

(2011) 07 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 11096 of 2011 (O and M)

Sandeep Sangwan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Environment (Protection) Act, 1986 — Section 3(2)
Punjab Land Preservation Act, 1900 — Section 3, 4

Citation : (2012) 1 ILR (P&H) 448 : (2012) 1 RCR(Civil) 271

Hon'ble Judges : A.K. Goel, Acting C.J.;Ajay Kumar Mittal, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, A.C.J..

1 This petition by way of a PIL seeks quashing of auction notice dated June 3, 2011 issued by the Director, Mines and Geology, Haryana for auction of minor mineral quarries not exceeding 4.5 hectares in each case for extraction of Boulder, Gravel and sand for nine months.

2. Main ground to challenge the impugned notices is that the proposed mining is in violation of notification issued by the Central Government dated 14.9.2006 requiring Prior Environmental Clearance (PEC) and also in violation of judgment of this Court dated 15.5.2009 in CWP No. 20134 of 2004, Vijay Bansal and Ors. v. State of Haryana and Ors. To circumvent the notification of the Central Government and judgment of this Court, the area of quarries in impugned notices is restricted to 4.5 hectares but location of plots being contiguous to each other, the area covered is far beyond 50 hectares. Thus, by mere sub division, the State is circumventing the Central Government notification and judgment of this Court. Reliance has also been placed on order of Hon'ble the Supreme Court dated 18.3.2011 in SLP (Civil) CC 5462 of 2011, Matsya Education and Rural Development Trust v. state of Haryana and Ors., read with order dated 20.5.2011 in the same case whereby order of this Court dated 4.3.2011 in CWP No. 4758 of 2008 permitting grant of mining contracts/permits upto 31.7.2011 as one time

measure was stayed.

3. Notice was issued and finalization of auction was stayed. Reply has been filed on behalf of the State of Haryana. Stand taken therein is that no environmental clearance is required from Environment Impact Assessment Authority (EIAA) in terms of notification dated 14.9.2006 issued by the Government of India as the mining areas in question are less than 5 hectares. As regards judgment of this Court dated 15.5.2009, it has been stated that process of obtaining environment clearance was expected to be completed within a reasonable time and on that basis, this Court had allowed mining operations to continue upto 28.2.2010 pending environmental clearance. Necessary applications were moved for determining terms of reference for the mining projects in question but the Expert Appraisal Committee (EAC) returned the applications with the observation that preparation of Environment Impact Assessment Report (EIAR) was not in their scope of the work. The judgment dated 15.5.2009 was in appeal before the Supreme Court in SLP No. 19628 - 29/2009 and matter stands referred to Central Empowered Committee (CEC). The State was faced with the extreme shortage of construction material leading to astronomical increase in price, loss of employment, loss of business for the industry, loss of revenue, increase in illegal mining, windfall for persons having mining interest in adjoining States of UP and Rajasthan who were selling the mined material at higher rates and who are behind filing cases in courts to subvert the process of mining operations. In the case of State of Punjab vide order dated 6.11.2009 in CWP No. No. 12664 of 2008, Ran Bahadur Singh v. State of Punjab and Ors., this Court, while directing expeditious consideration for environmental clearance for mining of minor minerals, allowed period of six months taking into account the period required for obtaining clearance. In the case of Haryana, vide order dated 4.3.2011, permission to grant short term permits upto 31.7.2011 was allowed in CWP No. 4758 of 2008 which has been stayed by the Hon''ble Supreme Court.

4. We have heard learned Counsel for the parties.

5. Following questions arise for consideration:

i) Whether writ petition by way of PIL is abuse of legal process at the instance of beneficiaries of ban on mining?

Ii) Whether impugned notices for auction of mining areas is in violation of notification of the Central Government requiring environmental clearance and judgment of this Court in Vijay Bansal?

Re: (i)

6. Learned Counsel for the State submitted that the petition was abuse of the Court's process at the instance of beneficiaries of ban on mining in the State of Haryana. The Advocate in whose name the petition was filed is not shown to be having any interest in environmental protection. He is not even present in Court. He is not shown to have taken any steps for environmental protection. He had

only lent his name to advance commercial interest of affected parties. Though, we find, prima facie, merit in this objection, the fact remains that the State cannot be allowed to act in violation of orders of this Court or in violation of provisions of Environmental Protection law.

Re: (ii)

7. Reading of impugned notices shows that even though individual mineral quarries on which mining is proposed to be allowed does not exceed 4.5 hectares which takes the matter outside the notification dated 14.9.2006 and judgment of this Court in Vijay Bansal, the mining mineral quarries covered by the auction notices are certainly of large areas and thus, by using the device of limiting the area of individual quarries to 4.5 hectares, the requirement of environment clearance as per notification dated 14.9.2006 cannot be allowed to be defeated. The said notification is a statutory notification u/s 3(2)(v) of the Environment (Protection) Act, 1986 read with the relevant rules requiring prior environmental clearance for any specified activity in any part of India from the Central Government or the State level Environmental Impact Assessment Authority constituted by the Central Government as per procedure laid down therein. Mining of minerals in 50 hectares of mining lease area is specified as a project covered by the Schedule to the notification. Impact of mining has to be assessed before clearance is granted. While considering this aspect in the light of judgments of the Hon'ble Supreme Court in Vijay Bansal, it was held that natural resources are not property of State but national assets and it is obligation of all to conserve the environment. Prior environmental clearance was mandatory as per notification dated 14.9.2006 for mining activities in Shivalik range of Himalayas. Every new contract, lease or license of mining area was start of a new project/activity attracting notification dated 14.9.2006. It was further held that if total area was more than 50 hectares, mandatory requirement of prior clearance could not be defeated through division of mining areas to different quarries. The State was under obligation to apply to its EAC and to ensure that environment impact assessment report is prepared and public consultation was carried out. The State could conduct public auction for the mining areas only thereafter. This was necessary to give effect to the principle of "sustainable development". Grant of short term permits was also not permissible. The conclusions reached by this Court are as under:

To sum up, both these petitions are disposed of with the following consolidated directions:

i) the lands/areas forming part of the notification u/s 3 of the Punjab Land Preservation Act, 1900 and in respect of which restrictions have been imposed u/s 4 of the said Act are declared to be "forest lands" for the purposes of the Indian forest Act, 1927 and the Forest (Conservation) Act, 1980. it is, accordingly, directed that these areas shall Not bed used for "non forest purposes" including the mining of "major" or minor minerals;

ii) Notification dated 14.9.2006 issued by the Central Govt. in exercise of its powers under the Environment (Protection) Act, 1986 governs all the mining activities irrespective of the fact that the minerals are major or minor and is thus fully applicable in respect of the mining areas in the Shivalik ranges of Himalayas, including those falling in District Panchkula. No mining activity shall be carried out in these areas without the prior environmental clearance save beyond the maximum period granted hereinafter for obtaining such prior environmental clearance.

iii) The State of Haryana and the State Level Expert Appraisal Committee are directed to enforce the Notification dated 14.9.2006 qua all the mining areas and monitor the mining operations regularly and vigorously so as to bring them in conformity with the terms and conditions imposed while granting the prior environmental clearance;

iv) Notification dated 14.9.2006 is directed to be applied qua those mining areas also where the mining activities used to be undertaken prior to its issuance and every new contract/license/lease permitting the mining shall be taken as a new activity for the purpose of the said notification;

v) It is also directed that wherever the total mining area is a homogeneous or otherwise identifiable piece of 50 hectares or above, the Notification dated 14.9.2006 shall be enforceable even if such mining area has been divided into zones or quarrying plots of smaller sizes.

vi) The State of Haryana is directed to apply to the Expert Appraisal Committee for determining the Terms of Reference (TOR) and get the Environmental Impact Assessment Report (EIAR) prepared for the entire mining area falling within the fragile Shivalik ranges of Himalayas and then complete the process of public consultation prescribed as Stage No. III in the Central Govt. notification dated 14.9.2006 and thereafter get a final Environment Impact Assessment Report prepared. The State Government shall submit the application, complete in all respects, before 31st August 2009.

vii) We also direct that no public auction shall be held and no license/contract/lease or right for extraction of minerals from the Shivalik ranges of Himalayas shall be granted by the State of Haryana until the final Environment Impact Assessment Report is prepared and made available as a public document to the prospective bidders;

viii) Every successful bidder shall be required, and be under a legal obligation, to apply alongwith a copy of the final Environment Impact Assessment Report and obtain the prior environmental clearance and then abide by the Terms and Conditions as may be imposed by the Expert Appraisal Committee. No lease/license/contract shall attain finality unless prior environmental clearance is granted and the project proponent undertakes the responsibility to comply with the terms and conditions as may be imposed by the Expert Appraisal Committee. The Project Proponents/successful bidders shall apply for prior environmental

clearance within one month from the date of auction;

ix) the Govt. of Haryana shall be entitled to recover the expenditure incurred by it in the compliance of stage Nos. (1) to (III) (whichever is applicable) prescribed in the Central Govt. notification dated 14.9.2006 for obtaining the prior environmental clearance including the expenditure incurred on public consultation or the preparation of the tentative and/or final environment Impact Assessment Report, proportionately from the successful bidders;

x) the Expert Appraisal Committee is directed to prepare the final Environment Impact Assessment Report (EIAR) within a period of six months from the date of receipt of the application from the State Government and thereafter to grant or reject the prior environmental clearance within a period of two months from the date of receipt of the application of the project proponent/successful bidders;

xi) Having regard to all the attending circumstances and to obviate varied hardships caused to the general public, labour and the State, we direct that the mining activities may continue till 28th February 2010, however, only on the basis of the contract/license granted to the highest bidders through a transparent public auction held after wide publicity and subject to the terms and conditions, as are imposed while granting a five year contract and further subject to strict compliance of such terms and conditions;

xii) We clarify that the State of Haryana shall not stand absolved of its legal obligation on mere successful accomplishment of the fourth Stage enumerated in the Central Govt. notification dated 14.9.2006 and it shall continue to enforce the measures contained in the forest Department's notifications dated 27.11.1997 and 28.11.1997 (Annexure P.2 and P.3) issued u/s 3 and 4 of the Punjab Land Preservation Act, 1990 respectively.

8. Thereafter, though interim order dated 4.3.2011 was passed permitting grant of short term permits upto 31.7.2011 on the ground of delay in clearance in terms of notification of the Central Government, the said order has been stayed by the Hon'ble Supreme Court and application for modification thereof has been dismissed. It was observed by the Hon'ble Supreme Court in the order dated 20.5.2011 that grant of permission to milk Shivalik Hills in the name of revenue or providing employment was against public interest. Thus, the impugned auctions are contrary to letter and spirit of notification of the Central Government, orders of this Court in Vijay Bansal and orders of the Hon'ble Supreme Court in Matsya Education & Rural Development Trust.

9. It is pointed out that on behalf of the State that vide order dated 6.11.2009 in CWP No. 12664 of 2008, Ran Bahadur Singh v. state of Punjab and Ors., this Court gave certain directions to expedite the process of environmental clearance as follows:

In the totality of the above circumstances, therefore, we direct as under:

1. the Department of Industries and Commerce, Government of Punjab shall

within four weeks from today file applications for grant of environmental clearance in Form I of Appendix I to notification dated 14.9.2006 in respect of districts Ropar, Mohali and Patiala and two months in so far as other districts in the state of Punjab are concerned. Director Industries and Commerce, Government of Punjab, who is present in person, shall be personally responsible to ensure that all steps requisite for making the applications for mining areas measuring more than 5 hectares and less than 50 hectares are taken and applications presented without any deficiencies and supported by all information, material and data.

2. On receipt of the applications from the Director Department of Industries and Commerce, Punjab the State Environmental Impact Assessment Authority shall process and forward the same to the State Expert Appraisal Committee within 10 days. Thereafter the Member Secretary to the State Expert Appraisal Committee shall be responsible for adhering to the time schedule prescribed for this purpose and ensure that the entire process requisite for forwarding of the applications to the Committee is completed well in time.

3. On receipt of the applications duly forwarded to it, the state Expert Appraisal Committee shall screen the same and complete a comprehensive study for environmental assessment within a period of 60 days and forward the terms of reference to the applicant/industries department for getting the study conducted by an expert of their choice. The director, Department of Industries and Commerce would do well to start the process of identifying an expert well in advance to ensure that there is no delay in the conduct of the studies by him once the reference is received back from the Committee mentioned above.

4. The environmental impact study to be conducted by the expert shall be completed within 90 days from the date reference is made and submitted to the Punjab Pollution Control Board who shall conduct the requisite consultation in terms of the notification and the provisions of the Act and submit the result of the same back to the State Environmental Impact Assessment Authority within a period of 45 days.

5. the State environmental Impact Assessment Authority shall finally appraise the project and submits its recommendations to the State Expert Appraisal Committee within 60 days thereafter. The State environmental Impact Assessing Authority would then pass appropriate orders on the said recommendations within 30-40 days from the date the recommendations are received.

6. The above process shall be completed by the authorities and the agencies concerned within the time frame given for the purpose which would roughly consume nearly nine months or so.

The said order was upheld by the Hon''ble Supreme Court on 10.1.2011 in SLP (Civil) CC 20308/2010, Union of India v. Pratap Singh Sandhu and Ors.

10. In view of order of this Court in Vijay Bansal and order of the Hon''ble

Supreme Court in Matsya Education and Rural Development Trust, the State cannot proceed with the grant of mining rights in pursuance of impugned notices until environmental clearance is granted in terms of notification dated 14.9.2006. Accordingly, we restrain the State from proceeding further with the impugned auction of mining rights. However, the State would be at liberty to seek environmental clearance as already observed in the order of this Court in Vijay Bansal. Learned Counsel for the State of Haryana states that necessary application has already been moved which was returned with certain objections. The State will be at liberty to resubmit its application and the application so made shall be dealt with by the concerned authorities as per direction already issued in Vijay Bansal, with further clarification that the State of Haryana will be at liberty to follow such modified procedure as may be permitted by the concerned authorities specified in the notification dated 14.9.2006.

The writ petition is disposed of.