
(2008) 03 JH CK 0101
In the Jharkhand High Court

Shankuntala Mehta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Citation : (2008) 3 JCR 79

Hon'ble Judges : M. Karpaga Vinayagam, C.J;D.G.R. Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Karpaga Vinayagam, C.J.—Shankuntala Mehta, claiming herself as the President of Forest Safety Committee Tetariadih, Koderma has tiled this writ petition in the nature of public interest litigation for giving a direction to the respondents not to grant any mining lease in favour of any person within Langrapara and Domchanch Protected Forest and also to declare the mining leases granted in favour of the private respondents in respect of Langraparas and Domchanch Forest Area which have been notified as Protected Forest as illegal and consequently set aside all such leases and further direct the respondents to forbear from carrying out any mining activities within the protected forest areas of Langrapara and Domchanch.

2. The case of the petitioner is as follows:

(i) The petitioner is a President of Forest Safety Committee, Tetariadih, Koderma and the aim of the committee is to strive for the protection and preservation of the forest as well as the wildlife.

(ii) There are two forest areas in Koderma district, namely, Langraparas and Domchanch, which have been notified as Protected Forest under the Indian Forest Act.

(iii) There has been indiscriminate diversion of forest land for non-forest use for stone quarrying and mining.

(iv) The mining leases over these forest areas have been granted to certain private persons without complying with the mandatory provisions of the Forest Conservation Act.

(v) Due to grant of mining lease in forest area, there is a large scale dumping of soil in forest area.

(vi) Due to mining activity being carried out in the forest area, there has been a large scale felling of trees.

(vii) The respondent authorities, while granting mining lease, have given a silent go bye to the mandatory provisions of the Act and the rules.

(viii) Being aggrieved by the above situation, the petitioner sent representations on 14.12.2004 as well as 1.12.2005 bringing to the notice of the concerned respondent authorities about the large scale de-forestation and danger to the wildlife and even then there is no action taken.

(ix) The petitioner preferred an application under Right to Information Act regarding stone mining in these forest areas. The petitioner was informed through letter dated 29.12.2006 issued by the Ministry of Environment and Forest (F.C. Division) that the Government of Jharkhand has been requested by the Ministry of Environment and Forest to enquire into the indiscriminate diversion of forest land for non-forestry use. However, the State Government has not provided any information as to the steps taken by it for afforestation and for prevention of indiscriminate diversion of forest land.

(x) Hence, this writ petition has been filed in the nature of Public Interest Litigation seeking for the prayers referred to above.

3. Counters have been filed by the respondent authorities, namely, Range Forest Officer, Koderma District; Chief Conservator of Forest, Ministry of Environment and Forest. From the counters filed by the respondent authorities, the following factors are revealed:

(i) The Langarparas and Domchanch, both are notified as Protected Forest Area. It is not correct to state that there has been an indiscriminate diversion of forest land. Similarly, it is incorrect to say that mining lease has been granted without complying with the mandatory provisions of Forest Conservation Act and rules framed therefor.

(ii) Only 8 number of leases have been granted in the entire Koderma District Forest Area right from 1972 upto 2007. The mining leases have been granted in the years 1972, 1974, 1976 and 1977, which are much prior to the coming into force of Forest Conservation Act, 1980 and two mining leases had been granted after 1980. The leases, which had been granted subsequent to the coming into force of Forest Conservation Act, 1980, were granted only after following all the norms and rules prescribed by the Act.

(iii) All the leases granted and renewal of the forest land are in respect of

protected forest area and not in respect of reserve forest area and all these leases have been granted within the forest area after approval of the Central Government as received by the concerned department and in all cases Central Government has granted prior approval for mining leases and only thereafter the mining lease operations have been allowed to begun.

(iv) Out of these 8 leases, one lease was granted in the year 2007 for the purpose of Koderma Giridih Railway Project, which is a project of Government of India.

(v) The compensatory afforestation scheme also has been strictly followed. For the purpose of plantation of trees to satisfy the afforestation scheme, the lessees had to deposit amount and thereupon the Central Government had approved for grant of mining lease in the forest area.

(vi) The users have complied with all the terms and conditions mentioned by the Government of India, as such the apprehension of the petitioner regarding deforestation is misconceived.

4. On the basis of the pleadings made by the petitioner in her affidavit as well as rejoinder and also the pleadings made by the respondent authorities in their counter, the arguments were advanced by the counsel for the parties.

5. The counsel for the petitioner would site the following judgments of the Supreme Court which deals with the stoppage of quarry licence/mining licence under the Forest Conservation Act; sustainable development and also about the lack of effective enforcement of environmental laws.

(i) T.N. Godavarman Thirumulkpad Vs. Union of India and others, .

(ii) Essar Oil Ltd. Vs. Halar Utkarsh Samiti and Others, .

(iii) N.D. Jayal and Another Vs. Union of India (UOI) and Others, .

(iv) M.C. Mehta Vs. Union of India (UOI) and Others, .

6. The main contention of the petitioner is that the grant of mining lease in forest areas is illegal. But, it is to be noticed that there is no blanket bar over the grant of mining lease in the forest areas as there are provisions under the Act and the rules for granting licence for mining lease even in the forest area, provided they observe the mandatory rules, which includes approval of the Central Government.

7. The affidavit of Rajendra Kumar Dey, who is the Chief Conservator of Forest, Ministry of Environment and Forest would give the details of the mining leases which have been granted in the area only subject to the observance of the mandatory rules and also after obtaining approval of the Central Government. It is specifically stated in paragraph 8 of the counter by the Chief Conservator of Forest that in respect of all the leases, the Government of India has accorded final approval for diversion of forest land for non-forest use and the project authorities are being allowed to carry out non-forest activities in the forest land

only after the Stage II approval is accorded.

8. In the light of the fact that the respondent authorities asserted in their counter-affidavit that 8 leases have been granted only after observing the mandatory provisions of the Act and the rules, that too after the approval of the Central Government, it cannot be declared that grant of lease is illegal.

9. Under such circumstances, we cannot grant the relief sought for in the writ petition. However, if the petitioner gets any solid material to show that the State Government, in the matter of grant of mining lease in the forest area, has not followed the mandatory provisions of law, it is open to the petitioner to bring the same to the notice of the Central Government authorities so as to enable the Central Government authorities to enquire and to take appropriate action, if so warranted. With these observations, this writ petition is dismissed. There shall be no order as to cost.

D.G.R. Patnaik, J.

10. I agree.