
(2018) 07 UK CK 0053
In the Uttarakhand High Court
Case No : Special Appeal No. 272 of 2018

Praveen Nautiyal	Vs	APPELLANT
State of Uttarakhand & Others		RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

Citation : (2018) 07 UK CK 0053

Hon'ble Judges : K.M. JOSEPH, C.J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Rajendra Dobhal, Prince Chauhan, Prabha Naithani, Swami Dayanand Ji

Final Decision : Allowed

Judgement

K.M. JOSEPH, C.J. (Oral)

SHARAD KUMAR SHARMA, J.

1. Heard Mr. Rajendra Dobhal, learned senior counsel for the appellant, Mrs. Prabha Naithani, learned Brief Holder for the State/respondent nos. 1 to

5 and also Swami Dayanand, the party in person, respondent no. 6 on the question of condonation of delay of three days. Having heard the parties, we

are of the view that as delay is not seriously opposed by respondents delay is to be condoned. Accordingly, the delay condonation application will stand

allowed and the delay in filing the Special Appeal will stand condoned.

2. Appellant is the writ petitioner in the Writ Petition No. 216/2018. The Writ Petition was filed substantially seeking the following reliefs no.(i) to (v)

and other reliefs were also sought, by which we need not be detained. Relief nos. (i) to (v) are as follows:

â??(i) Issue a writ, order or direction in the nature of certiorari quashing the

Notification No. 1207/VII-I/24-Kha/2007 dated 07.08.2015, which was further followed by another notification dated 26.02.2016 and 19.05.2016 (annexure nos. 1, 2 & 3), whereby the rates of royalty have been revised.

(iii) Issue a writ, order or direction in the nature of certiorari quashing the impugned notice dated 06.05.2017 as well as subsequent notices dated 28.09.2017 and 09.11.2017.

(iv) Issue a writ, order or direction in the nature of certiorari quashing the entire recovery proceedings initiated pursuant to impugned notice dated 06.05.2017 as well as subsequent notices dated 28.09.2017 and 09.11.2017.

(v) Issue a writ, order or direction in the nature of mandamus directing the respondents not to put hindrance under the garb of demand notice in carrying out the mining operations by the petitioner as per the terms and conditions of lease deed issued in his favour.â??

3. The petition came to be heard along with certain other petitions. The learned Single Judge decided the Writ Petition (M/S) No. 3077/2017 along with the present Writ Petition No. 216/2018 with which we are concerned at present vide its judgment dated 21.03.2018, impugned in present Appeal.

The reliefs sought in the said Writ Petition (M/S) No. 3077/2017 are as follows:

â??(i) A writ, order or direction in the nature of mandamus commanding the official Respondents to issue formal order of permission in favour of the

Petitioner in order to continue with the mining operation pursuant to mining lease deed for complete five years.

(ii) Any other order or direction which this Honâ??ble Court may deem fit and proper under the facts and circumstances of the case.

(iii) Award cost of the Petition to the present Petitioner.â??

4. We notice paragraph no. 4 of the impugned judgment dated 21.03.2018. An Impleadment application was filed on behalf of Matri Sadan through

one of its trustees, namely, the 6th respondent in this Appeal, which was allowed. The learned Single Judge took note of the order of the National

Green Tribunal and, thereafter, disposed of the Writ Petitions as follows:

â??7. Considering that there is already a restrain for mining activity in terms of the said order, the writ petitions stand disposed with the direction to

the Secretary, Mining, Government of Uttarakhand to look into the matter after hearing the petitioners as well as the representative of Matri Sadan

and pass appropriate orders therein, as expeditiously as possible, in accordance with law but preferably within a period of four weeks from the date of

production of a certified copy of this order. Petitioners would also be at liberty to raise the issues before the Secretary which they have raised before

this Court, which shall be considered in accordance with law.â??

5. It is feeling aggrieved against judgment dated 21.03.2018 that the writ petitioner in Writ Petition (M/S) No. 216 of 2018 has preferred Special

Appeal No. 272 of 2018.

6. We heard Mr. Rajendra Dobhal, learned Senior Counsel on behalf of the appellant. We also heard the party in person-respondent no. 6 and Mrs.

Prabha Naithani, learned Brief Holder on behalf of the State/respondent nos. 1 to 5.

7. Mr. Rajendra Dobhal, learned senior counsel for the appellant/writ petitioner would point out that the issue, which was raised in Writ Petition (M/S)

No. 216 of 2018 has not been considered by the learned Single Judge. The issue relating to the legality for demand of Royalty and challenge to

Notification, other reliefs, in fact, were raised but the same has not been considered.

8. After perusing the impugned judgment, we find that Writ Petition (M/S) No. 216 of 2018, has not been considered having regard to the issues,

which were projected and pleadings, which came to be exchanged.

9. In view of the fact, the impugned judgment reveals that the issues raised, apparently, which affect the appellant, have not been dealt with by the

learned Single Judge, we cannot sustain the impugned judgment. Accordingly, we allow the Appeal and set aside the common judgment dated

21.03.2018, insofar as it relates to Writ Petition (M/S) No. 216 of 2018 and we remit the matter back to the learned Single Judge for a decision in the

Writ Petition afresh on its merits. The Writ Petition will stand posted on 18.07.2018 in the Daily Cause List before the learned Single Judge and we

request the learned Single Judge to dispose of the matter at the earliest. We make it clear that we have not expressed any view regarding the merits

of the contentions of the parties.