

(1999) 04 AHC CK 0194
In the Allahabad High Court
Case No : C.M.W.P. No. 17276 of 1999

Bipin Kumar and Subhash Chandra

APPELLANT

Vs

District Magistrate, Garhwal and another

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Citation : (1999) 3 AWC 2089

Hon'ble Judges : V.P. Goel, J;Ravi S. Dhavan, J

Bench : Division Bench

Advocate : Shashi Nandan, for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Dhavan, J.—This is a case from Pauri Garhwal. The petitioners. Messrs. Bipin Kumar and Subhash Chandra Kothari, claim mining rights for excavating sand, grit, small stones (Bajari) and boulders from a river, Malan River, flowing along the Kotdwar Range. The mining operations of the petitioners are under the Landsdowne, Forest Division in Pauri Garhwal. The petitioners had applied for a mining lease under the U. P. Minor Minerals (Concession) Rules, 1963, As the mining area came within reserved forests, thus, the approval of the Government of India had to be sought by the State of Uttar Pradesh under the Forest (Conservation) Act, 1980. In the circumstances, the State of Uttar Pradesh sought permission of the Government of India. Ministry of Environment and Forests (Department of Environment), Minerals and Wild Life. New Delhi. The Government of India considered the matter and had its approval conveyed for the two mining areas for which permission was being sought. The mining areas were alongside Malan River Kotdwar Range and Silwad River Landsdowne Forest Division. The approval of the Government of India was conveyed to the Secretary, Forest Department, Government of Uttar Pradesh, Lucknow, by its communication dated May 22, 1989 (Annexure-4). In this communication, the Government of India, Ministry of Environment and Forest, permitted mining of sand, boulders and Bajri etc. from the two river beds for a period of ten years.

The mining operations were permitted during the season October 1 to June 30. Leases to be granted by the State Government were approved for ten years.

2. The petitioners were one set of persons who received leases under the U. P. Minor Minerals (Concession) Rules. 1963. They were granted lease for a period of five years with effect from July 24, 1995. Effectively, the lease granted to the petitioners is valid upto June 30, 2000.

3. The petitioners received a communication, the impugned communication from the Divisional Forest Officer. The Divisional Forest Officer's communication of October 6, 1998 (Annexure-10) was received by three persons. Two of them were petitioners, Messrs. Bipin Kumar and Subhash Chandra Kothari, in the context of the area along Malan river. Kotdwar Range. The third person probably may have received the communication in reference to the other area mentioned in the Government of India communication for which approval had been sought. This communication of the Divisional Forest Officer, intimates that under advice from the District Magistrate, Garhwal, in reference to the two rivers, that is, Malan River Kotdwar Range and Silwad River Landsdowne Forest Division, mining operations within these areas shall cease forthwith, effective from June 1, 1999. But, this order is only consequential to the order of the District Magistrate, dated August 31, 1998 (Annexure-9). It is in the order of August 31, 1998 that the District Magistrate had a general circular issued that mining operations within these two areas, will cease at the end of May, 1999. The District Magistrate has based his orders on the judgment of the Supreme Court dated 12.12.1996. Though not mentioned in the order of the District Magistrate, the judgment of the Supreme Court, of which the date has been given, is the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, .

4. This is the case in which the Supreme Court expressed its concern for ecology and protection of reserved forests. The interim directions had been issued by the Supreme Court relating to all on-going activities in any forest in any State throughout the country. The Supreme Court had issued a mandamus that all such unwarranted activities leading to denudation of forests must cease. It is this judgment as a consequence of which running of saw mills including veneer or plywood mills and mining of any mineral, for non-forest purpose has been prohibited without permission of the Central Government. In matters of mining operations, also, the Supreme Court had issued directions that these must cease forthwith.

5. If strict proof liability be the contention of the petitioners, then under the law whatever lease the petitioners may have been given must run its duration and logically the petitioners are correct to that extent that their lease for five years is valid. But the Court is afraid that this is a matter which probably cannot be seen in isolation on facts which relates to the petitioners' lease and the logic of law that a contract is not being permitted to run its duration. The petitioners rely very heavily on the communication of the Government of India dated May 22, 1989 by which the area which had been allocated to the petitioners, the mining

lease had been approved. The contention of the petitioners is that far from curtailing the period of lease, at present, held by them for five years which otherwise would run up to the year 2000, the petitioners are even otherwise entitled to renewal.

6. As the Court has observed that this matter cannot be seen in isolation of a contract cut short as was stipulated and agreed between the petitioners and the State of Uttar Pradesh, notwithstanding that it was approved by the Government of India. The surrounding circumstances make the letter of the Government of India by which approval had been granted out of date. The petitioners are facing the effect of the Supreme Court judgment, which is law. The contract. In context, between the petitioners and State, may stand frustrated. The law also provides for this.

7. Any concept relating to the preservation of ecology and environment of which forests are part, have dated by now. By the decisions of the Supreme Court, the meaning of forest has seen a drastic change as a concept. Legal meaning has given way to nature. The Supreme Court interprets forests as an expanding concept stretching beyond 100 metres off its existing line. Forest has to be understood in its ordinary meaning. These concepts enunciated by the Supreme Court are binding on the High Court.

8. In fact, this Court will go even further. Vested interests, whether they are persons like the petitioners or even the State (both Provincial and Central) do not understand the concept of environment and ecology when it comes down to making money out of it. The concept of protecting the environment became an ideology in last two decades, after the Constitution of India was amended, and made environment protection an obligation as a fundamental duty. This was the beginning of concern for ecology. In so far as this Court is concerned, the day Constitution of India stood amended by insertion of Part IVA, the protection of the environment including forests ceased to be a platitude. The Constitution of India itself sent a message to live in peace with the nature. In the circumstances on whatever the forests may mean, it is the opinion of the Court that forests, today, stretch to wherever the shadow of the forests extends at sun-rise and at sun-set. Plant more, and another shadow will extend the line of demarcation.

9. In the circumstances, notwithstanding that the petitioners' contract is on record which permits the duration to run up to 2000, this Court cannot certify that the District Magistrate was in error in issuing orders to the Divisional Forest Officer that mining operations in this area should cease effective from the close of May, 1999.

10. The Court is unable, on reasons which have been given in this order, to either permit the petitioner to mine during the period of the contract of the lease or to quash the order of the District Magistrate and the consequential order of the Divisional Forest Officer.

11. Dismissed.