
(1993) 05 P&H CK 0082
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4536 of 1993

Hem Chand and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-05-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Citation : (1993) 105 PLR 192

Hon'ble Judges : S.S. Grewal, J; M.S. Liberhan, J

Bench : Division Bench

Advocate : V.K. Jain and Ajay Aggarwal, for the Appellant; D.D. Vasudeva, D.A.G., M.L. Sarin and Alka Sarin, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Liberhan, J.—This petition is directed against the vires of Haryana Regulation and Control of Crushers Act, 1991 (Act No. 15), herein after referred to as the "ACT". The Act is in sequel to the various steps taken by the State administration as well as the legislature to maintain a pollution free environment.

2. The petitioners' pleas may be summarised thus:- The petitioners about 35 years ago had put up stone crushers. In order to maintain ecological balance in the State: to prevent environment degradation and to avoid traffic and human health hazards, keeping in view the Forests and Wild Life notification dated 10.2.1988. A notification dated 9.6.1992 was issued under the Environment (Protection) Act, 1986, as well as the Rules framed thereunder, by which the following parameters were fixed.

That stone crushers units shall install pollution control measures which will include construction of sheds and installation of sprinklers. These measures should be operated to the satisfaction of the Pollution Control Board by 15th August, 1992 and (ii) that no stone crusher unit shall be allowed to operate within the limits of 1-1/2 kms of National Highway, 1 Km. from the State

Highway, 1-1/2 kms from town Abadi and approved urban colony; 1 km. from village Abadi and 1-1/2 kms. from any existing tourist complex. It further provided that stone crushers falling in the prohibited limits shall shift to the zone as identified by the State Government within six months from the date of issue of the notification.

3. The State of Haryana vide Notification dated 18.12.1992 brought about amendment in the Notification dated 9.6.1992 vide which it was provided that no stone crusher unit except those which are in the identified zone or which have been certified by the Haryana State Pollution Control Board for having fulfilled the sitting parameters of the notification dated 9.6.1992, shall henceforth be allowed to operate within the limits of :-

- a) 1-1/2 Kilometers of the National Highway;
- b) 1 Kilometer from the State High-way;
- c) 500 meters from the link road;
- d) 5 Kilometers away from the boundary of metropolitan cities;
- e) 3 Kilometers away from the District Headquarters;
- f) 1-1/2 Kilometres from the town abadi other than District Headquarters; approved urban colony and any existing tourist complex;
- g) 1 Kilometer from the village abadi or any land recorded as forest in Government record or any area which comes under the controlled area.

4. It further envisaged that a stone crusher shall be located in a minimum area of one acre which should be owned by the stone crusher unit and should not be owned on lease from the Panchayat. Further, every stone crusher unit shall install suitable pollution control measures to the satisfaction of the Haryana State Pollution Control Board. It further provided that establishment of a stone crusher shall be subject to the "No Objection Certification" from the Town and Country Planning Department, Haryana, and shall conform to all other statutory regulations. Subject to the above conditions, the State of Haryana declared whole of the State as the zone and permitted the stone crusher owners to install their units provided they fulfil the above mentioned parameters.

5. The Haryana Regulation and Control of Crushers Act, 1991 came into effect from 17.8.1992. The provisions of the Act made it incumbent on the owners of the Stone crushers to get a licence from the State within a period of six months in case the stone crusher is already operating i.e. in case of relocation of the stone crusher. On failure of the owners of the stone crushers obtaining a licence from the Department of Mines and Geology, the State of Haryana is authorised to proceed u/s 4 and 12 of the Act.

6. The petitioners sought a declaration of Act No. 15 of 1991 to be ultra vires and for quashing of notification dated 9.6.1992. The notification Annexure P2 dated

9.6.1992, Annexure P3 dated 4.8.1992, Annexure P7 dated 18.12.1992 as well as the notice for disconnecting the electrical current Annexure P9 dated 9.3.1993 were challenged being violative of Article 14 of the Constitution of India as they were claimed to be arbitrary and violative of Articles 14, 19(1)(g) of the Constitution i.e. right to carry on practice, profession, occupation, trade or business as well as being violative of Article 21, i.e. no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. A further relief of mandamus was sought directing the respondents State of Haryana for declaring village Bandhwari as the zone for stone crushing and to grant a licence and further granting reasonable time to establish the stone crushers with a further direction to release the electric connection. An interim prayer for issuing a writ of prohibition directing the respondents not to stop the functioning of the petitioners' stone crushers till the disposal of the writ petition was made.

7. The charter of claims for declaring Act No. 15 of 1991 to be ultravires is to the effect that the petitioners industry is an essential industry in the field of construction. It is needed for the development of roads, towns etc of the State. The Act imposes an unreasonable restriction on the trade of the petitioners, in a totally arbitrary fashion and confers unguided, uncontrolled and unbridled powers on the executive authorities. It does not specify which stone crusher would be allowed to work and which would be asked to shift. The Act does not prescribe any procedure for granting or refusing the licence. It does not provide any time period for the process of issuing licence. The Director of Mining has been authorised to refuse to grant the licence on unspecified grounds taking into consideration unspecified factors. There is no objective criteria provided by the Act. On refusal of the licence at the present site there is no obligation on the part of the State to provide alternative sites to those who have established stone crushers. The Act does not enjoin any duty or period for making it incumbent on the Electricity Board to release electric connection. Because of its vagueness it leaves a lot of scope to vary or change the conditions of licence during the period of licence. The Act is unworkable.

8. We may hasten to add during the course of argument nothing worth noticing has been said except the bare reference to the vires. The learned counsel for the petitioners accepted that the petitioners have earlier challenged the vires of the Act in CWP No. 2295/1993. However, in the replication filed the petitioners have reproduced their prayer in order to put farther their claim that in the earlier writ petition the relief sought was not the same as in the present writ petition. The relief sought in the said writ petition is for directing the respondents to grant 9 months time for shifting their stone crushers and that the respondents be restrained from interfering in the functioning of the stone crushers.

9. After hearing the learned counsel for the parties, we are of the considered view that in pith and substance in the earlier writ petition which was disposed of with CWP No. 15869 of 1992 by a common order, the facts, the claim of the

petitioners, the contentions raised and the effective relief sought viz. declaration of the zone etc. were the same. Writ petition No. 15869 of 1992 was disposed of in view of the statement of the learned counsel for the petitioners that the whole of the State of Haryana has been declared to be a single zone and they are entitled to establish their industries according to law within six months in that zone. The respondents' stand then was that they would not proceed except in accordance with law and they will give sufficient notice for disconnecting the electric connection and the petitioners would be at liberty to challenge the said notice. So the writ petitions were disposed of.

10. Be that as it is, the object of the Act No. 15 of 1991 is the control of the location, installation or working of the stone crushers by vesting their licencing in the State. It is in the furtherance of the object of ensuring a pollution free environment by ensuring the sources of pollution being kept away. The rules have been published on 29.9.1992 which have laid down sufficient guidelines for achieving the objects of the Act. The powers are vested with the responsible Officers which raises a presumption that powers would be exercised reasonably and properly particularly when an opportunity of hearing, as well as right of appeal have been provided. Merely leaving it to the rules making authorities to provide terms and conditions for the grant of licence by itself would not make the provisions unreasonable or *ultravires*. In the facts and circumstances the restrictions which may not be permissible under the other facts and circumstances are *prima facie* reasonable, as presently advised, keeping in view the public interest, public health, the harmful consequences of the rapidly increasing pollution and the resultant effect on ecological balance.

11. Reading pith and substance of the Act, it is clearly discernible that the Act has provided that no stone crusher shall be installed or run except on a licence granted by the State subject to such terms and conditions as may be prescribed under the Act. As observed earlier, from the very nature of things the conditions cannot be prescribed by the legislature in the Act itself. These are left with the rule making authorities or to the discretion of the persons granting the licence. The conditions have to vary according to the place depending upon numerous factors like number of stone crushers which are already working in a locality, nearness to places inhabited by human beings, ecological balance, requirement of the local agricultural conditions and general health of the public, crops, forest, industries etc. The parameters for the grant or refusal of the licence have been provided by Section 4 of the Act. The rights of the petitioners are further protected as the Act provides a reasonable opportunity of hearing before granting or refusing the licence and it further provides the right of appeal to the higher authorities. We fail to comprehend even remotely the stand put forth by the learned counsel for the petitioners that the Act is not workable merely on account of not providing an alternate site to establish stone crusher, similarly not providing period for the grant or refusal of the licence, which would ordinarily be treated as reasonable period, would not render the provisions of the Act *ultravires* any provisions of the Constitution. While putting reasonable restrictions

on the trade or business in the interest of the society, the State is not duty bound under the Constitution to provide alternate sites for working particularly keeping in view the peculiar facts and circumstances of the case, when whole of the State has been declared as a stone crushing zone and it is only on the satisfaction of the parameters set up for controlling the pollution that a licence is granted. The terms and conditions for granting the licence have already been notified under the rules. The powers of the licencing authority are hedged with the object of the Act as well as the rules of the Statute including Section 4 of the Act, which provides for the grant or refusal of the licence.

12. There is always a presumption in favour of intravires of an Act and it is for the petitioners to show that the Act has violated any provisions of the Constitution, which in the present case, the petitioners have miserably failed to show.

13. So far the prayer of the petitioners to declare village Bandhwari as a zone for stone crushing, is concerned, the same has become infructuous as the entire State has been declared to be crushing zone and the petitioners are entitled to get licence subject to the parameters prescribed under the Environment (Protection) Act, 1986. The State of Haryana undisputedly in exercise of the powers delegated by the Central Government in 1988 has issued notification Annexure P2, which was amended vide Notification Annexure P7, laying down parameters for controlling the pollution. The vires of the Environment (Protection) Act, 1986 are not under challenge. The powers have been categorically delegated to the State vide Annexure Rule 1 to issue the impugned notification. Thus, the contentions raised by the learned counsel for the petitioners that Annexures P2, P3 and P7 have been issued without jurisdiction and without having delegated powers, cannot be sustained particularly in view of the admitted facts that the respondents have been delegated powers vide Annexure Rule 1.

14. Learned counsel for the petitioners very vehemently put forth their claim of discrimination inter-alia, contending that the village Palli, just at a distance of 1-1/2 kilometers from Delhi Border, licences for stone crushers have been granted and alternate sites have been allotted to the persons displaced from the localities around Delhi. It was further contended that the State is bound to treat the petitioners similarly by allotting alternate sites. It was argued that there is no rational for fixing 5 Kilometers distance from the Union Territory as a parameter for granting licence, when licences have already been granted in village Palli which is at a distance of 1-1/2 kilometers from the Union Territory of Delhi. It is further argued that the respondents are estopped on the principle of promissory estoppel in view of the earlier notification issued on 9.6.1992 laying down different parameters and the petitioners having changed their position by taking land in village Bandhwari satisfying the parameters fixed vide Annexure P-2. We find no force in the contention raised by learned counsel for the petitioners for the obvious reason that the petitioners have not applied till today for the grant of

a licence. There is no rule or principle or estoppel against the State in exercise of its legislative powers. From the nature of things the parameters have to be kept flexible and would go on changing in view of the fact that urban areas are changing at a fast pace. There cannot be any water tight compartment for all times to come with respect to the need for keeping ecological balance.

15. We find no force in the contention of learned counsel for the petitioners that the petitioners have been discriminated against in view of the fact that licence have been granted to people in village Palli. We find support in the contention of learned counsel for the respondents while refuting the submissions made by learned counsel for the petitioners that licences were granted in village Palli when the present parameters imposed vide notification Annexure P7 were not in existence and that stone crushers were accommodated on the alternate sites, in view of the stand taken before Hon"ble the Supreme Court and under orders of the Supreme Court. It would be categorically discernible by reading the order dated 15.5.1992 in M.C. Mehta v. Union of India. The argument of discrimination appears to be fallacious the face of it as all the stone crushers of the State cannot be accommodated at one place. In the very fitness of things and the facts, the state Government is empowered to keep the various factors, said in the earlier part of the Judgment and the object of the Act in view, to refuse the grant of licence. The very fact that different parameters are applicable when the petitioners want to obtain a licence would make the petitioners a class by itself. They cannot be treated equally or similarly as the people who applied for licence, much prior to the petitioners.

16. Above all the petitioners are debarred from challenging the notifications Annexures P2 and P7 particularly when their earlier writ petition was disposed of wherein the relief was declined to the petitioners. Nothing has been pointed out to show that the delegation of powers by the Central Government to the State Government is against law or unconstitutional. When whole of the State of Haryana has been declared as zone consequently no specific declaration is needed with respect to declaring village Bhandwari as a zone. Faced with the reports by the three Commissioners who went to the spot and reported on 16.11.1992 that village Bhandwari does not come within the parameters laid down by notification Annexure P2 much less the amended parameters laid down vide notification Annexure P7, bald assertions have been made that new parameters set up vide Annexure P7 is a colourable exercise or powers. Nothing has been pointed out to substantiate the assertions. Thus we find no ground to hold that laying down the parameters is an arbitrary act or a colourable exercise of powers by the respondents.

17. Annexure P3 is nothing but an amendment of the zones already declared which has lost its significance in view of the later events taken place and the fact that whole of the State has been declared as a crushing zone.

18. The contention of the learned counsel for the petitioners that the respondents are estopped by their own acts and conduct in refusing the licence

to the petitioners has already been dealt with in the earlier of the Judgment. However, we may add that giving of any assurance by respondents Nos. 3 and 4 to the petitioners has been categorically denied. Even otherwise, no assurance can be given against the statutory provisions. The principle of promissory estoppel cannot be invoked against the State in exercise of its legislative powers. Nothing has been pointed out to persuade us to take any other view. The Respondent-State is always at liberty to change its policies and to exercise its legislative powers.

No other point has been raised in the course of arguments.

Consequently, the writ petition is dismissed with no order as to costs.