

(2009) 05 SC CK 0161

In the Supreme Court Of India

Case No : I.A. No. 1967 in I.A. No. 1785 in Writ Petition (C) No. 4677 of 1985, I.A. No. 1785, I.A. No. 2152 in I.A. No. 1785, I.A. No's. 1962 and 2143 in I.A. No. 1785, I.A. No. 2186 in I.A. No. 1785, I.A. No. 2168 in I.A. No. 1785 and I.A. No. 2385 in I.A. No. 1

M.C. Mehta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Constitution of India, 1950 — Article 142, 21, 48A, 51A
Environment (Protection) Act, 1986 — Section 23, 3, 3(2), 4A
Forest (Conservation) Act, 1980 — Section 2, 2
Mineral Concession Rules, 1960 — Rule 2

Citation : (2009) 3 CALLT 54 : (2009) 6 JT 434 : (2009) 7 SCALE 650 : (2009) 6 SCC 142 : (2009) 9 SCR 998 : (2009) 6 UJ 2626

Hon'ble Judges : S. H. Kapadia, J;K. G. Balakrishnan, J;Arijit Pasayat, J

Bench : Full Bench

Advocate : Ranjit Kumar, A.C., Siddhartha Chowdhury, A.C., A.D.N. Rao, A.C., Kamal Gupta, A.C. and Party in Person NP, for the Appellant; Naresh Kaushik, Rupesh Kaushik, Lalitha Kaushik, Mohan Parasaran, ASG, S.W.A. Qadri, M.P.S. Tomar, S.N. Terdal, Kiran Bhardwaj, A. Deb Kuraar for Anil Katiyar, D.N. Goburdhan, Geeta Luthra, Vijay Panjwani, Anil B. Diwan Dhruv Mehta, Yashraj Singh Deora, Mohit Abraham for K.L. Mehta and Co. in I.A. No. 1967, S.B. Upadhyay Pawan Upadhyay, Ankit Shah, Anisha Upadhyay, in I.A. No. 2381, S. K. Dubey, K.V. Mohan, K.V. Thakur, in I.A. Nos. 2385 and 2186, Surat Singh, Jagdev Singh, Partikha Chopra, Arun Kr. Beriwal, Binu Tamta, Bimal Roy Jad, Vijay Kumar, M.G. Diwan, Vishwajit Singh, in I.A. No. 2198, Piyush Sharma, Piyush Sharma, Dinesh C. Pandey, in I.A. Nos. 2377-80, K.K. Rai S. K. Pandey, Bankey Bihari, Krishnand Pandey, Pawan Upadhyay, Anisha Upadhyay, Ankit Shah, Sharmila Upadhyay, in I.A. Nos. 2306-2307, A.K. Srivastava Puneet Agrawal, Satish Jaglan for Kailash Chand in I.A. Nos. 873-874, 1700 and 2445 in I.A. 873 and 874, M.N. Krishnamani S.L. Kumar, B.V.K. Ahluwalia, in I.A. Nos. 1612-13, Rajiv Dutta, Rakesh Dwivedi, Vijay Lakshmi Menon, Ekta Kapila, Vijay Kaurdel, Kuber Diwan, Preetika Dwivedi, T.K. Pradhan, in I.A. Nos. 2334-2335, Ashwarya Sinha, Amboj Kr. Sinha, Praveen Gupta, Chitralekha Sen for Kailash Chand, Parag P. Tripathi, ASG, Manjeet Singh, Arti Gupta for T.V. George, A.D.N. Rao, for Lawyers Knit and Co., Kavita Wadia, Haris Beeran, Ashish Dholakia, Adarsh Priyadarshi, Sumita Hazarika, in I.A. Nos. 2377-2380 and I.A. No. D 58737,

Kiran Bhardwaj, for Kailash Chand, Hemantika Wahi, Pinky, Somnath Padhan, Mamta Tushar, in I.A. Nos. 2355-2357, K.K. Venugopal Shyara Mohan, Jayashree Wad, Ashish Wad, Satya Vikram, Sameer Abhyankar for J.S. Wad and Co., D.N. Ray, Rajiv Mehta, K.B. Rohtagi, Aparna Rohatgi, Mahesh Kasana, Baldev Atreya, P.S. Patwalia Aman Preet Singh Rahi, D.K. Tripathi, Tushar Bakshi, Surat Singh, Jagdev Singh, Ashok K. Mahajan, in I.A. No. 1465, Soli J. Sorabjee Sanjay R. Hegde, Anil Mishra, Rohan Singh, R. Gopalakrishnan, in I.A. No. 2310, Sanjay Sen, Sukumar, Ravi Kant, K. Johnny Joseph, in I.A. No. 2336, Sheil Sethi in IA 1785, Bhupender Yadav, S.S. Shamsberry, R.C. Kohli, in IA 1895, Mukul Rohtagi Saket Sikri, Madhu Sikri, in IA 2390, K.V. Mohan, S. K. Dubey, K.B. Thakur, Amit Kumar, Shashi B. Upadhyay, E.M.S. Anam, Surya Kant, Kavita Wadhwa, B.V. Balram Das, Pravir Chaudhary, Shweta Garg, Anil Kumar Jha, in IA 2385, Ashwarya Sinha, Ambhoj Kumar Sinha, D.N. Ray and Sumita Ray, in I.A. Dy. 58737 and I.A. 2567, for the Respondent

Final Decision : Disposed Of

Judgement

S.H. Kapadia, J.—Has the situation (optimization of land and ecological degradation in an area admeasuring approximately 448 sq. kms. in the Aravalli Hill Range falling in the Districts of Faridabad and Gurgaon including Mewat) predicted in para 89 of the Judgment in M.C. Mehta Vs. Union of India (UOI) and Others, come about so as to warrant total stoppage of mining activity as stated in para 96(6) of the said judgment; and if so, what should be the duration of such ban/stoppage?

2. In this connection, at the very outset, we quote paras 89 and 96(6) of the said judgment, which read as follows:

89. It may be reiterated that if, despite stringent conditions, the degradation of environment continues and reaches a stage of no-return, this Court may have to consider, at a later date, the closure of mining activity in areas where there is such a risk.

96(6) The Aravalli hill range has to be protected at any cost. In case despite stringent conditions, there is an adverse irreversible effect on the ecology in the Aravalli hill range area, at a later date, the total stoppage of mining activity in the area may have to be considered. For similar reasons such step may have to be considered in respect of mining in Faridabad district as well.

3. History of the relevant Orders passed by this Court:

(i) On 6.5.2002 the following Order was passed:

IA No. 1785

2. Issue notice. Mr Bharat Singh accepts. Reply be filed within four weeks. Rejoinder be filed within four weeks thereafter. In the meantime, within 48 hours from today the Chief Secretary, Government of Haryana is directed to stop all mining activities and pumping of groundwater in and from an area up to 5 km

from the Delhi-Haryana border in the Haryana side of the ridge and also in the Aravalli hills.

(emphasis supplied)

(ii) On 29/30.10.2002 the following Order was passed:

ILLEGAL MINING IN ARAVALLIS

...We, prohibit and ban all mining activity in the entire Aravalli hills. This ban is not limited only to the hills encircling Kote and Alampur villages but extends to the entire hill range of Aravalli from Dholpur to Rajasthan. The Chief Secretary, State of Haryana and Chief Secretary, State of Rajasthan are directed to ensure that no mining activity in the Aravalli hills is carried out, especially, in that part which has been regarded as forest area or protected under the Environment (Protection) Act.

(emphasis supplied)

(iii) On 31.10.2002 the following Order was passed:

IA No. 1785 in IA No. 22 and in WP No. 4677 of 1985, all IAs and WPs on board

It is represented that applications have been filed with regard to environment impact assessment, and for approval of plans with regard to the mining activity which was proposed by the applicants/leaseholders. The said applications have to be dealt with in terms of the notification dated 27-1-1994 of the Ministry of Environment and Forests. The said notification relates to environment impact assessment of development projects. It appears that environment clearance has not been obtained and the learned Counsel submit that the applicants/leaseholders cannot be faulted for this.

It is quite obvious that on the principle of sustainable development, no mining activity can be carried out without remedial measures taking place. For this purpose, it is necessary that environment impact assessment is done and the applications dealt with before any mining activity can be permitted.

Counsel will give on the next date of hearing list of applications which were filed, so that the Ministry of Environment can be put to notice and be required to deal with those applications and to dispose of them within a period to be specified by this Court.

Liberty to file additional affidavits given.

The State of Haryana will also explain on the next date of hearing as to whether royalty payable to the villages has been given or not.

To come up on 25.11.2002.

(iv) On 16.12.2002 the following Order was passed:

IAs 828, 833, 834-835, 837-838, 839, 840, 846 & 847

One of the aforesaid applications has been filed by the State of Rajasthan seeking modification or clarification to the effect that the order dated 29/30th October 2002 would be applicable only to illegal mines in the Aravalli hills. IA 840 has been filed by M/s. Gurgaon Sohna Mineral and Anr. seeking similar relief. Applications have also been filed by State of Haryana and other parties.

We have heard learned Counsel. On 29th/30th October, 2002 this Court prohibited and banned the mining activities in the entire Aravalli hills. This ban, it was directed, is not limited only to the hills encircling Kote and Alampur villages but extends to the entire hill range of Aravalli from Haryana to Rajasthan. The Chief Secretary, State of Haryana and State of Rajasthan were directed to ensure that no mining activity in the Aravalli hills is carried out, especially in that part which has been regarded as Forest Area or protected under the Environment (Protection) Act.

On consideration of the report of Central Empowered Committee dated December 14, 2002, we issue the following further directions:

(1) Mining may be permitted in Forest Areas where specific prior approval u/s 2 of the Forest (Conservation) Act, 1980 has been accorded by the Ministry of Environment and Forest, Government of India. However, in view of this Court's order dated 14.2.2000 passed in I.A. No. 548 no mining activity is permitted within areas which are notified as Sanctuary, National Park under Sections 18, 35 of the Wild Life (Protection) Act, 1972 or any Sanctuary, National Part or Game Reserve declared under any other Act or Rules made thereunder even if prior approval have been obtained from the MOEF under the F.C. Act in such an area.

(2) Under Notification dated 29th November, 1999 issued u/s 23 of the Environment (Protection) Act for certain Districts including Gurgaon District in the State of Haryana, the Ministry has delegated power to grant approval for mining purposes to the State. The mining activities are being regulated under the Notification dated 7th May, 1992 issued by the Ministry of Environment and Forest (Annexure A-1 in IA No. 833). We direct that, for the time being, no mining shall be permitted within the areas of Gurgaon District in the State of Haryana where mining is regulated under the Notification dated 7.5.1992 issued u/s 3 of the Environment (Protection) Act, pursuant to permission granted after 29 November, 1999.

Meanwhile, the Central Empowered Committee which is examining the matter will give its suggestions within a period of six weeks. On the receipt of those suggestions, the prayers made by the applicants for modification of the order dated 29/30.10.2002 insofar as the Gurgaon District is concerned will be considered.

(3) No mining activity would be permitted in respect of areas where there is a dispute of applicability of F.C. Act, till such time the dispute is resolved or approval under the FC Act is accorded, in addition to order already passed in Writ Petition No. 4677/1985.

For the present, no mining will be permitted in the areas for which notification under Sections 4 and 5 of the Punjab Land Preservation Act 1900 have been issued for regulating the breaking up of the land etc. and such lands are or were recorded as "Forest" in Government records even if the notification period has expired, unless there is approval under the FC Act.

Learned Attorney General and Solicitor General will assist the Court on the aforesaid aspects on the next date of hearing.

In respect of suggestion 7 and 8, the Union of India will respond on the next date of hearing.

The order dated 29/30th October, prohibiting and banning the mining activity in Aravalli hills from Haryana to Rajasthan is modified insofar as the State of Rajasthan is concerned to the following effect:

Wherever requisite approval/sanctions in the said State have been obtained under FC Act and EP Act, and the mining is not prohibited under the applicable Acts or notifications or orders of the Court, mining can continue and to such mining the order aforesaid will not apply.

This order will be applicable to non-forest land covered for the period prior to the date of modification of the order dated 29th November 1999 in the State of Haryana.

This variation will not apply to the area in the Alampur District in the State of Haryana.

List the matter on 7th February, 2003 at 2 O'Clock.

(emphasis supplied)

I. Reasons behind Order dated 29/30.10.2002 imposing total ban:

4. The question to be answered at the outset is why did this Court impose a complete ban on mining in the Aravalli range falling in the State of Haryana which broadly falls in District Gurgaon and District Faridabad including Mewat? The statistical data placed before this Court indicated that, in October, 2002, twenty six mines were inspected which indicated wide scale non-compliance of statutory Rules and Regulations applicable to mines. Broadly stated, most of these mines failed to obtain environmental clearances. Most of these mines failed to submit environmental management plan. In some cases, the status of mining indicated below groundwater table. Mining pits were turned into huge groundwater lakes. No efforts were made to create plantation. Broadly, these were silica sand mines. In some cases, even groundwater stood extracted. Deep mining pits with large water bodies were detected. Huge amounts of overburden were also seen in the area. These are some of the defects which were highlighted by EPCA in various Reports as far back as October, 2002. These non-compliances have also been highlighted with the names of the mines meticulously in para 18 of the judgment in the case of M.C. Mehta (supra). It is important to note that by

Notification dated 7.5.1992 issued by MoEF u/s 3(2)(v) of the Environment (Protection) Act, 1986 ("EP Act" for short), as amended, all new mining operations including renewal leases stood banned. The Notification further laid down the procedure for taking prior permission before undertaking mining activity. At this stage it may be noted that by Notification dated 27.1.1994 as amended on 4.5.1994 issued by MoEF u/s 3(2) of the EP Act, 1986 read with Rule 6, Environment Impact Assessment ("EIA") before commencement of any mining operation became mandatory. Therefore, by Order dated 29/30.10.2002, when this Court found large scale mining without Approved Plans, it decided to ban all mining activities in the Aravalli Range.

II. Fall out of the Order dated 29/30.10.2002:

5. After Order dated 29/30.10.2002, I.As. were moved saying that applications have been filed for EIA and for approval of plans and it is at this stage that this Court ordered that no mining activity could be carried out without remedial measures being taken and for that purpose, it was necessary that EIA had to be done before any mining activity could be permitted. (see M.C. Mehta Vs. Union of India (UOI) and Others,).

6. At this stage, one event needs to be highlighted. The powers vested in the Central Government in terms of Notification dated 7.5.1992 were delegated to State Government concerned, namely, Rajasthan and Haryana, vide Notification dated 29.11.1999. But the delegation in favour of the State stood withdrawn when it was found that most of the mines in the State were operating in violation of Approved Plans. In most cases, mining operations were carried out unscientifically with the sole aim of maximizing profits which resulted in indiscriminate scattering of the overburden, wasteful manner of mining with complete disregard to mineral conservation aspect, rendering reclamation of mined area impossible. This Court further found that mining leases were granted by the State in areas where plantations were undertaken with the financial assistance provided by international donor agencies. That, mining was permitted in a manner which was destroying the groundwater table as also causing irreparable damage to the critical groundwater reserves. That, there was no effective mechanism to ensure compliance of various conditions stipulated while giving approvals and, lastly, no deterrent action was taken against mines for serious violations and non-compliance of conditions were found.

III. Consequences of Continuous Violation of the Rules:

7. As stated above, Notification dated 7.5.1992 was passed with a view to strictly implement the measures to protect the ecology of the Aravallis range. It was followed more in its breach. The Aravallis, the most distinctive and ancient mountain chain of Peninsular India, mark the site of one of the oldest geological formations in the world. Due to its geological location, desertification is stopped and it prevents expansion of the desert into Delhi. On account of extensive mining on a disproportionate scale without taking remedial measures has

resulted irreversible changes in the environment at Aravalli. It is in the aforesaid background that any mining activity came to be banned under Order dated 29/30.10.2002. Even as far back as 2002, the environmental problems in the Aravalli range in Gurgaon district came to be identified. Remedial measures including pollution control guidelines and action plan for various stakeholders came to be suggested by CMPDI. Though guidelines for mining operations came to be issued by the State Government, the compliance was not there. Moreover, there was no mechanism to upgrade the mining technologies to minimize the impact due to mining in the eco-sensitive zones. CMPDI also noticed that in the Aravalli Hills a large number of activities, operations of stone crushers and deforestation had caused environmental degradation even in 2002 which is clear from para 63 of the above judgment in M.C. Mehta case (supra) and the tragedy is that despite all warnings, the mines continued their operations without Environment Management Plan. That, right from 18.3.2004, when this Court pronounced the judgment in M.C. Mehta case (supra), till date, number of Reports came to be submitted as the Court tried to balance mining activity on one hand with protection of environment on the other hand. In fact, in para 57 of the said judgment, this Court stated that so long as it is possible to undertake mining operations on the sustainable development principle, the Court should not impose complete ban on mining as it generates revenue for the State. However, vide para 89, a warning was given that if despite imposition of stringent conditions, the degradation of environment continuous and reaches a stage of no-return, then this Court may have to consider at a later date the closure of mining activity. This prediction has come true. The consequence is that the State now has decided to close the mining activity. Para 89 is also important from another angle. The judgment in M.C. Mehta case (supra) has left it to this Court to consider at a later date the closure of mining activity. Even in para 96(6), this Court observed that mining activity can be permitted only on the basis of sustainable development and on compliance with stringent conditions as the Aravalli Hill Range has to be protected at any cost and in case despite stringent conditions, mining results in an irreversible consequence on the ecology in the said area then at a later date the total stoppage of mining activity may have to be considered. In other words, in the judgment of this Court in M.C. Mehta case (supra) decided on 18.3.2004, a window was left open for this Court to impose complete ban on mining operations if emergent situation arises. The decision to ban/suspend mining in the above area has been taken by State of Haryana (see Minutes of the Meeting dated 7.1.2009 annexed as Exhibit R/4 to the Second Report dated 15.1.2009 of CEC). In the said meeting held on 7.1.2009, a consensus has been reached between CEC and the State of Haryana to declare the entire Aravalli Hill Range falling in the Districts of Faridabad and Gurgaon including Mewat as a "Prohibited Zone" so far as mining of major mineral is concerned. The decision of State of Haryana is also supported by MoEF, as submitted by Shri Parag Tripathi, learned Additional Solicitor General.

IV. Breach of Relevant Rules and Consequences thereof:

(a) Mining Projects:

8. Nature has endowed India with a wide variety of temperate and tropical forests. The Earth has not only provided ridges, fauna, flora to India but immense mineral treasures with great potential for economic exploitation. At the same time, our economy is facing problems on account of rising population, indiscriminate industrialization, unsustainable exploitation of natural resources etc. Mining sector is regulated by a large number of environment and forest statutes. The Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 were enacted to implement the decisions taken in United Nations Conference on Human Environment in 1972 at Stockholm. These environment and forests statutes interact with mining regulations under Mines and Minerals (Development and Regulation) Act, 1957; Mineral Concession Rules, 1960; Mineral Conservation and Development Rules, 1988. On account of depletion of the forest cover, we have the Forest (Conservation) Act, 1980, which was enacted to regulate the diversion of forest area for non-forest purposes. Similarly, under the EP Act, 1986 we have several notifications, including Environment Impact Assessment Notification 1994. At the same time, mining comes under the purview of large number of mining statutes which are required to be implemented inter alia by State Forest Departments, State Pollution Control Boards, Forest Advisory Committee(s), MoEF etc. The grant of mining leases (major and minor minerals both, including quarry leases, quarry permits, short term permits etc.) inside forest areas coming under the purview of Section 2(ii) of Forest (Conservation) Act, 1980. It applies to mining leases. It is important to note that in order to operate mining inside the forest area, the lessee is required to possess clearances under Mines and Minerals (Development and Regulation) Act, 1957 ("1957 Act"); u/s 2(ii) of Forest (Conservation) Act, 1980; and to Environment Clearance under EIA Notification which applies to mining of major minerals and to the areas exceeding 5 hectares. In case of mining projects, a Site Clearance is also required which is issued either by the Central Government or the State Government depending upon the area of land let out on lease. Further, Section 2(ii) of Forest (Conservation) Act, 1980 prohibits grant or renewal of mining lease without prior approval of Central Government.

(b) Mining Plan:

9. Mining plan is prepared with the object of providing a systematic working of mine after considering every aspect of the background information, plant, machinery, method of working, object of mining, mining operations and reclamation of mined out areas. It is a mandatory document comprising information about leasehold area showing nature and extent of mineral body, prospecting data, details of geology including mineral reserves, method of mining, manual mining, mechanised mining, nature and extent of water bodies, forest areas, density of the trees, protective areas, environment impact assessment of mining activity on forest, land surface, details of ecological

restoration of area, land reclamation, use of pollution control devices and plans for excavation from year to year for 5 years and such matters and measures as may be directed by the Central Government or the State Government (see Handbook of Environment & Forest Legislations, Guidelines and Procedures in India by Ravindra N. Saxena and Sangita Saxena at p. 1529). The concept of mining plan applies to cases of mining of major minerals.

(c) Environmental Management Plan:

10. Rule 22(5) of Mineral Concession Rules, 1960 provides for various components of a mining plan. Every mining plan has to indicate limits of reserves, density of trees, assessment of impact of mining activity on forests, land surface and scheme for restoration of the area by afforestation, land reclamation and such other measures as may be directed by the Central Government from time to time. The mining plan includes Environmental Management Plan which must indicate the area degraded due to quarrying, dumping etc., a statement on Environment Impact Assessment giving details of the impact of mining on environment over a period of next 5 years, details regarding abandoned quarries/pits, measures to control erosion of watercourses, treatment and disposal of water from the mines and reclamation of mined out areas (see Handbook of Environment & Forest Legislations, Guidelines and Procedures in India by Ravindra N. Saxena and Sangita Saxena at pp. 1544-46).

(d) Breaches:

11. As stated above, as far back as 18.3.2004 this Court noticed that in large number of cases no requisite clearances for mining operations were obtained. No environmental management plan was prepared. In some cases, mining operations were carried out below groundwater table. Groundwater was even extracted without obtaining clearances [see M.C. Mehta's case (supra)] The paradox is that there is no dearth of enactments, the problem lies in non-compliance and as a result mining on extensive scale without Approved Plans and without taking remedial measures has led to land and ecological degradation. At this stage, one point needs to be highlighted. Over the years, the focus was on individual mining leases. Over the years, this Court tried to balance mining operations vis-a-vis environmental protection. Even after noticing non-compliance of above Rules as far back as 2004, this Court, after sounding a warning to the existing mines to comply with the Rules, did not suggest a complete ban on mining operations so long as it was possible to undertake such operations on the principles of sustainable development. However, the position did not improve. The position worsened. In the circumstances, the Court has now decided not to focus only on individual sites but to take a macro view of the matter, particularly while deciding the question of suspending mining operations. The Court is required to take a holistic view. It is important to note that most of the Applicants who are seeking to mine today in the virgin areas have mined out areas in the past without taking remedial measures. They have abandoned the sites after mining without rehabilitation of the degraded lands and the

consequence is devastation. As stated above, in 2004 this Court detected many cases where operations were done without proper environment management plan, mining plan etc. In this Order we are not examining faults of individual user agencies. Suffice it to state that when these mines operated without proper clearances in the past they have left pits/quarries without reclamation and without compliance of the provisions of the mining plan. Today, it is too late in the day to say that leases granted subsequently complies with various clearances because these lessees which operated mines earlier have left the pits/quarries open to the sky without taking remedial measures including reclamation. In this Order what we are emphasising is extensive mining and not individual unauthorised mining because even in the case of former no steps to re-habilitate was ever taken. The result is that mining operations have been carried out on a disproportionate scale in the Aravalli Hill mainly in Gurgaon and Faridabad including Mewat in the State of Haryana. The satellite images indicate the devastation caused to the area by the extensive mining operations. Extraordinary situation demands extraordinary remedies. In the circumstances, we are of the view that mining operations should be immediately suspended in the above Area.

V. Net Effect of Orders passed by this Court earlier on 6.5.2002, 29/30.10.2002; 16.12.2002, 13.4.2006 and Judgment dated 18.3.2004 in M.C. Mehta's case:

12. One of the points argued on behalf of the lessees before us was that on 6.5.2002 this Court directed State of Haryana to stop all mining operations in and around an area up to 5 km. from Delhi-Haryana border on the Haryana side of the ridge and in Aravalli hills. That, after considering the second Monitoring Report of CEC dated 28.10.2002 a complete ban was imposed on mining in the Aravalli hills vide Order dated 29/30.10.2002, which stood modified and clarified on 16.12.2002. According to the lessees after the Order dated 16.12.2002 there was no prohibition on mining. According to the lessees despite wide scale degradation being noticed by this Court in M.C. Mehta case (supra) this Court did not impose complete ban on mining operations but, on the contrary, this Court issued guidelines vide para 96 of the said judgment. It was argued that in the circumstances this Court cannot go behind Judgment and Order dated 18.3.2004 in M.C. Mehta case (supra).

13. We find no merit in this argument. To decide this point, we quote hereinbelow para 8 of the Order dated 13.4.2006 reported in M.C. Mehta Vs. Union of India (UOI) and Others, :

We have examined the orders dated 6.5.2002, 29/30.10.2002, 16.12.2002, the judgment dated 18.3.2004 in M.C. Mehta and affidavits placed on record. It seems clear that the order dated 6.5.2002 was confined to the limit of 5 km and did not prohibit mining in the entire Aravalli hills in the State of Haryana. The mining in the entire Aravalli hills was prohibited and banned by the order dated 29/30.10.2002. This order was, however, modified and clarified on 16.12.2002.

14. We also quote para 96 of the judgment in M.C. Mehta case (supra) which reads as follows:

a) no mining can be carried out where the mine owners have reached the water table. (In fact this Court recorded in para 84 the undertaking given by mine lessees not to mine in the area where water table had been reached during mining).

(b) no mining can be carried on in areas which are subject matter of notifications u/s 4 and/or 5 of the Punjab Land Preservation Act, 1900. However, even in these areas mining can take place after seeking permission u/s 2 of the Forest (Conservation) Act. (see para 89);

(c) No mining can be carried on in areas where plantations have been undertaken under the Aravalli project (EU funded project); and

(d) Environmental clearance is mandatory under the Environment Notification dated 27.1.1994.

15. It is true that, complete ban was imposed on mining Aravalli hills vide Order dated 29/30.10.2002, which came to be modified by Order dated 16.12.2002 and it is equally true that, vide judgment in M.C. Mehta case (supra), this Court observed that it was not suggesting a complete ban on mining operations so long as it is possible to undertake mining operations on the sustainable development principle (see para 57). At the same time, in paras 89 and 96(6) of the judgment dated 18.3.2004 this Court specifically suggested that if degradation of environment continues and reaches the stage of no return, this Court may consider closure of mining activities. In other words, a gateway was provided for this Court to impose the ban in future if degradation of environment becomes irreversible.

VI. Contentions and Answers thereto:

16. In I.A. No. 1967/06, it has been submitted by Shri Anil Diwan, learned senior counsel appearing on behalf of the lessee (M/s Sethi Brothers) that the order dated 6.5.2002 was passed in I.A. No. 1785/01 moved by Delhi Ridge Management Board complaining of falling water level in the sanctuary near Delhi-Haryana border. On account of the falling water levels, the said order dated 6.5.2002 came to be passed, consequently, mining activities within 5 km in the Districts of Faridabad and Gurgaon including Mewat came to a halt. Later on, the concerned lessees moved an application for modification of the above order on which application this Court directed EPCA to inspect the mines within 5 km and to give its report. EPCA conducted 2 inspections and gave its report, which are set out in the judgment in M.C. Mehta case (supra) dated 18.3.2004. The CEC also gave three reports which are set out in the said judgment. According to the learned Counsel, after referring to the Reports, vide para 96, this Court gave directions, which made environmental clearance mandatory under environment Notification dated 27.1.1994. This Court also appointed Monitoring Committee to

inspect individual mines. According to the learned Counsel, in the above judgment in M.C. Mehta case (supra), this Court had noticed violation by leaseholders and after extensive analysis of the provisions of 1957 Act observed that the Court needs to balance the twin objectives of mining based on the principle of sustainable development. According to the learned Counsel, even under various reports submitted by CEC, the Committee did not recommend a ban on mining within 5 km. but it recommended a ban up to 2 km from Badkhal Lake. However, EPCA recommended a ban of 5 km from Delhi-Haryana border, which according to the learned Counsel, came to be rejected by this Court by issuing directions, as mentioned hereinabove. It is further pointed out that apropos the directions contained in the judgment in M.C. Mehta case (supra) the Monitoring Committee inspected the mines. There was difference of opinion between the members. The official members of that Committee, however, recommended resumption of mining activities according to the guidelines laid down in the above judgment in M.C. Mehta case (supra). In short, it was submitted on behalf of the lessees that at no point of time this Court suggested or recommended or imposed ban of mining operations even after noticing non-compliance of the Rules. Therefore, according to the learned Counsel, in the present case, banning should be resorted to only if there are no other options left. Further, according to the learned Counsel, a ban can be placed only if material is brought on record to indicate so called devastation to the ecology as pleaded by the learned amicus curiae. According to the learned Counsel, in the present case, there is no such material justifying a complete ban on mining operations. It is also urged by the learned Counsel that in pursuance of the directions contained in para 96 of the judgment, MoEF considered applications submitted by Sethi Brothers for EIA and after extensive deliberations, MoEF granted environmental clearance to its two projects on the ground that the leases had not reached the water table, that the leases were not subject matter of Notifications u/s 4 and 5 of the Punjab Land Preservation Act, 1900 and that no mining has been carried out in areas where plantation has been undertaken.

17. We do not find merit in these arguments. As stated hereinabove, after taking a macro view based on the satellite images, we have come to the conclusion that this matter needs to be looked at holistically. This exercise which we have undertaken is not project-specific. Moreover, Sethi Brothers might have obtained clearances for two projects as of date but in the past they have carried out mining operations, which according to the learned amicus curiae, has been done without complying with the aspect of Rehabilitation. In this connection, it is important to note that in para 18 of the judgment in M.C. Mehta case (supra), this Court detected Sethi Brothers operating in a different sites in the Area without requisite clearances and without environmental management plan. Number of sites have been excavated in the past without clearances, which is indicated in para 18 of the said judgment. It is on account of absence of remedial measures qua those sites that today environment and ecology which are national assets and which are governed by inter-generational equities stand devastated

and which leaves no option to the Court but to ban the mining operations till remedial measures are taken and duly certified by the various competent authorities which are in-charge of granting clearances. As stated above, even in the case of M.C. Mehta (supra) it has been categorically observed that if despite stringent conditions, the degradation of environment continues and reaches a stage of no return then the Court may consider closure of mining activity in the area. Over the years, this Court has given latitude to user agencies with the hope that they would comply with stringent conditions including taking of remedial measures but that hope stands belied. Hence, we find no merit in the above contentions advanced on behalf of Sethi Brothers. We make it clear that by this Order the ban will not be confined only to 5 km. but it would cover the entire Aravalli Hill range within the State of Haryana in which mining operations are being carried out. (i.e. area admeasuring approximately 448 sq. kms. falling in the Districts of Faridabad and Gurgaon including Mewat.)

18. On the legal parameters, Shri Diwan and Shri Venugopal, learned senior counsel and Shri S.K. Dubey, learned Counsel, submitted that where law requires a particular thing to be done in a particular manner, it must be done in that manner and other methods are strictly forbidden. In this connection, it was urged that when Section 4A postulates formation of an opinion by the Central Government, after consultation of the State Government, in the matter of cancellation of mining leases in cases of environmental degradation, the power needs to be exercised by the State Government upon receipt of request from the Central Government. According to the learned Counsel, therefore, this Court cannot cancel the mining leases if there is alleged environmental degradation as submitted by the learned amicus curiae. It was further submitted that measures u/s 3(2)(v) of EP Act, 1986 to restrict areas in which industries shall or shall not be carried out can only be undertaken by the Central Government where it deems expedient to protect and improve the quality of environment. In fact, according to the learned Counsel, when Aravalli's Notification was issued on 7.5.1992 it was issued u/s 3(2)(v) by the Central Government. At that time, the Central Government thought it fit not to place a complete ban but to permit the industries in the mining sector to carry on its business/operations subject to restrictions enumerated in the said Notification. It was lastly submitted that the recommendations of CEC to impose complete ban on mining, particularly in cases where environmental clearances are obtained would amount to an exercise of power outside the 1957 Act and the Rules framed thereunder. That, this Court cannot exercise powers under Article 142 of the Constitution when specific provisions are made under various Forest and Environmental laws dealing with the manner and procedure for cancellation/termination of mining leases.

19. We find no merit in the above arguments. As stated above, in the past when mining leases were granted, requisite clearances for carrying out mining operations were not obtained which have resulted in land and environmental degradation. Despite such breaches, approvals had been granted for subsequent slots because in the past the Authorities have not taken into account the macro

effect of such wide scale land and environmental degradation caused by absence of remedial measures (including rehabilitation plan). Time has now come, therefore, to suspend mining in the above Area till statutory provisions for restoration and reclamation are duly complied with, particularly in cases where pits/quarries have been left abandoned. Environment and ecology are national assets. They are subject to inter-generational equity. Time has now come to suspend all mining in the above Area on Sustainable Development Principle which is part of Articles 21, 48A and 51A(g) of the Constitution of India. In fact, these Articles have been extensively discussed in the judgment in M.C. Mehta's case (*supra*) which keeps the option of imposing a ban in future open. 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.

20. At this stage, we may also note that u/s 13(2)(qq) of 1957 Act, Rules have been framed for rehabilitation of flora and other vegetation destroyed by reason of any prospecting or mining operations. u/s 18 of the 1957 Act, Rules have been framed for conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling pollution caused by prospecting or mining operations which also form part of Mineral Concession Rules, 1960 and Mineral Conservation and Development Rules, 1988. Under Rule 27(1)(s)(i) of Mineral Concession Rules, 1960 every lessee is required to take measures for planting of trees not less than twice the number destroyed by mining operations. Under Mineral Conservation and Development Rules, 1988, vide Rule 34, mandatory provisions for reclamation and rehabilitation of lands are made for every holder of prospecting licence or mining lease to be undertaken and that work has to be completed by the lessee/licensee before abandoning the mine or prospect. Similarly, under Rule 37 of Mineral Conservation and Development Rules, 1988 the lessee/licensee has to calibrate the air pollution within permissible limits specified under EP Act, 1986 as well as Air (Prevention and Control of Pollution) Act, 1981. Under the said Rules 1988, the most important Guideline is Guideline No. 25.26.3, 25.26.4, 25.26.5 and 25.26.6. This Guideline deals with reclamation, planning and implementation, restoration strategy, principles of rehabilitation, rehabilitation of mined out sites and methods of reclamations. (see Handbook of Environment & Forest Legislations, Guidelines and Procedures in India by Ravindra N. Saxena and Sangita Saxena at pp. 1555-1562). It may be noted that there are two steps to be taken in the method of reclamation, namely, technical reclamation and biological reclamation. The most important aspect of the above guideline is making of a Rehabilitation Plan.

Conclusion:

21. None of the above provisions have been complied with. In the circumstance, by the present order, we hereby suspend all mining operations in the Aravalli Hill Range falling in the State of Haryana within the area of approximately 448 sq. kms. in the Districts of Faridabad and Gurgaon including Mewat till Reclamation Plan duly certified by State of Haryana, MoEF and CEC is prepared in accordance with the above statutory provisions contained in various enactments enumerated above as well as in terms of the Rules framed thereunder and the Guidelines. The said Plan shall state what steps are needed to be taken to rehabilitate (including reclamation) followed by Status Reports on steps taken by the Authorities pursuant to the said Plan.

22. The question still remains as to whether we should grant permission to the State of Haryana to excavate minor minerals from a localized area of 600 hectares out of 448 sq. kms. (approx.) for purposes of excavating construction material which is needed for construction of houses, sports complexes and other buildings. In this connection, we may state that on this part the hearing will take place after the summer vacation. Accordingly, I.A. No. 1967 in I.A. No. 1785, I.A. No. 2186 in I.A. No. 1785 in Writ Petition (C) No. 4677/85 and I.A. No. 1465 in Writ Petition (C) No. 202/95 and other I.As., which have opposed imposition of ban on mining of major minerals stand disposed of. The I.As. which deal with mining of minor minerals are adjourned beyond summer vacation.