
(2012) 08 P&H CK 0072
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9388 of 2012

Jaswinder Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Citation : (2012) 08 P&H CK 0072

Hon'ble Judges : Jasbir Singh, Acting C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Mansur Ali, for the Appellant; Ashok Aggarwal, Advocate General, Punjab with Mr. Alok Jain, Additional Advocate General, Punjab, Mr. Gurminder Singh, Advocate and Mr. Onkar S. Batalvi, Senior Standing Counsel for Union of India, for the Respondent

Judgement

Jasbir Singh, ACJ

1. The petitioner transports the extracted minor minerals. It is his grievance that respondent No. 6 is charging excess price and the Government should post its officer(s) to determine the correct amount to be paid to the above respondent. On 28.5.2011, the following order was passed by this Court:-

Reply by way of counter affidavit of Bhola Singh Brar, General Manager -cum- Mining Officer, District Industries Centre, S.B.S. Nagar (Nawanshahar) on behalf of respondents No. 1 to 5, filed in Court today, is taken on record.

The petitioner, who transports minor minerals, after respondent No. 6 excavates them pursuant to a mining lease granted by the State of Punjab, has approached this Court inter-alia for the relief that as respondent no.6 is charging excess price, the department should post its officers, to determine the correct amount to be paid by the petitioner. During the course of hearing, it has come to our notice that in a matter relating to the State of Haryana, the Hon'ble Supreme Court has passed an order in SLP (C) No. 19628-19629 of 2009 (Deepak Kumar etc. v. State of Haryana and others etc.), which reads as follows:-

We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF.

Ordered accordingly.

The State of Punjab has auctioned a large number of contiguous mines dividing them in five hectare each with the result that a stretch of river bank has been given out for mining.

We call upon the State of Punjab to respond to the above extract as we are, prima-facie, of the considered opinion that it would apply to the State of Punjab, as well. The State of Punjab shall also file an affidavit whether it has obtained environmental clearance with respect to these mines.

Adjourned to 01.06.2012.

2. Taking note of an order passed by the Supreme Court in Deepak Kumar and others vs. State of Haryana and others, (2012) 4 Supreme Court Cases 629, the Division Bench of this Court said that for quarries upto five hectares as per direction issued in that case, environmental clearance may be necessary. The State of Punjab was asked to respond. Thereafter, on 23.7.2012, the following order was passed by this Court:-

In terms of the orders passed by the Hon"ble Supreme Court in the case of Deepak Kumar etc. v. State of Haryana and other SLP (C) No. 19628-19729 of 2009 dated 27.2.2012, it is directed that henceforth no mine be leased out, even in an area of less than five hectares of land, without getting environmental clearance.

Adjourned to 27.7.2012.

Counsel for the State is directed to place on record data regarding leasing out or auction of minor minerals.

Copy of this order be supplied to counsel for the State under the signatures of Court Secretary, for compliance.

3. It was specifically directed that henceforth no mine be leased out, even in an area of less than five hectares of land without getting environmental clearance.

4. In response to the above order, reply was filed by the State of Punjab through an affidavit of Sushminder Singh, State Geologist, Department of Industries & Commerce, Punjab. So far as getting environmental clearance qua the operational quarries upto five hectares, by making reference to a letter dated 8.6.2012 (Annexure R/4), it was stated that clarification has been sought from the Ministry of Environment & Forest, Government of India, as to whether for operational quarries also, in terms of order passed by the Supreme Court in Deepak Kumar's case (supra), any environmental clearance is needed or not.

5. Taking note of the averments made in the affidavit, on 27.7.2012, this Court

directed the State to place on record copy of the application moved by the concerned parties in the Hon''ble Supreme Court on the basis of which order dated 16.4.2012 was passed.

6. On 1.8.2012, the following order was passed by this Court :-

On request made, we implead Union of India, Ministry of Environment and Forest as one of the respondents. Registry is directed to make necessary changes in the memo of parties and supply a copy of the petition as well as written statement to Mr. O.S. Batalvi, Advocate, who is present in Court and on asking accepts notice on behalf of Union of India.

Adjourned to 8.8.2012.

Mr. O.S. Batalvi, Advocate is directed to inform the Court on or before the next date of hearing as to what action has been taken by the Ministry of Environment and Forests, Government of India, on letter dated 8.6.2012, written by Government of Punjab, seeking clarification regarding memorandum issued by the above Ministry on 18.5.2012 and also to further clarify as to whether, in terms of order passed by Hon''ble Supreme Court in SLP (C) No. 19628- 19629 of 2009 titled Deepak Kumar etc. v. State of Haryana & others decided on 27.2.2012, clearance for the existing contracts of less than 5 hectares of land is also needed or not.

7. Union of India was directed to seek clarification from the Ministry concerned as to whether for the operational quarries in an area upto five hectares, environmental clearance is needed or not. In response thereto, an affidavit of Surendra Kumar, Director, Union of India, Ministry of Environment and Forest has been placed on record alongwith a letter dated 14.8.2012 addressed to the above officer by Deputy Director, Ministry of Environment & Forest, Government of India. The contents of the letter read thus:-

Dated the 14th August, 2012

To

Sh. Surender Kumar Director NRO, MOEF, Chandigarh

Subject:

Order of Hon''ble Supreme Court dated 27.2.2012 in I.A. no. 12-13 of 2011 in SLP (C) no. 19628-19629 of 2009 in the matter of Deepak Kumar etc. vs. State of Haryana and Ors. - Environmental Clearance to carry on Mining of Minor Mineral in respect of lease area less than 5 ha under Category - B - regarding.

Sir,

This is with reference to your letter no. NIL dated 13.08.2012 on the subject cited above.

Reference is also invited to the above mentioned order of the Hon''ble Supreme

Court directing inter-alia as under:

We in the meanwhile, order that leases of minor mineral including their renewal for an area of less than 5 ha be granted by the States / UTs only after getting environmental clearance from the MoEF.

In order to ensure compliance of the above referred order of the Hon''ble Supreme Court dated 27.7.2012, it has now been decided that all the mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior environment clearance. The date of implementation for the same is from the Order Date of Hon''ble Supreme Court i.e., dated 27.2.2012 in I.A. no. 12-13 of 2011 in SLP (C) no. 19628- 19629 of 2009 in the matter of Deepak Kumar etc. Vs State of Haryana and Ors. Hence the same is applicable since the date of Order and applies to operational quarries as well as these also require the prior environmental clearance.

8. Vide the letter mentioned above, it has been made very clear that for the operational quarries in an area upto five hectares as per order passed by the Hon''ble Supreme Court in Deepak Kumar's case (supra), environmental clearance is needed. In terms of the order mentioned above, the following averments have been made in the affidavit filed by the above officer:-

2. That the deponent wish to submit that as per the orders of the Hon''ble Supreme Court dated 27.02.2012, in I.A. No. 12-13 of 2011, in SLP (C) No. 19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and others the environment clearance even to carry on mining of miner mineral in respect of lease area less than 5 hectare, which falls under category B, environment clearance is necessary for the operational quarries also.

3. That now it has been decided that all the mining projects of the miner mineral including their renewal irrespective of the size of the lease would hence forth required prior environment clearance. The date of implementation for the same is from the order of the Hon''ble Supreme Court dated 27.02.2012 in I.A. No. 12-13 of 2011, in SLP (C) No. 19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and others, and the same is applicable since the date of order.

4. That as per the letter dated 14.08.2012 of GOI, Ministry of Environment and Forest is annexed herewith as Annexure A-1, wherein it is clearly mentioned that the prior environment clearance is required for the operational quarries also.

9. Learned Advocate General, Punjab states that it was not clear whether for operational quarries in an area upto five hectares, environmental clearance is needed or not. The State Government has sought clarification from the Union of India vide letter dated 8.6.2012 (Annexure R/4).

10. It is on record that after passing of order by the Supreme Court in the case of Deepak Kumar (supra) on 27.2.2012 and on 16.4.2012, a memorandum was issued by the Ministry concerned to all the States on 18.5.2012. The contents of

the memorandum reads thus:-

Dated the 18th May, 2012

Office Memorandum

Sub:

Order of Hon''ble Supreme Court dated 27.2.2012 in I.A. no. 12-13 of 2011 in SLP (C) no. 19628-19629 of 2009 in the matter of Deepak Kumar etc. vs. State of Haryana and Ors. - Implementation thereof - Regarding.

Reference is invited to the above mentioned order of the Hon''ble Supreme Court directing inter-alia as under:

We in the meanwhile, order that leases of minor mineral including their renewal for an area of less than 5 ha be granted by the States / UTs only after getting environmental clearance from the MoEF.

2. The Environment Impact Assessment (EIA) Notification, 2006, as amended, requires mining projects (new projects, expansion or modernization of existing projects as also at the stage of renewal of mine lease) with lease area of 5 ha and above, irrespective of the mineral (major or minor) to obtain prior environment clearance under the provisions thereof. Mining projects with lease area of 5 ha and above and less than 50 ha are categorized as category "B" whereas projects with lease area of 50 ha and above are categorized as category "A". The category "A" projects are considered at the central level in the Ministry of Environment & Forests while category "B" projects are considered by the respective State/UT Level Environment Impact Assessment Authority, notified by MoEF under the EIA Notification, 2006.

3. In order to ensure compliance of the above referred order of the Hon''ble Supreme Court dated 27.2.2012, it has now been decided that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior environment clearance. Mining projects with lease area up to less than 50 ha including projects of minor mineral with lease area less than 5 ha would be treated as category "B" as defined in the EIA Notification, 2006 and will be considered by the respective SEIAAs notified by MoEF and following the procedure prescribed under EIA Notification, 2006.

4. Further, the Hon''ble Supreme Court in its order dated 16.4.2012 in the above mentioned matter and the linked applications has observed as under:

All the same, liberty is granted to the applicants before us to approach the Ministry of Environment and Forests for permission to carry on mining below five hectares and in the event of which Ministry will dispose of all the applications within ten days from the date of receipt of the applications in accordance with law.

Accordingly, the respective SEIAAs in dealing with the applications of the

applicants referred to in the above mentioned order shall ensure that the directions of the Hon''ble Supreme Court are effectively complied with and the applications of such applicants are disposed of within the time limit prescribed by the Hon''ble Court in accordance with law.

This issues with the approval of the Competent Authority.

11. Reading of the above letter makes it very clear that even for operational quarry in an area upto 5 hectare, environmental clearance was needed and in terms of the order passed by the Supreme Court on 16.4.2012, an application, may in that regard, was to be decided by the State/UT Level Environment Impact Assessment Authority within 10 days as per law.

12. We feel that intent of the memorandum was very clear and in the face of the above memorandum, there was no necessity to ask for any clarification from the concerned Ministry as was done by the State of Punjab vide letter dated 8.6.2012 (Annexure R/4). Immediate application should have been moved for getting environmental clearance to the concerned authorities. It was not done, rather the operational quarries continued to operate without getting environmental clearance, contrary to the order passed by the Supreme Court and directions issued by the Ministry concerned.

13. In the facts and circumstances, we direct that all the operational quarries operating in an area upto 5 hectares be stopped forthwith. All the Deputy Commissioners in the State of Punjab are made responsible to ensure that orders passed by this Court are complied with strictly.

14. Learned Advocate General, Punjab, is asked to intimate the Chief Secretary, Government of Punjab, of the order passed, who shall forthwith intimate the Deputy Commissioners concerned to ensure compliance of the order.

15. The State of Punjab may seek environmental clearance for the running of the quarries in question operating in an area upto 5 hectares by moving an application and if any such application is moved, the same shall be decided, as per law, by the authorities concerned within 10 days as directed by the Supreme Court.

16. The writ petition is disposed of accordingly.

17. It is made clear that henceforth no quarry shall operate contrary to the orders passed by the Supreme Court in the case of Deepak Kumar (supra) and today by this Court, except after getting environmental clearance as per law. Let a copy of this order be given dasti under signatures of the Court Secretary.