

(2009) 04 KAR CK 0096
In the Karnataka High Court
Case No : Writ Petition No. 60023 of 2009

MSPL Limited

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2
Karnataka Forest Act, 1963 — Section 24, 82

Citation : (2009) 3 KCCR 1838

Hon'ble Judges : P.D. Dinakaran, C.J.; V.G. Sabhahit, J

Bench : Division Bench

Advocate : Krishnan Venugopal, for M.M. Swamy, for the Appellant; Udaya Holla, General, for the Respondent

Judgement

P.D. Dinakaran, C.J.

1.1. The petitioner, a company incorporated under the Companies Act, 1956 is a lessee under the current mining lease for mining iron ore (M L No. 2416) over an extent of 350.78 Hectares. Out of 350.78 hectares covering Sy.Nos. 1,4,5, and 6 of Vyasanakere village, Hospet Taluk, Bellary District, an extent of 347.22 hectares was leased out for mining activities and the remaining 3.56 hectares was demarcated for road.

1.2. The said mining lease was granted originally in the year 1952 by the then Government of Madras for 10 years to one K. Narayanaiah and subsequently transferred in favour of the petitioner herein in the year 1962 and got renewed for 20 years each time with effect from 14.11.1962, 14.11.1982 and 14.11.2002. The petitioner, admittedly obtained clearance from the concerned forest authorities as contemplated u/s 2 of the Forest Conservation Act, 1980 vide the proceedings dated 8.3.2007 of the Government of India and the Government of Karnataka has also accorded approval for the lease by proceedings dated 23.3.2007.

1.3. With this background, the petitioner entered into an Agreement dated 19.4.2007 with the Deputy Conservator of Forests, Bellary Division, Bellary representing the Government of Karnataka, viz., the fourth respondent, and the relevant Clauses of the Agreement are extracted hereunder:

1. xxx

2. xxx

3. xxx

4. Fencing, protection and regeneration of the safety zone area (7.5 metres strip all along the outer boundary of the mining lease area) shall be done at the project cost. Besides this, afforestation on degraded forest land, to be selected elsewhere, measuring one and a half times the area under safety zone, shall also be done at the project cost.

5. xxx

6. xxx

7. xxx

8. The User agency shall take up planting work on the static dumps during the advance mining operations.

9. No damage to the flora and fauna of the area shall be caused.

10. xxx

11. xxx

12. The mining lease area shall be demarcated on ground at the project cost, using four feet high RCC pillars, with each pillar inscribed with the serial number, forward and backward bearings and distance between two adjacent pillars.

13. The forest land shall not be used for any purpose other than that specified in the proposal.

14. xxx

15. xxx

16. xxx

17. xxx

18. The lessee shall undertake to protect rigidly the leased area and forest area surrounding the area up to one km from the leased area.

19. xxx

20. xxx

21. xxx

22. xxx

23. In case of violation of agreement conditions, the State Government (Department of Forest, Ecology and Environment) shall have right to suspend the mining activities.

1.4. While approving the scheme of mining by proceedings dated 30.4.2007, the Controller of Mines(SZ), Indian Bureau of Mines, Bangalore, under the control of Department of Mines, Central Government, has imposed the condition that the petitioner shall dump the overburden waste only within an area of 37.32 Hectares during 2006-07; within an area of 40.15 Hectares during the next 5 years ending on 31.3.2012 and the same shall not be extended during the rest of the periods.

2.1. When the petitioner was mining thus, the fourth Respondent-Deputy Conservator of Forests, Bellary Division, by proceedings dated 29.12.2008, which is impugned in the present writ petition, referring to the letter of the Assistant Conservator of Forests dated 15.12.2008 and the letter of the Range Forest Officer, Hospet, even dated, observed that:

1. The user agency M/s Mineral Sales Private Limited, Hosapete not properly marked their leased mining area, up to the border mark fixed area not installed the prescribed concrete poles for every 20 meters distance and not marked number on the poles, not mentioned Forward and Backward bearing, as it is safety zone area, therefore unable to identify 7.5 meters measurement script and border gunta, it is violation of condition No. 4 and No. 12 of the agreement;

2. The user agency in Vyasanakere forest area during its mining activities to dump the waste produce of mining materials shown 24.75 hectare area out of the sanctioned area. But during spot inspection said firm used more land for dumping waste produces. Therefore asked the surveyor of Belay Forest Division Office to conduct survey of the leased forest area and to survey the dumping area. On 10.12.2008 in presence of Range Forest Officer, Hosapete and his staff the Surveyor conducted survey, tallied the dumping area, with the leased sketch for mining activities after that the surveyor reported on 11.12.2008 to the Assistant Conservator of Forest, Hosapete Sub-division, Hosapete. As per surveyor report M/s Mineral Sales Private, Hosapete have dumped the static dump out of their leased area in an extent of 20.53 hectares area in Kallahalli Forest Sy. No. 169, lease holder has encroached the forest land is proved. Regarding this Range Forest Officer reported that he took action on 14-12-2008 registered First Information Report against the said firm. By this act, the M/s Minerals Sales Private Limited, Hosapete have violated Section 24 of the Karnataka Forest Act and Agreement condition Nos. 13 and 18; and

3. The user agency out of their mining leased forest area to dump the waste soil have obtained grant in land use plan only for 24.75 hectares. But Range Forest Officer of Hosapete has reported along with sketch that said firm used 45.00 hectares forest area for dumping the waste produces of mining activities.

Because of this the said firm used 20.25 hectares more forest area to dump the waste produces of their mining activities, so natural grown plants and trees destroyed. And also as shown in the Land Use Plan in an extent of 24.75 hectare area over the dumped waste produces not taken to plant the points, sow the seeds and this firm not stabilized the fixed area to it. This is violation of condition Nos. 8 and 9 of the agreement.

2.2. Accordingly, by the impugned proceedings dated 29.12.2008 the fourth respondent, invoking Condition No. 23 of the Agreement and Section 82 of the Karnataka Forest Act, 1963 directed the petitioner to stop, mining activities temporarily till the petitioner corrects the violated conditions and thus suspended the mining licence.

3.1. It is pertinent to note that based on the complaint made by the Forest Guard, Kallahalli Beat, Hosapete, a First Information Report dated 14.12.2008 was lodged for the alleged offence punishable under Sections 24(a), (c)(ii), (d), (f) and (h) of the Karnataka Forest Act, 1963.

3.2. Aggrieved by the said FIR dated 14.12.2008 which was received by the jurisdictional Magistrate on 15.12.2008 and the proceedings dated 29.12.2008 of the fourth respondent, the petitioner has filed the above writ petition:

a) to quash the Order dated 29.12.2008 bearing No. M2/MNG/B/MSPL/ML No. 2416/2007-08 of fourth respondent; and

b) to quash the FIR dated 14.12.2008 filed in F.O.C. No. 47/08-09 of sixth respondent.

4.1. Mr. Krishnan Venugopal, learned Senior Counsel appearing for the petitioner contends that:

(i) the observation No. 1 in the impugned proceedings dated 29.12.2008 is without any basis. According to him, as there are disputes between the neighbouring mining operators and the petitioner and civil disputes are still pending between them at various stages, including the one which is seized by the Hon"ble Supreme Court as on date, on the ground that neighbouring operators have encroached into the area leased out to the petitioner, the petitioner as well as the neighbouring operators could not demarcate the mining area leased out to them nor erect poles; and therefore, condition Nos. 4 and 12 of the Agreement dated 19.4.2007 could not be given effect to by the petitioner as well as by the neighbouring mining operators and as such the said condition Nos. 4 and 12 could be given effect to only after surveying the mining area leased out by the Government.

(ii) With regard to observation Nos. 2 and 3 referred to in the proceedings dated 29.12.2008, relating to the violation of condition Nos. 8, 9, 13 and 18 of the Agreement dated 19th April, 2007, Mr Krishnan Venugopal, learned senior Counsel for the petitioner, submits that unless and until the area leased out to the petitioner, viz. 347.22 hectares is clearly demarcated, the respondents could

not come to an unilateral conclusion that the petitioner had encroached outside the leased out area for dumping overburden waste. The learned Senior Counsel also brought to our notice that the Controller of Mines, Indian Bureau of Mines, by his proceedings dated 30th April 2007 had permitted 40.15 hectares for dumping overburden waste, which the petitioner strictly adhered to. Mr. Krishnan Venugopal submits that the petitioners are prepared to substantiate that they have not encroached outside the leased out area, if an opportunity is given to them.

5.1. Per contra, Sri Udaya Holla, learned Advocate General, appearing for the respondents, fairly submits that condition Nos. 4 and 12 of the Agreement dated 19th April 2007 could not be cited against the petitioner in view of the pendency of the civil litigation between the petitioner and the neighbouring mining operators, more particularly, when the matter is seized before the Supreme Court.

5.2. With respect to observation Nos. 2 and 3, the learned Advocate General, on instruction from the Assistant Conservator of Forests, Hospet and Range Forest Officer, Hospet, submits that respondents are prepared to substantiate that the petitioner has encroached outside the leased out area, after giving an opportunity to the petitioner. The learned Advocate General further submits that the interim suspension of the mining lease for the alleged violation of the condition Nos. 8, 9, 13 and 18 is permissible in view of condition No. 23 of the agreement dated 19th April 2007. However, the learned Advocate General agrees that in the facts and circumstances of the present case, where the petitioner complains that his neighbouring mining operators have encroached into the petitioner's leased out area, both on northern and eastern sides and the petitioner is dumping the overburden waste within his leased out area but not into survey No. 169 of Kallahalli Forest Area, without surveying the field in the presence of the petitioner and the Controller of Mines, Indian Bureau of Mines, Bangalore, it may not be proper to invoke condition No. 23 of the Agreement dated 19th April 2007 for the alleged violation of the condition Nos. 8, 9, 13 and 18, as a serious doubt is raised by the petitioner with regard to the alleged encroachment and the petitioner seriously denies encroachment out side the leased out area. In any event, the learned Advocate General also agrees that while deciding the extent of encroachment after giving notice to the petitioner, an inspection would be conducted in presence of the Controller of Mines, Indian Bureau of Mines, for which proposal Mr Aravind Kumar, learned Assistant Solicitor General, appearing for the Central Government has also agreed.

5.3. In any event, the learned Advocate General strongly contends that the FIR cannot be quashed merely on the averment made by the petitioner that he had not encroached outside the leased out area, as such an allegation has to be substantiated and proved by the respondents in appropriate proceedings before the competent criminal court.

6. We have given our careful consideration to the submissions of both sides.

7.1. In view of rival contentions referred to above, the following questions arise for our consideration:

(I) Whether it is proper for this Court to exercise the power of judicial review under Article 226 of the Constitution of India to quash the First Information Report dated 14th December, 2008?

(II) Whether the fourth respondent is empowered to suspend the mining licence invoking condition No. 23 of the agreement for the alleged violation of the condition Nos. 8, 9, 13 and 18 of the agreement dated 19th April 2007?

(III) To what relief the petitioner is entitled to?

7.2. Issue No. I

(I) Whether it is proper for this Court to exercise the power under Article 226 of the Constitution of India to quash the First Information Report dated 14th December, 2008?

The power of judicial review under Article 226 of the Constitution of India is akin to the inherent power conferred u/s 482 of the Code of Criminal Procedure. It is a settled law that even though such inherent powers conferred on the High Court are very wide, the very plenitude of the power requires great caution in its exercise and the Courts must be very careful to see that its decision in exercise of such inherent power is based on sound principles as held by the Apex Court in the case of *Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.* reported in (2007)12 SCC 1, because the inherent powers conferred on this Court has to be sparingly exercised (i) to give effect to an order under the Code; (ii) to prevent abuse of process of Court; and (iii) to otherwise secure the ends of justice, but in any event not to encourage violations of the provisions of any statutes in force much any conditions of agreement thereunder which empowers the competent authority to take appropriate action against the law breakers and those who violate the conditions of agreement.

7.3. In any event, such powers should not be exercised to stifle a legitimate prosecution and therefore the Courts should refrain from giving a prima-facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court.

7.4. In the instant case, the learned Advocate General comes forward to substantiate the complaint made against the petitioner as to the violation of the conditions of Agreement dated 19th April 2007. Therefore, when the evidence is yet to be collected and produced before the Court and the respondents are prepared to substantiate the violation of conditions by the petitioner, it may not be proper for this Court to use the inherent power to stifle the legitimate prosecution nor to give a prima-facie decision hastily. Hence, we are convinced that it may not be proper for this Court to quash the F.I.R. at this stage.

Issue No. I is answered accordingly.

7.5. Issue No. II:

(II) Whether the fourth respondent is empowered to suspend the mining licence invoking condition No. 23 of the agreement for the alleged violation of the condition Nos. 8, 9, 13 and 18 of the agreement dated 19th April 2007?

Parliament enacted the Forest (Conservation) Act, 1980 in order to prevent deforestation which causes ecological imbalance and leads to environmental deterioration. The deforestation causes widespread concern. Section 2 of the Forest (Conservation) Act, 1980 imposes the restriction on dereservation of forest or use of forest land for non-forest purposes. As per Section 2 of the Forest (Conservation) Act, no State Government or authority shall make, except with the prior approval of the Central Government, any order directing (i) that the reserved forest shall be ceased to be reserved; (ii) that any forest land or any portion thereof may be used for any non forest purpose; (iii) that any forest land may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by State Government, and (iv) that any forest land may be cleared of trees which have grown naturally.

7.6. After the Forest (Conservation) Act, 1980 came into force, no mining lease/licence can be granted in the forest area without the prior approval of the Central Government, which is a condition precedent, because Section 2 of the Forest (Conservation) Act starts with non-obstante Clause viz., "Notwithstanding anything contained in any other law for the time being in force in a State...." Therefore, no non-forest activity can be carried on in the forest area, except with the prior approval of the Central Government, which means, even the State Government cannot carry on any such non-forest activity in the forest area without the prior approval of the Central Government. The fact that the mining activity amounts to non-forest purpose is beyond doubt.

7.7. The renewal of a lease is really the grant of a fresh lease as held by the Apex Court in Delhi Development Authority Vs. Durga Chand Kaushish, and therefore such prior approval of the Central Government in terms of Section 2 of the Forest (Conservation) Act, 1980 would be required when mining lease granted before the commencement of the said Act is renewed after its coming into force.

7.8. The impugned quarry is admittedly located in the forest area. Therefore, the mining lease granted to the petitioner in such forest area is subject to the conditions imposed by the Central Government and State Government while exercising the power conferred u/s 2 of the Forest (Conservation) Act, 1980. While thus exercising the power conferred u/s 2 of the Forest (Conservation) Act, an agreement was entered into between the petitioner and the 4th respondent on 19.4.2007 wherein the petitioner-company have specifically agreed to comply with the conditions incorporated in the said agreement. Had the agreement not been executed, mining lease itself would not have been granted to the petitioner.

Under Condition No. 23 of the said agreement, the petitioner has also agreed that the fourth respondent has the power to suspend the mining licence, if the conditions agreed to by the petitioner while executing the agreement are violated. Therefore, as rightly pointed out by the learned Advocate General, the fourth respondent is empowered to suspend the licence, if the conditions agreed to by the petitioner/lessee are violated. But it depends upon the facts and circumstances of each case as to the enforcing circumstances.

7.9. It is not in dispute that the very area leased out to the petitioner is in dispute and there are civil litigations pending in this regard between the petitioner and the neighbouring mining operators, of which, one of them is seized by the Hon'ble Supreme Court, where the issue to survey the respective leased out area is under consideration. As a result, the leased out area of the petitioner itself is yet to be identified and demarcated. In that view of the matter, the enforceability of condition Nos. 8, 9, 13 and 18 referred to in observations 2 and 3 has become difficult, according to the petitioner. On the other hand, the learned Advocate General comes forward to substantiate the complaint by giving an opportunity to the petitioner in the presence of the Controller of Mines, Indian Bureau of Mines, Bangalore, who by proceedings dated 30th April, 2007, fixed an extent of 40.15 hectares in which the overburden waste could be dumped during the lease period. It is under such circumstances, we are of the considered opinion that it would not be proper to suspend the mining operation without ample material to substantiate the violation of condition Nos. 8, 9, 13 and 18. Otherwise, it will amount to an arbitrary and unreasonable exercise of power conferred in condition of 23 of the agreement dated 19th April, 2007 and will also amount to violation of the principles of natural justice, attracting Article 14 of the Constitution of India.

Issue No. II is answered accordingly.

8. Issue No. (III)

To what relief the petitioner is entitled to?

8.1. In the result, we pass the following:

ORDER

(i) the prayer to quash the First Information Report dated 14.12.2008 is rejected, giving liberty to the respondents to proceed in accordance with law subject to the orders hereunder;

(ii) the impugned order dated 29.12.2008 of the fourth respondent - Deputy Conservator of Forests, Bellary Division, Bellary directing stopping of mining activities and suspending the impugned licence, stands quashed;

(iii) Deputy Conservator of Forests, Bellary Division, Bellary-fourth Respondent, shall inspect and survey the impugned area leased out to the petitioner, in his presence and in the presence of Controller of Mines, Indian Bureau of Mines,

Bangalore and take a decision with reference to the survey records and other relevant material available and documents produced by the petitioner as to the alleged violation of the condition Nos. 8, 9, 13 and 18 of the agreement dated 19th April, 2007;

(iv) subject to the finding arrived at by the fourth respondent-Deputy Conservator of Forests, Bellary Division, and the Controller of Mines, Indian Bureau of Mines, Bangalore; petitioner shall rectify the violation by removing the overburden waste whatsoever within two weeks from the date of such order passed by the fourth respondent and the Controller of Mines, Indian Bureau of Mines, Bangalore; and

(v) subject to such findings of the fourth respondent and the Controller of Mines, Indian Bureau of Mines, Bangalore, the 6th respondent - Forest Guard, Department of Forests, Hospet, is at liberty to proceed with the enquiry, strictly in accordance with law.

Writ petition is accordingly disposed of. No costs.

Registry is directed to furnish copy of this Judgment to Sri Aravind Kumar, Assistant Solicitor General, who appears for Controller of Mines (SZ), Indian Bureau of Mines, Bangalore.