

(2011) 08 RAJ CK 0136

In the Rajasthan High Court

Case No : Writ (PIL) Petition No. 10304 of 2010

Dinesh Bothra

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 48A, 51A
Environment (Protection) Rules, 1986 — Rule 5(3)
Mineral Concession Rules, 1960 — Rule 27(1)
Mineral Conservation and Development Rules, 1988 — Rule 34, 37
Rajasthan Forest Act, 1953 — Section 29(3)

Citation : (2011) 4 RLW 3447

Hon'ble Judges : Arun Mishra, C.J.;Alok Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon"ble Mishra, CJ.

1. The Public Interest Litigation has been filed by the petitioner for restraining the allotment of the quarry license for mining activities in Sihanda area in pursuance of advertisement dated 4.3.2009 without obtaining the prior environmental clearance as mandatory under the Environmental Impact Assessment (EIA) Notification, 2006. The prayer has been made to quash the advertisement dated 4.3.2009 and the entire process of allotment of quarry license in pursuance of advertisement dated 4.3.2009 without obtaining the prior environmental clearance, may also be declared illegal.

2. It is submitted by the petitioner that he is a Journalist and student of LL.B. Final Year also. The Government of India has published a notification dated 14.09.2006 specifying the requirement for environmental clearance for establishment, expansion of modernization of any project or activity as covered under the said notification. It has been Issued in exercise of the powers under Rule 5(3) of the Environmental Protection Rules, 1986 (hereinafter to be referred

as "Rules of 1986"). The said notification imposes restrictions and prohibitions on new projects or activities or on expansion of modernization of existing project or activities based on their potential environment impact as indicated in the Schedule appended to the notification dated 14.9.2006, unless a prior environmental clearance has been taken from the Central Government or the State Level Environmental Impact Assessment Authority (in short "SEIAA") as the case may be. The said notification provides the categorization of project/activity looking to the spatial extend as well as the level of impact on human health and environment. The Clause 2 of the notification provides that in case, the project/activity falls Under category "A", the concern regulatory authority will be Ministry of Environment & Forests and in case of category "B", the concerned authority will be SEIAA.

3. The State Government had issued an advertisement on 4.3.2009 inviting applications for quarry licenses for mining of sand-stones mineral in the Sihanda area of Tehsil Balesar, District Jodhpur. The State Government is going to allot a huge area for undertaking mining activities to the other individuals. The Department of Mines has taken a decision for undertaking mining activities upon a land admeasuring.201.06 hectare. Therefore, in view of the mandatory nature of the notification dated 14.9.2006, the respondent Department is certainly required to take a prior environmental clearance from the Ministry of Environment and Forests as the same falls within category "A project/activity, So far, no environmental clearance has been accorded to the Mining Department for the proposed mining activity at Sihanda area. The process of allotment has been started by Mining Department, which is in violation of the mandatory notification dated 14.9.2006 issued by the Government of India.

4. The petitioner had filed representation on 7.9.2010. The quarry licenses are being issued by the Mining Department and they are finalising bids. It would become impossible to check the mining activity and the same would be in violation of EIA Notification of 2006. Hence, the writ petition has been preferred.

5. In reply filed by the respondents No. 1 to 3, it is contended that first, the grievance ought to have been raised by the petitioner before the State Government and Pollution Control Board. It is also stated that necessary parties have not been impleaded in the writ petition. Small quarries are being allotted, as such, petition is based on wrong interpretation of the notification dated 14.9.2006, which is not attracted. There are as many as 1117 quarry licences each comprising of an area of 60 X 30 metre (0.18 hectare) and consent is required to be obtained of the Rajasthan Pollution Control Board only. In substance, the reply is that EIA Notification of 2006 is not attracted to the small ares, which are to be allotted. However, it is not in dispute that total area, which would be allotted is more than 200 hectares.

6. The stand of Ministry of Environment and Forests, the respondent No.4, in its reply is that before the EIA Notification of 2006, the Environmental Impact Assessment Notification, 1994 was in force. However, the said notification was

not applicable to the mining of minor minerals. It was felt that on one hand, the proposal for mining of major mineral undergo the entire process of Environment Impact Assessment as well as environmental clearance procedure, but no provision was there to check and control the environmental aspects of mining of minor mineral. After realizing the said aspect of the matter that even the projects of minor mineral adversely affects the different components of environment, the EIA Notification was re-engineered and the new EIA Notification of 2006 was promulgated while bringing the minor minerals under the ambit of EIA Notification. The first entry of EIA Notification of 2006 relates to mining of minerals irrespective of its further classification of major mineral or minor mineral. It is, thus, clear that the mandatory provisions of EIA Notification are very much applicable in the cases of minor mineral.

7. It is further contended by respondent No.4 in its reply that area of proposed activity is 50 hectare and above. The EIA Notification of 2006 categorized the mining projects in two categories, namely, Category "A" and "B" based on their area. The projects having activity area of 5 hectare & above and less than 50 hectare have categorized as Category "B" project and the projects having area of 50 hectare & above as Category "A" project. The Category "A" projects are appraised at the Central Level in the Ministry of Environment and Forests in consultation with the Expert Appraisal Committee while the Category "B" projects are appraised at the State Level i.e. State Level Environment Impact Assessment Authorities and Committees. The said Committees are multi-disciplinary Committees constituted by the Ministry of Environment and Forests in terms of the provisions of EIA Notification of 2006 entrusted with the responsibility of appraisal of the projects. The procedure has already been specified in EIA Notification of 2006. The said notification has been issued while exercising the powers under Rule 5(3) of the Rules of 1986. The notification has the statutory force and is mandatory in nature. The State Government has proposed mining activity for a big piece of land. It is obligatory to obtain prior environmental clearance before proceeding any further with any mining operation to be carried Out. After the promulgation of EIA Notification, a clarificatory circular dated 2.7.2007 has been issued by the Ministry of Environment and Forests providing that even the existing mining activities required to obtain environmental clearance, in case of increase of the lease area or increase in production and even for the purpose of renewal of the mining lease. It is further contended that in the instant case, the Ministry of Environment and Forests has not received any applications from the Department of Mines, Government of Rajasthan for the proposed mining of sandstone in village Sinhada, Tehsil Shergarh, District Jodhpur in the area of 201.06 hectare. It is submitted that any action taken for initiating the mining activity without the requisite environmental clearance as is mandatory under the EIA Notification of 2006 would also amount to violation of Environment Protection Act, 1986 attracting action under the penal provisions thereof. There is lapse on the part of State Mining Department. The action is against safe and hygienic environment, A

Committee constituted has recommended that the minimum size of mine lease should be 5 hectare for minor mineral. The Committee has also recommended Cluster in case of small mines. In the zeal to collect higher revenue, the environmental concerns cannot be and should not be compromised. A report of the Committee has also been placed on record. The State Mining Department is bound to take prior environmental clearance. Therefore it is prayed that action of the respondent Mining Department allotting the quarry license for mining activities without taking the prior environmental clearance may be declared illegal and further, the respondent Mining Department may be directed to obtain the prior environmental clearance under the, EIA Notification of 2006 with regard to the proposed mining activity at Sihanda and Balesar, Rajasthan.

8. In additional affidavit filed by Shri Ratan Lal Udai, Superintending Mining Engineer, Circle Jodhpur, it is contended that so far no allotment has taken place. The allotment is being made to the BPL & backward classes of the civil society. Other facts mentioned in the earlier return have been reiterated, It is contended that EIA Notification of 2006 is not attracted.

9. Shri Sandeep Shah, learned counsel appearing on behalf of the petitioner has submitted that the action of the respondents No.1 to 3 is violative of the provisions of the Environment Protection Act, the Rules and the EIA Notification of 2006. So far no allotment has taken place and prior approval is required to be obtained. The cluster area comes to 201.06 hectare. Thus; the State Government is bound to obtain prior environmental clearance from the concerned Department of the Central Government as per EIA Notification of 2006.

10. Shri Anand Purohit, Additional Advocate General appearing on behalf of the respondents No.1 to 3 has submitted that allotment is to be made to BPL section of the society. In view of the subsequent decisions as the area in cluster of mines has to be considered requisite clearance is required to be obtained from the Ministry of Environment and Forests, Department of the Central Government as per the EIA Notification of 2006. So far no allotment has taken place, as such, there is no question of any mining activity taking place in the area.

11. Shri Sanjeet Purohit, learned counsel appearing on behalf of the respondent No.4 has submitted that the EIA Notification and the Committee's report of 2006 makes it apparent that the prior environmental clearance is required to be obtained from the Ministry of Environment and Forests. No allotment can be made without prior environmental clearance, So far no application has been filed to obtain approval. Thus, no mining activity can take place in the area in question.

12. On behalf of intervenor, it was submitted that allotment can be made in view of the clarification issued on 19.8.2010 by the Government of India, Ministry of Environment and Forests, which provides that construction of the boundary wall and shed for guards are permissible in the project area, which contemplates that allotment can take place but construction activity cannot be made until & unless

project receives requisite clearance.

13. After hearing learned counsel for the parties, we are of the opinion that as the area in question is 201.06 hectare, in which cluster of mines is to be allotted, total number of mines are 1117. Obviously, the mining activity has to take place in more than 50 hectare of the land, as such, the activity would fall within the purview of Category "A" of the EIA Notification of 2006 considering the area which is involved in the mining activities. When the total area upon which the mining activity has to be undertaken, is 201.06 hectare, dividing it into small pieces would not make it mining activity in less than 50 hectares. When the mining activity area is above 50 hectares, it is bound to have impact upon environment flora and fauna in the area. Development has to be sustainable one.

14. The main motto of social life is to live in harmony with nature. It was regarded as a sacred duty of everyone to protect them. With a view to protect the Forest Wealth and Wild Life of the areas, the Rajasthan Forest Act, 1953 was enacted. Thereafter, in order to check deforestation which ultimately results in ecological imbalance and leads to environmental deterioration, the Forest Conservation Act, 1980 was enacted. The Environment Protection Act, 1986 has been enacted with a view to provide for the protection and improvement of environment and for matters connected therewith. The Environment Protection Rules, 1986 have been framed thereunder. Rule 5(3) of the Rules of 1986 under which the EIA Notification of 2006 has been issued reads as follows:

5. Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas.-

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, given notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries and carrying on of processes or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restriction on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may [within [three hundred and sixty-five days] from such date of publication,] impose

prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

15. The ecological imbalances and the consequent environmental damage which has become alarming due to reckless mining operations. Preservation of forest, flora and fauna is necessary for human existence. There is great and urgent necessity to preserve such forests.

16. Environment has become so degraded that instead of nurturing the people, it is poisoning them. In this scenario, in a large number of cases, the Apex Court intervened in the matter and issued directions from time to time in public interest to protect and preserve forest cover, ecology, environment, wildlife etc.

17. In *Tarun Bharat Sangh, Alwar Vs. Union of India and others*, the Apex Court has laid down that State Government while professing to protect the environment by means of the notifications and declarations, itself permitting degradation of the environment by authorizing mining operations in the area. The Apex Court also considered the provisions of Section 29(3) of the Act of 1953 and laid down that mining rights are not the private rights in or over the forest land.

18. In *T.N. Godavarman Thirumalpad (through K.M. Chinnappa) Vs. Union of India (UOI) and Others*, the Apex Court has observed that environmental law is an instrument to protect and improve the environment. The Constitution has laid the foundation of Articles 48A and 51A for a jurisprudence of environmental protection. Today, the State and the citizen are under a fundamental obligation to protect and improve the environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. Duty is cast upon the Government under Article 21 to protect the environment and the two salutary principles which govern the law of environment are : (i) the principles of sustainable development, and (ii) the precautionary principle.

19. In *M.C. Mehta v. Union of India and Ors.*, (1991) 2 SCC 137 *Satish vs. State of Uttar Pradesh*, 1992 Supp (2) SCC 94 and *Tarun Bharat Sangh vs. Union of India & Ors.* (supra), it has been laid down that Court has to enforce the directive under Article 48A to protect environment which is connected with right to life itself.

20. In *T.N. Godavaraman Thirumulpad Vs. Union of India (UOI) and Others*, the Apex Court held that adherence to the principle of sustainable development is now a constitutional requirement. The courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under the Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity. The Apex Court while considering principle of sustainable development has observed that Indian economy for the last couple of years has been growing at the rate of 8% to 9% GDP. It is a remarkable achievement. However, accelerated growth rate of GDP does not provide

inclusive growth. Keeping in mind the two extremes, the Apex Court thought of balancing development vis-a-vis protection of wildlife ecology and environment in view of the principle of sustainable development.

21. In *M.C. Mehta Vs. Union of India (UOI) and Others*, the Apex Court has held that when mining leases were granted, requisite clearances for carrying out mining operations were not obtained which have resulted in land and environmental degradation. Time has now come to suspend all mining in the said area on sustainable development principle which is part of Articles 21, 48-A and 51-A(g) of the Constitution of India. Mining within the principle of sustainable development comes within the concept of "balancing" whereas mining beyond the principle of sustainable development comes within the concept of "banning". It is a matter of degree. Balancing of the mining activity with environment protection and banning such activity are two sides of the same principle of sustainable development. They are parts of precautionary principle. It has further been held that the provisions of Rule 27(1)(s)(i) of the Mineral Concession Rules, 1960, Rules 34 and 37 of the Mineral Conservation and Development Rules, 1988 and the guidelines issued under the said Rules of 1988 have not been complied with. Hence, all mining operations in the Aravalli hill range falling in the State of Haryana within the area of approximately 448 sq. km. in the districts of Faridabad and Gurgaon, including Mewat have been suspended.

22. In the wake of what has been discussed, the submission raised by Shri Anand Purohit, Additional Advocate General in the instant case, in view of the stand of respondent No.4, is correct that the State Mining Department is required to obtain the prior environmental clearance of Ministry of Environment and Forests of the Central government in terms of EIA Notification of 2006 to minor minerals also. The notification has been issued in exercise of the powers under Rule 5(3) of the Environmental Protection Rules, 1986. The notification takes care of the directive/objective for State contained in Article 48A of the Constitution of India, which provides that the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. Besides, the notification has statutory force also under the Environmental Protection Act and the Rules of 1986 framed thereunder.

23. Reliance, which has been placed on the clarification dated 19.8.2010 issued by the Government of India, Ministry of Environment & Forests, deals with those projects which are of such a nature involving construction activities. The clarification does not deal with obtaining of prior clearance of Ministry of Environment and Forests. No inference can be drawn as suggested with respect to a matter which is not dealt with in the clarification issued with respect to projects which involve construction activity, in some cases allotment may not be required at all. However, the clarification is also restrictive in nature, it provides that construction activity cannot take place except fencing of the site to protect it from getting encroached and enables construction of temporary shed for the guards. Mining cannot said to be such a project which requires any such

construction activities, fencing etc. Thus, no benefit can be derived out of clarificatory office memorandum dated 19.8.2010. It deals with those projects which require clearance by the respondents for which project report has to be seen and its impact on environment has to be considered. In such projects, no construction activity except to limited extent is permissible. It is not permissible to interpret by inferential reasoning that it is permissible to allot mines as per said clarification contained in office memorandum dated 19.8.2010.

24. In the cases of mining lease, requiring clearance as per EIA Notification of 2006, we are of the considered opinion that no allotment of mines is permissible until and unless prior environmental clearance is obtained, any action to the contrary is per se illegal. The EIA Notification dated 14.9.2006 is mandatory and is having statutory force issued under Rule 5 (3) of the Rules of 1986. In case, mining area is permitted to be allotted and possession is permitted to be handed over before clearance is granted, whole purpose of EIA Notification would be defeated. The duty of the courts is to ensure that such an interpretation is not adopted, which would frustrate very purpose of obtaining the requisite clearance. The illegal mining has become a menace. Even otherwise, mining activity has to be sustainable, to ensure it the said notification of EAI of 2006 has been issued. In case, allotment of mines is permitted before clearance, it would be extremely difficult and impossible to further check the illegal mining and whole purpose of the EIA Notification of 2006 would be frustrated and same would be violative of provisions of not only the Environment Protection Act, the Rules of 1986 and also the statutory notification dated 14.9.2006 issued under Rule 5(3) of the Rules of 1986. Thus, we are of the considered opinion that no allotment can be made; no mining lease can be executed and no possession can be handed over without obtaining the requisite prior environmental clearance as mandated under the notification dated 14.9.2006.

25. We make it clear that we have not dealt with those projects in which construction activity is involved in which fencing and guard room are permitted to be constructed vide office memorandum dated 19.8.2010. Those projects are not involved in the petition. The matter in question is confined to the mining leases only.

26. Resultantly, the writ petition is allowed. The respondents No. 1 to 3 are restrained from making any allotment of the land or to execute any mining leases or to handover the possession of the area in question without obtaining of the requisite clearance from the concerned Committee constituted under EIA Notification of 2006 and shall also ensure that no mining activities shall take place in the area in question without requisite clearance. In future also, the respondents No.1 to 3 to comply with mandate of the said notification of 2006. No costs.