
(2013) 07 P&H CK 0912

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11110 of 2013 (O and M)

M/s. A.J.S. Deformer Pvt. Ltd. and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Citation : (2013) 172 PLR 301

Hon'ble Judges : Jasbir Singh, J;G.S. Sandhawalia, J

Bench : Division Bench

Advocate : O.P. Goyal, with Mr. Ranvir Singh Mander, for the Appellant; D. Khanna, Addl. A.G., Haryana for the State, for the Respondent

Judgement

Jasbir Singh, J.

C.M. No. 10827 of 2013

1. Application for placing on record Annexure P-22 is allowed, subject to all just exceptions. Annexure P-22 is taken on record.

C.W.P. No. 11110 of 2013

The petitioners moved an application to the competent authority to set up a stone crusher unit in village Silkho, Tehsil Tauru, District Mewat. To permit such like stone crushers, the State of Haryana has formulated rules known as Haryana Regulation and Control of Crushers Rules, 1992 (in short "the 1992 Rules") (Annexure P-15). These rules lay down the procedure and formalities to be completed by the applicant before permission is to be granted. The Rules further provide as to how record has to be maintained by a unit qua its activities and provision of appeal in case of any adverse order passed also exists in the 1992 Rules.

It is case of the petitioners that after meeting the formalities as per the 1992 Rules, he moved an application on 10.01.2012 for grant of No Objection Certificate to the Haryana State Pollution Control Board (in short "the Board").

During process of verification by the officers of the Board, vide letter dated 30.01.2012, it was intimated that the land where the applicant wishes to set up a stone crusher does not fall within the forest zone and there is no bird sanctuary existing nearby. It was only stated that "No Objection Certificate" cannot be granted because qua mining of the minor minerals, ban has been imposed in Mewat district. In the above said letter, it is clearly mentioned that after July, 2011, "No Objection Certificate" has been given to 35 units and if new units are allowed to be set up, it is going to be a big problem in future because owners take mineral from Rajasthan at higher rates and on account of availability of cheaper illegal material, they indulge in unauthorized mining.

2. Thereafter, petitioners deposited the requisite fee with the concerned authorities, documents showing that fact are placed on record from page Nos. 89 to 94 of the paper book. The Board recommended case of the petitioners for grant of "No Objection Certificate" to the District Level Clearance Committee (DLCC) vide letter dated 02.02.2012. The request of the petitioners was so placed before the said Committee on 18.06.2012. Following proceedings were noted qua prayer made by the petitioners against Agenda Item No. 4:--

As per the order No. 1/7/14-21 BII-2012 dt. 21.04.2012 of Worthy Financial Commissioner & Principal Secretary to Government of Haryana, Mines & Geology Department "due to the non-availability of minor mineral within the State for the present, it has been decided that no fresh licences be granted from establishment of new stone crusher units in the State till further orders." Thus the NOC cases of the following stone crushing units are placed before the committee for final decision.

3. To decline prayer made by the petitioners, it was stated that due to non-availability of minor minerals within the State at present, fresh licence is not to be granted.

4. Issue came to this Court by filing this writ petition. When notice of motion was issued on 22.05.2013, following contention of counsel for the petitioners was noticed by this Court:--

Counsel for the petitioner submits that though the right to grant license for a stone crusher vests with the respondents, but they cannot deny a license to the petitioners on the ground that mining is prohibited in the State of Haryana. It is further submitted that if such a stipulation is to be legally enforced, the State of Haryana would be required to shut down all stone crushers, in the State of Haryana and to desist from renewing any license. The State of Haryana has, however, renewed existing licenses. It is further submitted that as there is no prohibition on stone crushers, the letter dated 7.5.2012, issued by the Director, Mines and Geology, Haryana, directing the Haryana Pollution Control Board not to issue licenses for stone crushers is arbitrary and void.

5. It was argued that if for want of raw material licence cannot be granted, why to allow the existing stone crusher"s to continue within the State of Haryana

especially when mining activities was not allowed in the State.

6. Upon notice, reply was filed. To deny right of the petitioners, it is stated that the matter regarding illegal mining is going on before the Hon"ble Supreme Court. On an order passed by the Supreme Court, "Central Empowered Committee" visited District Mewat and adjoining areas to make assessment as to whether illegal mining is going on or not. After noting report made by the above said Committee, the Hon"ble Supreme Court, in order dated 02.04.2012, made the following observation regarding illegal mining activities in the State of Haryana:--

CEC conducted inspection on 21.03.2012 and submitted its detailed report dated 30.03.2012 for our consideration. We have perused the report and find that the situation is alarming in the District of Mewat. Report indicates that there is blatant violation of the Aravali Notification and trees are also cut without any permission. Report indicates that illegal mining is going on in the above mentioned areas and no concrete action has been taken by the authorities concerned, in spite of the various orders passed by this court. Prima facie, it is seen that the Government machinery has failed to control the illegal mining going on in that area and mining mafias, writ-now runs in the district of Mewat and other areas of Haryana.

We are led to be believed that illegal mining is going on with the blessing of the officers who are legally obliged to curb the same. In such circumstances we feel that notice has to be issued to the Chief Secretary to the State of Haryana, District Collector, District Mining Officer and Superintendent of Police of Mewat and Gurgaon. Notice also be served on the standing counsel for the State of Haryana.

In the meantime, we direct the above mentioned officers to see that the illegal mining going on in the areas mentioned in the CEC's report be stopped and the transportation of the illegal material mined be seized forthwith and to report compliance within a period of two weeks from today. They should also ensure that all illegal functioning crusher units be dismantled and the illegally mined materials be confiscated forthwith.

Copy of the CEC report be made available to the officers mentioned above for information and prompt action.

List on 16.04.2012.

7. It was noted with concern that illegal mining is going on with blessings of the officers who are responsible to stop it. Matter was adjourned to 16.04.2012. Directions were issued to the State of Haryana to take measures to stop the illegal mining and to confiscate the material illegally extracted.

8. It appears that to show action taken, the officers in response to the above order, affidavit of Sh. P.K. Chaudhery, Chief Secretary to the Government of Haryana was filed in the Hon"ble Supreme Court wherein, it was stated that

DLCC constituted to grant consent to establish new stone crushing units under The Air (Prevention and Control of Pollution) Act, 1981, in its meeting on 09.02.2012, has decided not to give consent to establish new stone crushing units in view of ban on mining in the district. It was further stated that to stop illegal mining, the State of Haryana has issued an order on 21.04.2012 deciding not to issue any fresh licence to set up stone crushing unit. The relevant portion of that letter dated 21.04.2012 reads thus:--

It has been observed that issue of any further licenses for the new Stone crushing Units is likely to encourage obtaining of raw mineral from unauthorized or illegal sources especially when any import of mineral from legal sources from outside the State is insufficient even for the existing stone crushing units. As a result, a large number of existing stone crushing units are either operating at suboptimal installed capacity or are lying closed. As such keeping in view the non-availability of minor mineral within the State for the present, it has been decided that no fresh licences be granted for establishment of new stone crusher units in the State till further orders.

9. It is only noted that on account of stoppage of mining activities in the State, no fresh licence be granted because the new stone crushing units are likely to encourage obtaining of raw material from unauthorized or illegal sources especially when the import of mineral from legal sources, from outside the State is insufficient even for the existing stone crushers.

10. This order appears to have been passed because it was compulsion of the State Officers to show some activity undertaken by them because affidavit was to be filed in the Supreme Court. Instead of dealing with the situation to stop illegal mining, an attempt was made to deny right to the applicants to set up new stone crushers. To say that illegal mining will be encouraged is no ground to stop setting up of the stone crushing units. The State was supposed to take remedial measures to stop the illegal mining by putting in regulatory methods.

11. It has come on record that at present, in the State of Haryana, out of 1183 licenced units, 548 are closed and 635 are functional. After denying right to the petitioners to set up a new unit, in Mewat district alone, licences of 17 units were renewed. In Mewat district, 71 units are running. If activities of those 71 units can be regularized, it is very surprising as to why the activities to be undertaken by the fresh units cannot be put under watch. While issuing order dated 21.04.2012, virtually, the 1992 Rules have been set at knot. Inability of the State Government to stop illegal mining cannot be taken as a ground not to grant new licences as per the 1992 Rules. It appears that said order has been issued with mala fide intention to give benefit to the existing crushing units so that they can charge the rate of material the way they like. The action taken is totally discriminatory. It violates the provisions of Articles 14 and 19 of the Constitution of India. Similarly situated persons have been dealt with separately. At the time of hearing, no justification was given to issue order dated 21.04.2012 stopping grant of new licences to set up crushing units except that it will increase

illegal mining. The State is not helpless and if any unit is indulging in illegal activities, action can be taken and the licence can be cancelled. Instead of doing that exercise, a short cut method has been adopted to stop progress of the industry in the State. In view of the facts mentioned above, this writ petition is allowed. Order of the Government dated 21.04.2012 stands quashed. Directions are issued to respondent No. 2 to look into application filed by the petitioners. If it meets the parameters, licence to set up a fresh stone crushing unit be granted forthwith. Respondent No. 2 shall get report from DLCC etc., if it is needed. Needful shall be done in six weeks from the date of receipt of a copy of this order.