

(2013) 10 SC CK 0091

In the Supreme Court Of India

Case No : C.A. No"s. 10378-10380 of 2013 (Arising out of SLP (C) No"s. 729-731 of 2011 along with I.A. No"s. 7-9 and 10-12) and C.A. No"s. 9864-9865 of 2013 (Arising out of SLP (C) No"s. 30432-30433 of 2013)

Union of India (UOI)

APPELLANT

Vs

Vijay Bansal and Others

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Environment (Protection) Act, 1986 — Section 3(1), 3(2)

Citation : (2013) 14 SCALE 132

Hon'ble Judges : Surinder Singh Nijjar, J;Fakkir Mohamed Ibrahim Kalifulla, J;A.K. Patnaik, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. We have heard Learned Counsel for the panics. Leave granted.
2. By the impugned order, the High Court has directed the State of Haryana to apply to the Expert Appraisal Committee for determining the Terms of Reference (TOR) and get the Environmental Clearance Impact Assessment Report (EIAR) required for the entire 'mining area' falling within the fragile Shivalik Ranges of the Himalayas and then complete the process of 'public consultation', prescribed at Stage III in the Central Government Notification dated 14th September, 2006 and thereafter get a final Environmental Impact Assessment Report prepared.
3. The only point raised in these appeals by the Appellant is that the State of Haryana could not have applied for environmental clearance and it is the party who has applied for mining lease who has to apply for environmental clearance. We have been told by the Learned Counsel for the Appellants that in all other states applications are being filed for environmental clearance by the party applying for mining lease and the view taken by the High Court was not a correct view.

4. In fact, a fresh Notification dated 4th April, 2011 has been issued by the Ministry of Environment and Forests, Government of India under Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the Environment Protection Act, 1996 read with Clause (d) of sub-rule 5 of Environment Protection Rules wherein it has been clarified that the applicant seeking prior environmental clearance shall be made by the project proponent.

5. We had called for a report of the Central Empowered Committee on this point raised in these appeals and the Central Empowered Committee is also of the view that the application for environmental clearance has to be filed by the project proponent and not by the concerned State.

6. We, therefore allow these appeals, set aside the decision of the High Court in the impugned order that the State of Haryana will file application for environmental clearance and hold that the project proponent and not the State of Haryana which has to apply for environmental clearance for mining leases. We however, make it clear that rest of the findings and directions in the impugned order of the High Court have not been disturbed by us.

7. Nonetheless, the decision of the High Court in the impugned order was in force till today and, therefore, if any action has been taken in accordance with the said decision of the High Court either by the State Government or by any other party, the same shall not stand affected by this order holding that the project proponent and the State of Haryana would be the applicants for the environmental clearance in case of mining lease.

8. It has been brought to our notice that despite the fact that the impugned decision of the High Court was in force till today, environmental clearance was granted by the Ministry of Environment and Forests during May-June, 2010 in favour of M/s. S.S. & Co., for mining of 20 million metric tons of mines and minerals in districts Sonapat and Panipat on the basis of applications filed by the project proponents and not the State Government.

9. The Ministry of Environment & Forests will explain as to how environmental clearance was granted in favour of M/s. S.S. & Company, for mining of 20 million metric tons of minerals in Districts Sonapat and Panipat on the basis of the applications filed by the project proponent and not by the State of Haryana. The competent officer of the Ministry of Environment and Forests will file an affidavit within two weeks from today explaining this alleged violation of the order of the High Court. Till the Union of India will file its reply and till this Court passes orders, we direct that that M/s. S.S. & Company, will not carry out any mining operations. List these matters on 18th November, 2013.