
(2007) 04 MP CK 0016

In the Madhya Pradesh High Court

Case No : Writ Petition (PIL) No. 4133 of 2005

Jaipal Singh and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Minor Minerals Rules, 1996 — Rule 5

Citation : (2007) 3 MPLJ 97

Hon'ble Judges : P.K. Jaiswal, J; Abhay Gohil, J

Bench : Division Bench

Advocate : S.B. Gupta, for the Appellant; Vivek Khedkar, Government Advocate for Respondents No. 1, 2 and 3, Vishal Mishra for Respondent No. 4 and V.K. Bharadwaj for Respondents No. 5, 6 and 8, for the Respondent

Judgement

Abhay Gohil, J.

This Public Interest Litigation Petition has been filed under Article 226 of the Constitution of India for issuance of writ of mandamus in the matter of arbitrary and illegal grant of Mining Lease without following the procedure prescribed in the Minor Mineral Rules, 1996 by the State Authorities and permitting to establish crushers by respondents.

As pleaded in the petition, the petitioners are agriculturists and they are public spirited persons. Their contention is that in village Paragon Tehsil Datia, the AKS showing the Survey Nos. 72/1, 72/2 and 73 are adjacent to Survey No. 78, 80, 81, 14, 13, 12 and 16 and the Survey No. 15 and 324 which are hillock has been taken up by the State Authorities for the grant of mining lease for establishing crushers and this Survey No. 15 and 324 are surrounded by agriculture land and mining officer has granted lease to the Respondents No. 5 to 8 and to some other persons for a period of 10 years and land bearing Survey Nos. 311, 376, 380, 382 as has been shown in AKS is agricultural land belongs to the petitioners. Their contention in nutshell is that for excavation of the flagstone

from the hillock and installation of crushers is to be blasted or broken up manually for preparation of various size of Gitti and to filter by way of revolving of the Mesh which emits huge amount of dust which will blow in air and later on would be settled in nearby agriculture field and the aforesaid crushed dust of the stone will damage all the standing crops and will also hamper the growing of seeds and drastically it will reduce the fertility of the land and as a result of settling of the crushed dust in the agriculture field will totally damage the cultivation and reduce the agricultural value of the land and soil and ultimately the agriculturist would be crop less and this will affect their fundamental rights of livelihood. It was further contended that if it is necessary to permit the installation of crusher, the same should have been permitted only after providing safeguard so that the same may not cause any damage to the agricultural land. It was further submitted that the Collector before granting lease has not taken into consideration the interest of the agriculturists and petitioners. Representation dated 5-9-2005 (Annexure-P/8) was also submitted to the Collector, District Datia indicating therein that the petitioners and other villagers have no other source of income except the agricultural land and if the mining lease is granted and crushers are allowed on spot, it will cause loss to the agriculturists. Earlier also a representation dated 2-12-2004 (Annexure-P/9) was submitted. A panchanama was prepared which is Annexure-P/10. It was also submitted that adjacent to the hillock, forest area is also situated and the mining operations will affect the forest area. Under Rule 5 Chapter II of M. P. Minor Mineral Rules, 1996, no grant of quarry can be made. As per Rule 5(2)(b) of Chapter II of M. P. Minor Mineral Rules, 1996, no quarry lease or trade quarry permit shall be granted in the forest land without the permission of appropriate authority as prescribed in the Forest (Conservation) Act, 1980, within a distance of 75 metres from any bridge, National or State Highways, Railway line or 50 metres from any public place. No mining operation can be permitted within 5 km. Radius of the protected forest boundaries. As per Rule 45 of the M. P. Minor Mineral Rules, 1996, the activities will cause damage to the flora of the area, therefore, such permission is against the rules. The blowing dust will settle on the field and ultimately will reduce the productivity and make the land uncultivable and will also create ecological and other environmental imbalance. No Objection Certificate has also not been given by the Pollution Control Board and prayed that:

(i) the process for mining lease of crushing purpose on spot may kindly be directed to be stopped and suitable orders and direction be passed that even if the government intent to grant the lease for mining purpose for excavation of black stone, the crushing operation be done at other site protected whereby byproduct dust flowing from the operation of crushers. may not reach the fields/ agricultural lands of the petitioners and other agriculturists.

(ii) Any other writ, order or direction as this Hon''ble Court deems fit, may also be issued doing justice in the matter.

Respondents No. 1 to 3 State of M. P. and its authorities have filed their return and have raised preliminary objections. It was submitted by the respondents that as per provisions of the Minor Mineral Rules, 1996, whenever any quarry lease has been granted for mining purposes, the following conditions required to be fulfilled by the lease operators:

- (1) No Objection Certificate from the Gram Panchayat concerned.
- (2) No Objection Certificate from the Forest Department.
- (3) Report from Revenue Department.
- (4) Report from Deputy Director Mining.
- (5) Permission from Pollution Control Board and thereafter report from Mining Inspector.

And thereafter lessee of the mining lease has to fulfil the other conditions as laid down under Rule 5 of the Minor Minerals Rules, 1996. Before granting lease, rules have been followed and after receiving No Objection Certificate and reports from the required concerning Departments, the quarry lease has been granted. There is also no violation of any rules before granting the quarry lease. The allegation of the petitioners regarding violation of Rule is totally baseless and merit less.

It is further contended in the return of the State Government that before granting quarry lease all the conditions have been fulfilled and No Objection Certificate from Gram Panchayat, Forest, and permission from Pollution Control Board has been received. The copies of the relevant documents has been filed as Annexure-R/1 to R/4. It was further submitted that the joint inspection of the spot of survey No. 324 for grant of quarry lease to Respondent No. 5 was made by Patwari, Revenue Inspector, Mining Inspector and Naib Tehsildar and it was found that one "Madiya" is situated about 100 metres away from the quarry lease. Copy of the joint inspection report is Annexure-R/5. The quarry lease has been sanctioned to the Respondents No. 5 to 8 on survey No. 324 and 15 and both the survey numbers are recorded as hills. Copies of relevant Khasras are Annexure- R/6 and 7. Copy of the AKS are Annexure-R/8 and 9, in which the area of lease has been demarcated. Though presently lease has been granted to respondents No. 5 to 8 but there is no mining operation on the spot. No crusher has been established till today on the spot. Therefore, the petition is totally premature and is liable to be dismissed. It is also submitted on behalf of the Government that while granting quarry lease certain conditions have been imposed by the State Government contained in Annexure-P/4 to P/17. Quarry lease has been allowed for mining manually only.

It was further contended that there is no specific policy of State about establishment of crushers. One notification was issued by the Minor Mineral Resources Department on 10-12-2003, in which it is specifically directed that the crusher should be established on the land of quarry lease. If it is not possible

then it should be established consulting Gram Panchayat after obtaining permission from Gram Panchayat and approval of the concerned Collector. Copy of the notification is marked as Annexure-R/10. It is further pleaded that before filing the petition, the petitioners submitted a complaint before the Collector. From these complaints, they are not aggrieved by the allotment of the quarry lease but they are aggrieved about the establishment of crushers. Presently, there is no crusher on the spot. Thereafter inquiry was made by Mining Inspector and Surveyor and thereafter it was suggested by them that lease-holders be directed to establish the crushers in the eastern-southern side of the quarry lease. On the basis of aforesaid report, the letter was issued to the Respondent No. 5 to submit a proper affidavit as per the observation and conditions proposed by the Mining Inspector. The inspection report along with Panchnama is annexed as Annexure-R/12 and R/13. A copy of the letter dated 12-4-2005 issued by the Collector is filed as Annexure-R/14. The Respondent No. 5 also submitted an affidavit and copy of the affidavit is Annexure-R/15, it was also mentioned that if the leaseholders shall violate any condition then their lease can be cancelled.

In the return Government has also clarified that the entire survey No. 324 is 37.49 hectare in which the lease has been granted to 3 persons. Total 12 hectare has been granted to three leaseholders. The Survey No. 324 is surrounded by the agricultural land. It is specifically mentioned in the lease order that the excavation of the metal stone shall be made manually and it shall not be done by blast. It is further stated that the dust of the crushers will affect only hundred metres area and if crusher is installed in the middle of the land, it will not affect the fertility of the agricultural land. It was also clarified that it is not a flagstone quarry. Lease has been granted after receiving permission from the Pollution Control Board and the leaseholders are bound by the conditions imposed by the M.P. Pollution Control Board. It is totally misconceived that the dust will blow in air or will be settled in the nearby agriculture field. It was further submitted that there is no likelihood of any damages as presumed by the petitioners. The Madiya (Chabutra) is hundred metres away from the quarry lease. It was further submitted that the alternative remedy for filing appeal under Rule 57 of the Mining Mineral Rules is available. There is no forest area nearby quarry lease and the forest area is more than 500 metres to 1 Km away from the quarry lease. Forest Department has issued circular Annexure-R/16, in which it is specifically contended that quarry lease cannot be granted within the forest area as well as within the area of 250 metres from the forest land. Therefore, it is denied that no mining operation cannot be permitted within the radius of 5 kilometres.

Respondent No. 4-M. P. Pollution Control Board has also filed its return in reply of the petition and their submission is that Respondent No. 5 Smt. Prabha Yadav, resident of village Kurthara Tehsil District Datia filed an application for permission for mining and installation of stone crusher in Khasra No. 324, Chakkabu, district Datia along with No Objection Certificate dated 15-8-2004 issued by Gram Panchayat, Honhaar, Vikas Khand Datia. On the application the inspection was got done and consent letter dated 4-9-2004 was duly submitted. During the

inspection it was found that the respective area is 500 metres away from the residential block. In the inspection report it was submitted that there is no permission for blasting. Only manual mining is permissible. There is also no permission for installation of a stone crusher. Copy of consent letter is filed as Annexure-R/4/1. As per Clause 9, for installing stone crusher, no specific permission from answering respondent has been taken as required to be taken. Similar is the reply of Pollution Control Board in the matter of Respondent No. 6 and 8, permission has only been granted to Respondent No. 7 for installation of crusher. But till date no crusher has been installed and prior to starting the crusher, the Respondent No. 7 has to take consent from the answering respondent showing that he has complied with all the conditions. A letter of Pollution Control Board dated 5-1-2007 has been filed by which the Pollution Control Board has granted permission to M/s B. S. Stone Crusher for establishing a stone crusher at Survey No. 15, total area of 2.58 hectares at village Chakkabu, Thana Baroni, Datia (M. P.) on the following terms and conditions:

The total quantity of the industry and domestic effluent shall not exceed 1.0 Kl/day.

The industry shall provide adequate facility for proper treatment of industrial waste effluent and shall ensure that the treated effluent quality meets the standards prescribed by the Board and notified in the M. P. Gazette dated 25-3-1988.

The industry shall install separate electric metering arrangement for running of pollution control devices and this arrangement shall be made in such fashion that any non-functioning of pollution control devices shall immediately stop the electric supply to the production and shall remain tripped till such time unless the pollution control device/devices are made functional. The record of electricity consumption for running of pollution control equipment shall be maintained and submitted to the Board every month. A separate log book shall be maintained.

The construction of effluent treatment plant shall be taken up simultaneously with other civil work, if required.

Industry management shall have to submit C.A. Certificate/Balance sheet as proof for capital investment within 15 days from the receipt of this letter.

The industry shall have to make arrangement of suitable drains/pipe network to ensure adequate flow for full utilization of treated effluent inside premises.

Industry shall install suitable Air Pollution Control Equipment at all points. Ambient air quality at the boundary of the factory premises shall conform to the following limits:

- (a) S.P.M. 200 Microgram/Cubic metre.
- (b) SO₂ 80 Microgram/Cubic Metre.
- (c) N O_x 80 Microgram/Cubic Metre.

(d) CO 2000 Microgram/Cubic Metre.

The industry shall recalculate/utilize all treated effluent within the premises for land use. No effluent either treated/untreated shall be discharged outside the premises in any case concept of Zero discharge shall be practiced.

Industry shall provide water metering arrangement for the measurement of fresh water utilized and waste water generated.

The submission of environmental statement by the industry who seek consent Under Air Act or both and authorization under the Hazardous Wastes (Management and Handling) Rules, 1989 (as amended in 2003) has been made mandatory under the Environment (Protection) Act, 1986. As per this provision, such industries are required to submit environmental statement for the previous year ending 31st March on or before 30th September every year to the Board,

All the slope of external dumps of over burden should be maintained at a maximum of 28 degrees.

Industrial activity shall be carried out in such a way so that prime land area may not get degraded.

Separate Environmental Management cell with suitably qualified technical personnel to carry out various functions should be set up under the control of senior executive who will report directly to head of the organization.

The industry shall take proper action to control the noise pollution. The ambient noise level shall not exceed the limit 75 DB(A) during the day time and 70 DB(A) during the night time.

Good house keeping practice shall be adopted by the mine.

Respondents No. 5, 6 and 8 have also filed their return and have also raised their preliminary objection that under Rule 57(2) of the M. P. Minor Mineral Rules, 1996, the appeal lies to the Director of Geology and Mining Madhya Pradesh against the order passed by the Collector and since the alternative and efficacious remedy of appeal is available to the petitioners, the present petition is not maintainable. Their next objection is that the petition is premature. They have also submitted that it is wrong to say that the mining lease is granted to the humble respondent for installing crusher without following the procedure prescribed in the M.P. Minor Mineral Rules, 1996, Survey No. 15 is a hillock and the Survey No. 324 is far away. Mining lease has been granted to Smt. Prabha Yadav (Respondent No. 5) in Survey No. 324 as per the terms and conditions of the lease deed. It was further stated that the Survey No. 324 is not surrounded by agriculture field and Survey Nos. 319, 323, 384, 378 are all Government land. Respondent No. 5 shall install the crusher as per the conditions imposed in Annexure-P/4 to P/7. The pollution control equipments are to be installed and this equipment will suck all the dust and before starting the crushing work, the respondent will also do the needful plantation and required fountains shall also

be installed by taking precautions and there are no chances of the dust going outside the Survey No. 324. The land of Survey No. 324 is also a hillock and the place where crusher is to be started is also surrounded by a hillock by 3 sides. The crusher and the other equipments are totally covered and the photograph of "Pollution Control Shed" in Annexure-R/3 and R/4 has been filed and in para 5.7 it is stated that, "for the crusher operation all machines are well covered and the pollution control equipments along with the required fountains are going to be installed and as such the dust will not flow along with the air. The dust will be collected in the pollution control equipments as the said dust is most valuable item like "sand" and after installation of the unit the same will be fully covered by "shed and cottage." The apprehension shown by the petitioners is baseless and premature. It was also denied that by installation of the crushers, the agricultural land will be affected or the fundamental rights of the petitioners will also be affected. There shall be no damage to the ancient temple also. So far as the forest land is concerned, it is 3 Kms away from the place of the operation and the land allotted to the Respondent No. 6 is 4 Kms away from forest. The inquiry report of Tehsildar dated 25-6-2005 is Annexure-R/5 and 6. The Pollution Control Board has also granted the consent in respect of the lease, the same letter has been filed as Annexure-R/7 on 15-8-2004. The Gram Panchayat has issued No Objection certificate for installation of crusher by resolution No. 5 dated 16-6-2005. Again on 2-10-2005 resolution Nos. 10 and 11 was passed regarding No Objection if the crusher is installed. Copy of the lease deed has also been placed on record in which detailed terms and conditions have been mentioned. As per those conditions also the every care has been taken to protect the land. In nutshell the submission of the respondents was that they shall take all necessary steps to protect the agriculture land and soil from the dust and the government has also taken all steps in this regard and, therefore, they have submitted that the petition be dismissed.

On the aforesaid pleadings, we have heard the learned counsel for the parties at length and their submissions. The learned counsel for the petitioners as well as learned counsel for the respondents both have specifically advanced their arguments on the same lines as has been pleaded by them in their petition as well as in their returns. The main contention of the learned counsel for the petitioners was that specific committee about the conservation of soil should be constituted to study air, water, soil conservation and guidelines be issued to the respondents and in reply the contention of the counsel for the respondents was that government has already examined the matter. The Pollution Control Board has also conducted inspection. They have already issued guidelines and has also imposed various restrictions, number of other conditions to preserve soil and agriculture land has also been mentioned in the Lease Deed and after installation of the crusher before commencing work the project shall be inspected by Pollution Control Board and after satisfaction permission shall be granted.

Rule 5 of M. P. Minor Mineral Rules, 1996 (hereafter shall be referred to as "Mines and Minerals Rules of 1996") reads as under:

Restrictions on the grant of (trade quarry") or quarry lease - (1) No quarry" lease, or (trade quarry) shall be granted to any person unless such person is an Indian National or a company as defined in Sub-section (1) of Section 3 of the Companies Act, 1956 (No. 1 of 1956) and satisfies such conditions prescribed in these rules.

Explanation - In case of a firm or any other association of individuals, for the purpose of this sub-rule, a person shall be deemed to be an Indian national only, if all the members of the firm or association are citizens of India.

(2) No quarry lease, or (trade quarry) shall be granted in respect of an area:

(a) notified by the Government as reserved for the use of the Government, Local Authorities or for any other public or for special purposes except with the previous approval of the State Government;

(b) in forest land without the permission of appropriate authority as prescribed in the Forest (Conservation) Act, 1980 (No. 69 of 1980);

(c) within a distance of 300 metres from sensitive areas like radio station, Doordarshan Kendra, airport, defence establishment etc.

100 metres from any bridge, national/state highway, railway line, public place or 10 metres from grameen kanchcha rasta.

(d) except for the mineral sand or bajri, within a distance of 100 metres from river banks, nalas, canal, reservoir, dam, any natural water course or any water impounding structure.

(e) which is not compact and contiguous.

Under Chapter XIII of the M. P. Minor Mineral Rules, 1996, Rule 57 provides for filing appeal, review and revision and Rule 59 provides for limitation of Appeal, Review or Revision. Undisputedly this is not a usual petition by a particular party challenging the order of grant of lease. But this is a Public Interest Litigation Petition which has been filed by the villagers in Public Interest regarding issue of direction in favour of the agriculturists, those who are having adjoining agriculture land and fields, cultivating thereon for the protection of their agriculture crop as well as for the protection of soil, seed and to protect the other environmental conditions from its damage by the mineral dust. No doubt agricultural land is the backbone of the lives of the citizens of this country and without the agricultural production the country cannot survive, therefore, whatever the agriculture land is available is required to be protected from the damage and from the damage of the mineral dust also. Therefore, such an important question can only be examined under powers of judicial review by the High Courts in a Public Interest Litigation and that question cannot be examined by any appellate or revisional authority who has limited scope to examine the question arising out of the rules. The scope of Public Interest Litigation Petition is much more wider where the petitioners can ventilate their problems before the

Court and may get the proper solution thereof by getting suitable directions from the High Court. Therefore, the preliminary objection raised by the respondents regarding remedy of appeal or revision is not sustainable.

In the case of Mohd. Haroon Ansari and Anr. v. District Collector, Rangareddy District Andhra Pradesh and others, reported in 2004 (4) SCC 491, in which a Public Interest Litigation Petition was entertained on the basis of a letter sent to the Chief Justice of the High Court of Andhra Pradesh to direct the respondent to take action against the illegal blasting and crushing of granite for concrete metal in the areas of Gododi, Nanakramguda, hills of Khanapur and Kokapet in Rangareddy district as a result of which a lot of fine granite silica dust is entering into the atmosphere which causes a disease called "silicosis" to the residents of nearby area. In the aforesaid matter High Court called for a report from the Assistant Director of Mines and Geology. The said report revealed that there are four quarry leases and three stone-crushers in Kokapet village, Rajendranagar mandal; that the quarries and crushers are at a distance of 2 Km to the south of Kokapet village and 20 Km from Hyderabad; that the ground-level water reservoir of Hyderabad Metropolitan Water Works and Sewerage Board, which supplies water to the city of Hyderabad is located at a distance of 1 Km from the stone quarry; that Osmansagar lake is also located about 3 Km south- west of these quarries and crushers. After receipt of the report of the Assistant Director of Mines and Geology, the High Court impleaded seventeen stone industries and also directed issuance of notice to the Government of Andhra Pradesh to appoint a Committee of Experts to examine whether quarrying, crushing and blasting activities are close to Osmansagar lake and whether the ground-level water reservoir of Hyderabad Metropolitan Water Works and Sewerage Board is endangered by such operations and submit a report of the said Committee to the High Court. Conclusions and recommendations of the Committee are as under:

(1) As a result of blasting in the quarries, within a radius of 1 Km the shock waves which are generated, pass through the joints - especially the horizontal joints and create vibrations in the nearby areas. The reservoir which is close by is also within the range of its impact. Higher than present intensities of blasting will definitely cause damage to the reservoir structure. Thus, blasting and quarrying within a range of 1 Km, already prohibited, must not be permitted.

(2) To prevent unauthorised quarrying, it is suggested that the approach road must be closed after the gateway of GLSR and all activities of unauthorised quarrying must be stopped forthwith. Security staff can be contracted for the purpose by the GLSR authorities.

(3) The authorised quarry and crusher company will lose approach and can be permitted to build another approach to their facilities from the eastern side.

(4) The quarries on the northern flanks of the hill range at a distance of 1 Km from the reservoir will not have any impact on the reservoir because of the joint patterns/systems in the areas. GLSR is on one side of the dispersion point, the

authorised quarries are on the other side of it. However, as a precautionary measure, the intensity of blasting must be kept at the minimum by fixing the limit of number of holes, depth of holes and quantity of explosive per blasting.

(5) There is no impact on Osmansagar lake due to blasting beyond 1 Km radius.

Thereafter the High Court after noticing various aspects attributed to in the report held as follows: -

The distance of 1 Km, according to the Expert Committee is a safe distance between the site under quarry lease and the residential locality or GLSR. In fact, the distance between them is not only to be safe, but it should be safer. As the residents of the village situated nearby are experiencing tremors as well as dust pollution, it is always better that no quarry lease should be granted within a distance of 2 Kilometres in future. Therefore, Respondents 7 to 23 cannot operate quarry leases and stone-crushers. It is, however, open to them to apply for areas for quarry lease, beyond 2 kilometres from residential areas and GLSR.

The order of the High Court was challenged before the Supreme Court in various appeals. The Supreme Court in the appeals directed the parties to get a report from the competent institution or organisation which has experience in the field to make a proper assessment as to the impact on GLSR in relation to the activities carried on by the stone-crushers and quarries and file a report. Thereafter, the Centre of Mining Environment, Indian School of Mines, Dhanbad constituted a committee and the committee after studying the area, nature of mining activities, change in land-use, topography, ground vibrations due to blasting, air-quality assessment, water-quality assessment, noise-quality assessment, submitted its detailed report. The Supreme Court has also called upon the Pollution Control Board to respond to the report submitted by the Centre of Mining Environment, Dhanbad, but the Pollution Control Board has not contradicted the aforesaid report and after considering the affidavit of the Board as well as the report of the Centre of Mining Environment, Indian School of Mining, Dhanbad, the Hon'ble Supreme Court modified the order of the High Court directed that the distance between the site of the quarry leases and the residential localities or GLSR or Osmansagar Lake and, thus, the distance of 1 Km would be justified after considering the various parameters, topography, etc., etc. instead of 2 Km as directed by the High Court.

Again in the case of M.C. Mehta Vs. Union of India (UOI) and Others, the similar question arose before the Apex Court and the Apex Court held that the mining operation is hazardous in nature. It impairs ecology and people's right to natural resources. The entire process of setting up and functioning of mining operation requires utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including

the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that the public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and people's life, health and property, the principles of accountability for restoration and compensation have to be applied.

In the aforesaid case, Supreme Court has referred the decision in the case of AIR 1991 420 (SC) in which it was held that the right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.

Adverting to the question of preservation of soil, virtually land and soil are also backbone of life throughout the world. Preservation of soil is the duty of every State in the present contest when the population of the country is on high-rise. It is a part of environmental justice, which is the fair treatment and meaningful involvement of all people, regardless of race, colour, national origin or income, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. Generally, justice is done when people get what they deserve or what is due to them. Air, water, biodiversity, forests and the aesthetic of the landscape are basic resources, necessary for the survival of both human species and the entire biosphere of which human beings are a part. The rules of access to environmental services, and benefits of the natural environment, should guarantee the public nature of goods as well as the equity of their distribution. The traditional individualistic nature of rights in the West has prompted the private appropriation of public goods to satisfy private interests, often to the detriment of the public or collective good. This is a total violation of justice and equity.

Article 48 of the Constitution of India envisages that the State shall endeavour to organise agriculture on modern and scientific lines, therefore, the preservation of agricultural land and to organise it on modern and scientific lines with a view to develop it for more agriculture product as one of the need of time. The agriculture land cannot be protected or developed for better crop and better production of agriculture produce unless the soil is preserved and conserved. The agriculture land is to be protected at par with the forest.

The most vital necessities namely, air, water and soil, having regard to right to life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of agricultural land and soil which has direct relation with the existence of human life. Therefore, in our opinion the question of the

conservation of soil is implicit in the right to life under Article 21 of the Constitution of India and, it can further be held that conservation of agricultural land and soil is also implicit in the right to life under Article 21 of the Constitution and its degradation cannot be allowed in any form.

Now, the question in this petition is that the petitioners have not sought any relief about quashing of the grant of lease of the respondents. So far as the establishment of installation of crushers for crushing purposes is concerned, that has not been done so far. The relief which has been sought is that crushing operations are done at other site whereby byproduct dust flowing from the operation of crushers may not reach the fields/agricultural lands of the petitioners and other agriculturists. In this regard the permission granted by the Pollution Control Board by letter dated 5th of January, 2007, is clear that the Board has already directed that the total quantity of the Industry and domestic effluent shall not exceed 1.0 KL/day. The industry shall provide adequate facility for proper treatment of industrial waste effluent and shall ensure that the treated effluent quality meets the standards prescribed by the Board as notified in the M. P. Gazette dated 25-3-1988. The industry shall install separate electric metering arrangement for running of pollution control devices and this arrangement shall be made in such fashion that any non-functioning of pollution control devices shall immediately stop the electric supply to the production and shall remain tripped till such time unless the pollution control device/devices are made functional. The record of electricity consumption for running of pollution control equipment shall be maintained and submitted to the Board every month. A separate log book shall be maintained. The construction of effluent treatment plant shall be taken up simultaneously with other civil work, if required. The industry shall have to make arrangement of suitable drains/pipe network to ensure adequate flow for full utilization of treated effluent inside premises. Industry shall install suitable Air Pollution Control Equipment at all points. Ambient air quality at the boundary of the factory premises shall conform to the following limits: (a) S.P.M. 200 Microgram/Cubic metre ; (b) SO₂ 80 Micro- gram/Cubic Metre; (c) N O_x 80 Microgram/Cubic Metre; (d) CO 2000 Microgram/Cubic Metre. The industry shall recalculate/utilize all treated effluent within the premises for land use. No effluent either treated/untreated shall be discharged outside the premises, in any case concept of Zero discharge shall be practiced. This means that there shall be no flow of dust upto the Zero level and no dust will go to the nearby agriculture field. The Respondent Nos. 5, 6 and 8 have also filed their affidavits along with photographs of their machines and installation of Air Pollution Control Measures, Pollution Control Sheds, cottages, and they have also answered that number of water sprinklers shall also be installed. The Pollution Control equipments will suck all the dust there shall be sufficient number of plantation that shall be nursed and number of fountains shall also be installed. The plant shall be fully covered under pollution control shed and dust will be collected in the pollution control equipments. It has been pointed out that the forest is 3 Km away from the place of operation of Respondent Nos. 5 and 8

and 4 Km away from the land allotted to the Respondent No. 6. Therefore, the Pollution Control Board has taken in the matter and sufficient safeguards steps to ensure the compliance of their directions. However, as directed by Supreme Court in the case of Mohd. Haroon Ansari (supra), now the distance of 1 Km from Lake or residential locality has to be maintained by the Mining Department as well as by the Forest and other Departments while granting quarry lease.

Thus, after considering various submissions, this petition is disposed of with the following directions:

(i) That it shall be the duty of the State and respondents to take all necessary steps to conserve agriculture land and its soil from any kind of degradation.

(ii) As has been stated in the lease, the mines shall be operated manually and there shall be no blasting.

(iii) If the crushers are required to be installed the same shall follow the provisions of M. P. Minor Mineral Rules, 1996 as well as the terms and conditions mentioned in the Lease Deed and the directions issued by the Pollution Control Board.

(iv) In addition to the Madiya, Chabutara in the shape of temple shall be preserved as it is and shall not be damaged by any mining activity.

(v) The crushers shall be installed towards the eastern-southern side of the hillock from where the dust may not reach to agricultural land.

(vi) The conditions laid down in the letter issued by M. P. Pollution Control Board dated 2-5-2007 and 5-1-2007 shall be binding on the lease holders.

(vii) The undertaking shall be given by the Respondents No. 5 to 8 regarding the plantation, installation of pollution control equipments and sufficient number of fountains. Such pollution control equipments shall be installed which will suck all the dust and the said dust will not blow in the air nor will go to the field and nor will be settled in the agriculture field and nor will spoil the crop as well as soil of the agriculture field.

(viii) In any case it shall be the duty of the respondents including the State as well as of the lease holders that the agriculture fields are not degraded and crop and the quality of the soil is also not degraded by flowing and settling of dust.

(ix) The general conditions mentioned for grant of quarry lease as per Rule 30 shall be binding on the lease holders. Rules 44, 45 and 46 shall also be binding.

(x) The provisions of the Air (Prevention and Control of Pollution) Act, 1981 (No. 14 of 1981) and the Environment (Protection) Act, 1986 (No. 29 of 1986) and the rules made thereunder shall also be binding on the lease holders.

(xi) These conditions and directions issued by the Court shall be in addition to all the terms and conditions mentioned in the Rules and Regulations as well as in Form No. 7 (under Rule 26 for quarry lease deed) and in the lease deed and in

the permission letter of the Pollution Control Board.

(xii) Before commencement of work of any crusher, fresh No Objection Certificate shall be taken from the Pollution Control Board with regard to the installation of Pollution Control Equipments, there functioning and regarding the quality and standard of those equipments.

(xiii) The Pollution Control Board shall ensure regular inspection of the crushers and shall also ensure compliance of all the conditions of the lease deed and provisions of M. P. Minor Mineral Rules of 1996 and all other directions issued from time to time and undertaking given by the respondents.

(xiv) In case of any default or any breach, proper action shall be taken by the Pollution Control Board else the Pollution Control Board shall also be held answerable and responsible.

(xv) The officers of the Mining Department including Mining Officer and Mining Inspector shall also ensure the compliance of the rules by the lease holders and in case of violation thereof they shall ensure the timely action against the lease holders.

(xvi) The State Government is directed to constitute an expert committee consisting of the agriculture experts, representative of agriculturists and mining experts to study whether and on what terms and conditions mining lease can be granted in future for mining operations or for installation of crushers near the agriculture land so that the agriculture land or its soil may be saved from any kind of degradation and damage. The Committee shall be constituted within 60 days from today and thereafter the committee will suggest ways and means to preserve and conserve agricultural land and soil and on the basis of aforesaid recommendation the State will issue necessary directions and if necessary the Government will also amend the M. P. Minor Mineral Rules, 1996 and incorporate such conditions which may save the agriculture field and soil from degradation in the State of Madhya Pradesh.

(xvii) The State Government shall also formulate specific policy about establishment of crushers in the State within six months.

With the aforesaid directions, this petition is finally disposed of. Parties to bear their own costs. Amount of security be deposited with Legal Service Authority.

Order accordingly.