certain relevant portions of the report submitted by the PCCF (HoFF), Odisha pursuant to the orders by the NGT. The relevant portion reads as under: -

"III. Frequent movement of elephants is reported from Kuldiha Wildlife Sanctuary

on the foothills of Sukhuapata hill of Mayurbhanj district up to Kala reservoir of Kaptipada Range of Baripade. The corridor between Hadgarh & Kuldiha is used round the year by the elephants for its movement. There is an evident threat to the habitat and the Elephant corridor due to quarrying because of its onsite and ofsite environmental effects. The fact of existence of these quarries around the traditional Similipal -Hadgarh - Kuldiha - Similipal elephant corridor was place by the State CWLW before the 40th Meeting of SC-NBWL which, recommended the proposal for operation of 97 stone quarries with certain pre-conditions as detailed earlier at Para No. 1. Though, these 97 quarries form a cluster as requisite no environment management plan has been submitted by the Revenue Authorities yet.

IV. Accordingly, as per the recommendation of the 40th meeting of SC-NBWL, a comprehensive: Wildlife Management Plan (CWLMP) to mitigate the impact to be caused by, operation of all quarries & transportation of- materials got approved by the Government of Odisha, F & E Department during July 2017 with financial outlay of Rs. 677.13 lakh to be spent over a period of 10 years. Part of the proposal for taking of Bald hill plantation over 200 ha. at an estimated cost of Rs. 408.40 lakhs was proposed to be addressed 'through the CAMPA/other State Funding and rest funds of 677.13 lakh was to be allocated from Environment cost to be released from all quarries rationally in proportion to the quantity of production. However, it is observed that the payment of Environment Cost towards implementation of the CWLMP is yet to be made by the Revenue authorities. "

8. On the basis of the above observations, PCCF (HoFF) gave the following recommendations: -

"A. Those quarries those that have made ingress into ESZ boundary must be penalized as per extent of ingress & destruction particulars. In this regard, Mining Department and Revenue Department jointly in each of these observed cases may assess damage cost /restoration cost, responsible quarries for the damage and realization of penalty amount etc. If needed, necessary services of expert organization like ICFRE, Dehradun /TERI, New Delhi may be taken in this regard. Till the completion of the exercise, the operation of these quarries may be considered to be stopped.

B. District Collector-cum-Chairman, DEIAA, Balasore may allow further quarry operation in the area only after obtaining specific clearance by SEIAA, Odisha as per order dated 11.12.2018 of the Hon'ble NGT in the Executive Application No. 55/2018 in O.A No. 520/2016, Vikrant Tongad Versus Union of India, directing that the notification dated 15.01.2016 of MoEFF& CC will stand suspended till a fresh notification issued by the MoEFF& CC, New Delhi.

C. There is every likelihood in future of further higher ingress of quarries in the Eco Sensitive Zone, considering the close vicinity of these quarries to the ESZ. In order to avoid any further future ingress within the limit of ESZ, DGPS

(Differential Global Positioning System) mapping should be immediately taken up for all the 97 quarries with permanent pillar posting. The vector polygon of the quarries may be shared with all concerned departments. The intactness of all the ESZ pillars for demarcation of ESZ must be ensured by the Revenue Department as some of the pillars during field visit were found missing. The Environment Management Plan for cluster of the quarries is yet to be finalized with ensuring its strict adherence. Further, implementation of Comprehensive Wildlife Management Plan by immediate deposit of Environment Cost by the District Administration needs to be ensured. A "Monitoring Committee" as recommended by NBWL & NTCA may be constituted immediately at the district level to look into the wildlife & environment issues on bi-monthly basis.

D. As quarry operation is being carried out adjacent to the identified traditional Similipal - Hadgarh - Kuldiha - Similipal Elephant Corridor, process should be initiated with the pending proposal for declaration of the conservation Reserve in that area U/S- 36 of the Wildlife (Protection) Act 1972 by the Principal Chief conservator of Forests (Wildlife) & CWLW, Odisha in order to avoid further destruction in that corridor apart from other site specific restoration plan as deemed appropriate to mitigate the impact caused due to rampant quarry operation and maintain ecological balance."

9. Based on this report of the PCCF (HoFF) and being concerned with the stone quarries operating adjacent to the elephant corridor, the NGT by an order dated 16.10.2019, directed the State Government to consider bringing the entire elephant corridor within the ambit of eco-sensitive zone. A further direction was given by the NGT for implementation of the recommendations made by the PCFF (HoFF), Odisha. Out of the 97 stone quarries, 11 quarries were found to have ingressed into the eco-sensitive zone. By its judgment dated 18.02.2020, the NGT directed the said 11 quarries to confine their activities outside the eco-sensitive zone. The process under Section 36 of the Act for declaration of the traditional elephant corridor as a conservation reserve was directed to be completed within three months. The Original Applications were disposed of with a direction that no mining activity shall be permitted within and in the vicinity of Similipal - Hadgarh - Kuldiha - Similipal Elephant Corridor. The Appellants who are the lease holders and whose applications for impleadment were rejected by the NGT are aggrieved by the direction of stoppage of mining activity in the vicinity of the elephant corridor.

10. We have heard Mr. Ramesh P. Bhatt, learned Senior Counsel for the Appellants, Ms. Aishwarya Bhati, learned Additional Solicitor General of India appearing for MOEF, Government of India, Mr. Ashok K. Parija, learned Advocate General for the State of Odisha, Mr. Ranjit Kumar and Mr. Manoj Swarup learned Senior Counsel appearing for Respondent No.8. The main contention of the Appellants is that their stone quarries are not amongst the 11 quarries which are said to have ingressed into the eco-sensitive zone. They contended that their stone quarries are not within the eco-sensitive zone and admittedly the stone

quarries are situated on the other side of the hillock. Therefore, there is no reason as to why the operation of their quarries should be stopped. The Appellants further contended that the NGT refused to hear the Appellants before passing an order which is detrimental to their interests and in violation of the principles of natural justice.

11. Mr. Ashok K. Parija, learned Advocate General for the State of Odisha referred to the guidelines that were issued by the Ministry of Environment and Forests (Wildlife Division) for taking up non-forestry activities in wildlife habitats and submitted that the Standing Committee of the NBWL approved the proposal of quarrying operations in its 40th meeting. He relied on the maps to show that the quarries of the Appellants were well outside the eco-sensitive zone and submitted that there is constant monitoring of any ingress by the lessees into the eco-sensitive zone. He argued that there is a contradiction in the impugned order passed by the Tribunal. He submitted that vide the said order, 11 quarries which have ingressed into the eco-sensitive zone were directed to confine their activities outside the eco-sensitive zone and at the same time, there was also a direction that no mining activity would take place in the vicinity of the elephant corridor. The learned Advocate General agreed that quarrying operations should be permitted around the eco-sensitive zone, subject to the implementation of the Comprehensive Wildlife Management Plan. During the pendency of the dispute, an affidavit was filed on behalf of the State of Odisha in which it has been stated that the process for declaration of Similipal - Hadgarh - Kuldiha - Similipal traditional Elephant Corridor as conservation reserve is under active consideration and a proposal for declaration of 2781.485 hectares of land as conservation reserve has already been placed before the Government on 03.02.2022, after completion of all the ground work and statutory requirements.

12. Mr. Manoj Swarup, learned Senior Counsel appearing for Respondent No.8 submitted that the Comprehensive Wildlife Management Plan might be in place, but it requires to be implemented before commencement of the mining operations. He stated that several measures have been suggested in the Comprehensive Wildlife Management Plan for mitigation of the impact caused by the quarrying, which have not been undertaken till date. He argued that the Standing Committee of NBWL approved the proposal for quarrying operations, subject to the implementation of Comprehensive Wildlife Management Plan. According to Mr. Swarup, no mining operations can take place without prior implementation of the Plan. Mr. Ranjit Kumar, learned Senior Counsel supplemented the arguments made by Mr. Manoj Swarup. He referred to Section 36A of the Act and argued that it is incumbent on the State Government to declare areas adjoining to the National Parks and Sanctuaries and those areas which link one protected area with another as a conservation reserve for protecting landscapes, seascapes, flora and fauna and their habitat. He placed reliance on Section 36A(2), according to which the provisions of Sub-Section (2) of Section 18, Sub-sections (2), (3) and (4) of Section 27, Section 30, 32 and clauses (b) and (c) of Section 33 shall, as far as may be, apply in relation to a

conservation reserve as they apply relation to a sanctuary. He relied upon judgments of this Court in Hospitality Association of Mudumalai v. In Defence of Environment and Animals & Ors. (2020) 10 SCC 589 and Goa Foundation v. Union of India (2014) 6 SCC 590 which dealt with the importance of preserving elephant corridors and wildlife sanctuaries.

13. Ms. Aishwarya Bhati, learned Additional Solicitor General appearing of behalf Respondent No. 2 - Ministry of Environment, Forest & Climate Change (MoEF) drew the attention of this court to the fact that the impugned order inadvertently mentions Section 36, however the relevant provision for declaration of the elephant corridor as a conservation reserve would be Section 36A of the Act. She submitted that the MoEF has no objection to the operation of stone quarries outside the eco-sensitive zone if the requirement of Section 36A and the conditions in Comprehensive Wildlife Management Plan are complied with.

14. The point that arises for consideration of this Court in this appeal is in a narrow compass. The Appellants have filed this appeal aggrieved by that part of the order issued by the NGT by which mining activity in the vicinity of Similipal - Hadgarh - Kuldiha - Similipal Elephant Corridor has been ordered to be stopped. According to the Appellants and the State Government there is no justification for stopping mining activity in the area which does not fall within the eco-sensitive zone. Whereas, the learned Senior Counsel for Respondent No.8 contended that no mining activity can be permitted even in the vicinity of an eco-sensitive zone unless the Comprehensive Wildlife Management Plan has been implemented and Section 36A of the Act has been complied with. The objection on behalf of Respondent No. 8 is only on the ground that the comprehensive wildlife management plan has not been implemented and that Section 36A of the Act has not been complied with. The learned Advocate General for the State of Odisha submitted that the mining operations will be permitted only after implementation of the Comprehensive Wildlife Management Plan. He stated that compliance of Section 36A of the Act for declaration of the elephant corridor as conservation reserve is in the advanced stage of consideration by the State Government.

15. The dispute can be resolved by giving a direction to the State Government to implement the Comprehensive Wildlife Management Plan and complete the process of declaration of the traditional elephant corridor as conservation reserve as provided in Section 36A of the Act.

16. Therefore, the State of Odisha is directed to implement the Comprehensive Wildlife Management Plan as suggested by the Standing Committee of NBWL before permitting any mining activity in the eco-sensitive zone. The State is also directed to complete the process of declaration of the traditional elephant corridor as conservation reserve as per Section 36A of the Act expeditiously. The mining operations of 97 quarries shall be permitted only thereafter.

17. Mr. Bhatt and Mr. Dash, learned Senior Counsel requested this Court to direct

the Government to compensate for the losses incurred for period during which they were not permitted to carry out mining operations despite holding a valid lease in their favor. We are afraid that we cannot issue such directions. However, the Appellants are at liberty to approach the Government for redressal of their grievances.

18. With the above directions, the Civil Appeals are disposed of.

Civil Appeal No. 1529 of 2022

19. This appeal arises out of the same order dated

18. 02.2020 passed by the NGT in O.A. No. 02/2019(EZ). This appeal is disposed of in terms of the judgment in Civil Appeal Nos. 1627-1628 of 2022.