

(2023) 02 UK CK 0042
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 47 Of 2022

Dinesh Kumar Chandola

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 14-02-2023

Acts Referred:

Mines And Minerals (Development And Regulation) Act, 1957 — Section 3(d)

Citation : (2023) 02 UK CK 0042

Hon'ble Judges : Vipin Sanghi, CJ; Ravindra Maithani, J

Bench : Division Bench

Advocate : Dushyant Mainali, Lalit Sharma, S.N. Babulkar, C.S. Rawat, Rajeev Bhatt, Aditya Pratap Singh

Final Decision : Disposed Of

Judgement

Vipin Sanghi, CJ

1. We have heard Mr. Dushyant Mainali, the learned counsel for the petitioner, and Mr. S.N. Babulkar, the learned Advocate General assisted by Mr. C.S. Rawat, the learned Chief Standing Counsel for the State of Uttarakhand, and proceed to dispose of this Public Interest Litigation.

2. The challenge raised in this Writ Petition (PIL) is to the Government Order dated 07.01.2022, and the subsequent permission granted for mining/ dredging of Nandhaur River in the Eco-Sensitive Zone of Nandhaur Wildlife Sanctuary. The petitioner also seeks a direction to the respondents to notify and categorize the zones, where mining is prohibited in the State of Uttarakhand, in consonance with the guidelines issued by respondent no. 1, i.e. the Ministry of Environment, Forest and Climate Change of the Union Government.

3. By the order dated 07.01.2022, the State Government had permitted M/s A.P.S. Infra Engineers Private Limited to carry out the activity of dredging in the Upper Nandhaur Chorgalia Area for a period of six months, and also to remove the silt and RBM, which is dredged.

4. According to the petitioner, the activity of removing of the mineral, which is dredged, tantamounts to mining, which is completely prohibited in the Eco-Sensitive Zone, which Nandhaur Wildlife Sanctuary is. In this regard, Mr. Mainali has referred to the definition of "mining operations" contained in Section 3(d) of the Mines and Minerals (Development and Regulation) Act, 1957, which means "any operations undertaken for the purpose of winning any mineral".

5. Mr. Mainali has placed reliance on the judgment passed by the Supreme Court in T.N. Godavarman Thirumulpad v. Union of India & Ors., 2010 (13) SCC 740 dated 04.08.2006, on the basis of which the Office Memorandum dated 08.08.2019 was issued by respondent no. 1, i.e. the Ministry of Environment, Forest and Climate Change of the Union Government. In the light of the aforesaid order passed by the Supreme Court, the Central Government has directed that "Proposals involving mining of minerals within the ESZ (or) one kilometer from the boundaries of National Parks and Sanctuaries whichever is higher is prohibited in accordance with the order of the Hon'ble Supreme Court dated 4.08.2006 in the matter of T.N. Godavarman Thirumulpad Vs. UOI in W.P.(C) No. 202 of 1995 and dated 21.4.2014 in the matter of Goa Foundation Vs. UOI in W.P. (C) No. 435 of 2012."

6. The submission of Mr. S.N. Babulkar, the learned Advocate General, is that the activity of dredging is essential to conserve the river and the adjoining areas, as failure to carry out dredging would lead to rise in the riverbed levels, leading to flooding in the adjoining areas in the rainy season, where agriculture is carried out and habitations are in place. He further submits that the Central Government has also exempted the requirement of obtaining environmental clearance for the purpose of carrying out the activity of dredging and de-silting of, inter alia, rivers and canals for the purpose of their maintenance, upkeep and disaster management. In this regard, he has placed reliance on the notification dated 28.03.2020 issued by the Ministry of Environment, Forest and Climate Change. Appendix-IX to this notification enlists at Serial Nos. 7 and 12, the activities, in respect whereof exemption has been granted by the Ministry of Environment, Forest and Climate Change, which reads as follows :-

"APPENDIX-IX

EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely:-

1.
2.
3.
4.
5.

6.

7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.

8.

9.

10.

11.

12. Excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of the District Collector or District Magistrate or any other Competent Authority.”

7. The further submission of Mr. Babulkar is that leaving the dredged minerals on the banks of the river, and their non-disposal would also create practical difficulties, inasmuch, as, the silt would flow back into the river in rainy season, and render the activity of dredging nugatory.

8. Mr. Mainali has, with his rejoinder affidavit, placed on record a Joint Inspection Report prepared by a team of Officers, which include the Conservator of Forests, Western Circle, Haldwani, the Deputy Director, MoEF&CC, Dehraun, the Scientist D, CPCB, Lucknow, the Regional Officer, UKPCB, Haldwani, the Sub-Divisional Magistrate, Haldwani, the Geo Chemist, Geology and Mining, Unit-Haldwani, and the Mining Officer, Geology and Mining, Unit- Champawat (Representative of the District Magistrate, Champawat), on the aspect of mining activity in upstream part of Nandhaur River, and Upper-stream part of Sharda Barrage, Tanakpur. This report was prepared in the matter of Ridhima Pandey v. State of Uttarakhand, (OA No. 429/2022). This report takes note of the impugned order issued by the State Government dated 07.01.2022 above referred to, which permits M/s A.P.S. Infra Engineers Private Limited to undertake dredging work, and also to remove the silt and RBM for a period of six months from the aforesaid river. The conclusion and recommendation made in this report by the aforesaid Team/ Committee of Officers is that the area in question is rich in bio-diversity and comes within Eco-Sensitive Zone of Nandhaur Wildlife Sanctuary. Hence, mining activity may not be permitted.

9. Mr. Mainali has also referred to the letter dated 28.03.2022 issued by the Divisional Forest Officer, Haldwani Division, wherein he states that the requisite permission is required to be obtained from the Ministry of Environment, Forest and Climate Change, as well as from the National Board of Wildlife, before permitting the activity to be carried out in terms of the impugned order dated 07.01.2022.

10. We have heard and considered the rival submissions.

11. There is no doubt that the activity of dredging is essential, and should be carried out in rivers and streams from time to time, so that the riverbed levels are maintained. This is essential to prevent flooding in rainy season, which also causes environmental degradation and loss of life and property along the path of the river, or the stream concerned. At the same time, it cannot be that under the garb of dredging, what is permitted, and what is actually carried out, is the activity of mining for commercial purposes. The impugned communication permits a private agency, namely M/s A.P.S. Infra Engineers Private Limited, to carry out not only the dredging activity in the Nandhaur Wildlife Sanctuary, but also to win the mineral, which is dredged. For this, undisputedly, it would be essential for the said agency to send its tools and tackles, men and heavy machinery, as well as trucks into the Wildlife Sanctuary to carry out the activity. Thus, what the impugned order dated 07.01.2022 permits M/s A.P.S. Infra Engineers Private Limited to carry out is not merely the activity of dredging, but also the activity of mining. There is no denying the fact that the activity of mining cannot be carried out in an Eco-Sensitive Zone, as we have already noticed above.

12. Another aspect that we cannot lose sight of, is that the grant of a contract to a private agency for the purpose of dredging, and also winning the dredged mineral, would lead to carrying out of the said activity purely for commercial purposes. The private agency would have its commercial interest in mind, and not the environmental interest, which is the rationale for carrying out the dredging activity in the first place. The dredging activity – which is carried out for environmental reasons, would be limited to the extent it is necessary for achieving that limited objective. However, once the activity is entrusted to a private agency, and that too with a right to carry out mining activity i.e. to win the mineral which is dredged, the extent of dredging that may be carried out on the site is very difficult to monitor or control. The moment the dredged mineral is removed for commercial purposes, the nature of the activity would change from merely dredging to mining, which is clearly prohibited in an Eco-Sensitive Zone.

13. Aforesaid being the position, we cannot permit the respondents to act in terms of their order dated 7.01.2022. The State departments, namely the Forest Conservation Department, and the Agriculture Department, of which the Soil Conservation Division is now a part, should have an active role to play in the carrying out of the activity of dredging in the river in question on its own, without the involvement of a private agency. The activity of mining, i.e. the winning of the dredged mineral, in any case, cannot be permitted. We, therefore, permit the State to undertake the activity of dredging entirely on its own, without the involvement of private agencies, and with the involvement of the State departments aforementioned.

14. The Writ Petition stands disposed of in the aforesaid terms.

15. Consequently, pending applications, if any, also stand disposed of.