

(2009) 04 AHC CK 0454
In the Allahabad High Court

Parmesh Mishra and another.

APPELLANT

Vs

State of Uttar Pradesh and others.

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0454

Hon'ble Judges : Amitava Lala, J and Shyam Shankar Tiwari, J

Final Decision : Disposed Of

Judgement

Amitava Lala, J.

The writ petitioners have contended before this Court that this case is similarly placed with Civil Misc. Writ Petition No. 17340 of 2009 (Faujdar Singh and another Vs. State of U.P. and others), wherein a Division Bench of this Court presided over by one of (Amitava Lala, J.) has passed an order on 31st March, 2009, which is as follows:

"This writ petition has been filed challenging the order dated 05.03.2009 passed by the District Magistrate, Sonbhadra, which was passed following the earlier order of the Regional Forest Officer, Obra, Sonbhadra dated 19.02.2009. By challenging both the aforesaid orders, the petitioners have contended that in the form of show cause notice by order dated 05.03.2009 the mining operation of the petitioners has been stayed by the District Magistrate, Sonbhadra whereas the earlier order passed by the Regional Forest Officer, Obra, Sonbhadra dated 19.02.2009 was passed without giving any opportunity of hearing.

Therefore, upon hearing learned Counsel appearing for the petitioners as well as the learned Standing Counsel, we are of the view that in the circumstances a fresh order can be passed, therefore, we direct the Regional Forest Officer, Obra, Sonbhadra to consider the cause of the petitioners and pass a fresh order within one week from the date of communication of this order upon giving fullest opportunity of hearing and by passing a reasoned order. However, till the decision is taken afresh both the orders dated 05.03.2009 and 19.02.2009 will

be kept in abeyance and will be subject to the fresh order to be passed by the Regional Forest Officer, Obra, Sonbhadra.

Accordingly, the writ petition is disposed of, however, without imposing any cost."

Learned Standing Counsel has raised an objection by saying that the earlier order, which has been passed by the Regional Forest Officer in the particular case, was on account of illegal mining, which is a factual difference between the referred case and this case. Learned Counsel appearing for the petitioners joined the issue therein by saying that in the similarly placed situation the order was passed by this Court in an earlier occasion. He has explained the position by saying that the earlier order dated 30th March, 2009, which has been relied upon by the District Magistrate, Sonbhadra at the time of issuing show cause notice, was an ex parte order, therefore, the petitioners had no opportunity of making any submission even with regard to the alleged illegal mining. Therefore, we are keeping everything open for the purpose of consideration by the authority concerned inclusive of case of illegal mining. Hence, the writ petition is disposed of with a direction upon the District Magistrate, Sonbhadra to consider the case of the petitioners and pass a fresh order within a week from the date of communication of this order upon giving fullest opportunity of hearing and by passing a reasoned order thereon. However, till the decision is taken afresh, the order passed by the Divisional Forest Officer, Obra, Sonbhadra dated 30th March, 2009 and the show cause notice issued by the District Magistrate, Sonbhadra dated 06th April, 2009 will be kept in abeyance and will be subject to the fresh order to be passed by the District Magistrate, Sonbhadra.

No order is passed as to costs.

(Justice Amitava Lala)

I agree.