
(2015) 07 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition (PIL) No. 66 of 2014

Vijay Ram Sharma

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Citation : (2015) 5 FLT 790

Hon'ble Judges : K.M. Joseph, C.J. and V.K. Bist, J.

Bench : Division Bench

Advocate : Mr. D.S. Patni, Advocate, for the Petitioner; Mr. Pradeep Joshi, Standing Counsel, for the State of Uttarakhand/Respondent Nos. 1, 2 & 11.; Mr. T.C. Agrawal, Advocate, for the Union of India/Respondent No.3.; Mr. M.C. Pant, Advocate, for the Respondent No.4.; Mr. Vinay Kumar, Advocate, for the Respondent No.9.; Mr. Piyush Garg, Advocate, for the Respondent No.10.

Final Decision : Disposed Off

Judgement

K.M. Joseph, C.J. (Oral)—The reliefs sought in this Public Interest Litigation are as follows:-

"(1) To direct the respondents to forthwith stop any mining activities being carried out within 10 Kms. from the National Park, Sanctuary or Protected Area within the entire State of Uttarakhand without the clearance of the National Board of Wildlife and/or Ministry of Environment and Forests.

(2) To direct the respondents to forthwith stop any mining activity throughout the State which is being conducted without the procurement of the Environment Impact Assessment or without Environment Clearance.

(3) To issue a writ, order or direction in the nature of certiorari quashing the Office memorandum No. 785/VIII-1/27-kha/2014 dated 25-4-2014 (Annexure No.20 to the petition) whereby and where under the respondents have held the illegal mining being done by the private respondents as legal and valid mining."

2. We have already considered the issue covered by prayer No.1 in Writ Petition (PIL) No. 41 of 2015. In this case, we would advert to Paragraphs 12, 13 & 14. The same are extracted hereunder :-

"12. Coming to the issue on merits, prima facie, as things stand, going by the proceedings of the Member Secretary, which we have adverted to, the mining area is within 10 kilometers of Rajaji National Park. We will not wish to say anything more on this in view of the nature of the order, which we propose to pass. As far as the effect of the Notification issued in the year 2006 under the Environment (Protection) Act and the further Notification issued in the year 2013 is concerned, we would think that the effect is as follows:

The Government has categorized projects into "A" and "B". "B" projects are those projects, which require clearance at the hands of the State Authority; whereas "A" projects are required to be dealt with by the Central Government. This is a general condition. They have decided to treat categories, which would otherwise fall in Category "B" as being liable to be treated under Category "A" in certain circumstances. If, for instance, the project is located within a particular distance of the National Park, even though it will otherwise fall under category "B", it would to be treated as falling under Category "A". It is, accordingly, that it is provided in the Notification of the year 2014 that even if it is located within five kilometers from the boundary of the protected area under the Wildlife (Protection) Act and the National Park, it has to be treated as falling under Category "A". Category "A" projects require deeper scrutiny and more elaborate inquiry, as already noted. But, we would think that this issue is not to be confused with the requirement, which flows from the order dated 02.12.2009, where the Government has provided that in respect of environmental clearance of projects located within 10 kilometers of the National Park, there must be a clearance obtained under the Wildlife (Protection) Act. We would think that, as things stand, this requirement in the order dated 02.12.2009 has not been overridden by the subsequent Notification. If this is the view to be taken on a conspectus of the orders and Notifications and if the distance is noted as within 10 kilometers, in regard to which, we have already held that there is material on record in the form of the proceedings of the Member Secretary, then mining being done by the party respondents cannot be permitted.

13. However, the learned counsel for the party respondents would submit that there may be a direction for measurement of the property, if the Court is inclined to grant any order.

14. In such circumstances, we dispose of the writ petition as follows:

In view of our prima facie view that mining activity is being carried out within ten kilometers of Rajaji National Park, we direct the 5th respondent to forthwith enforce prohibition of mining being done by respondent nos. 8 to 10. We further direct respondent no. 6, in association with an officer to be deputed by the District Magistrate, who is familiar with surveying, to measure the distance of the

property of respondent nos. 8, 9 and 10 from the boundary of Rajaji National Park and if it is found that it is beyond ten kilometers, we further direct that they will be free to carry on mining as per law; whereas if it is found that it is within ten kilometers, as we have prima facie found, our order that mining will not be carried out will continue to be enforced. The survey will be carried out and measurement will be done within a period of three weeks from the date of production of a certified copy of the judgment before the sixth respondent. The District Magistrate will indeed cooperate by deputing a person as ordered at the earliest on intimation being given by the sixth respondent. It is also made clear that the measurement will be made with due notice to the party respondents and the petitioner. In regard to Prayer No. (iv), we direct that the principle, which we have laid down, will be borne in mind by all the official respondents in the matter of any fresh grant or renewal of clearance or lease and, in regard to those, who have already been granted, we leave it open to the petitioner to challenge the same arraying the affected parties."

3. In this case, there is no case for the party respondents that they have obtained clearance under the Wild Life (Protection) Act. As far as the distance goes, we find that the petitioner has produced material in the form of the answers to the questions under the Right to Information Act, contained in Annexure 12. It would appear to show that the distance is below 10 Kms., i.e. in respect of respondent Nos.4, 5, 6, 7, and 8. The distance appears to be, prima facie, less than 10 Kms. Undoubtedly, it is true that Shri M.C. Pant, learned counsel appearing on behalf of the 4th respondent would submit that a short counter affidavit is filed, wherein it is pointed out that actually the measurement is not correct. As far as the other respondents are concerned, no counter affidavit is filed. In other words, Annexure 12 would go to show that in respect of respondent Nos. 4, 5, 6, 7 and 8, the distance is less than 10 Kms. from the land which relates to "Assan Wetland Conservation Reserve", which is a protected area.

4. No doubt, in respect of respondent no.4 a short counter affidavit is filed, raising the allegations that the petition is not filed bona fide. According to the 4th respondent, the petitioner filed this petition at the instance of the mining lobby of which the 10th respondent was an active follower. No doubt, there is no rejoinder to the same. It is settled law that even in Public Interest Litigation assuming that if a person comes in private interest, the Court will still consider, whether there is any genuine public interest in the projected public interest litigation. Even proceeding on the basis of unrebutted allegations, we can draw the conclusion that the petition is filed at the instance of mining lobby, there are two aspects which deter us from rejecting the petition on the ground of lack of bona fides. In the first place, similar question has already been decided by us in Writ Petition (PIL) No.41 of 2015. Secondly, the refusal to grant relief would not be in public interest as if the mining is being done contrary to law, then we would think that even if the petition is afflicted with absence of bona fides as projected by the learned counsel for the 4th respondent, the cause is one which will advance

public interest and we have also settled the law in this regard in the earlier writ petition. In such circumstances and, in the facts of this case, we would not accept the contention of the 4th respondent.

5. The 4th respondent has a further case, no doubt, that the measurement in Annexure 12 cannot be acted upon. We would think that though there is no rebuttal in the form of rejoinder affidavit we would think that when there is prima facie material which cannot, of course, be treated as conclusive and in view of the order we propose to pass, we would not say anything more.

6. Shri Vinay Kumar, learned counsel for respondent No. 9 points out that the leases are not challenged.

7. Accordingly, following the judgment of Writ Petition (PIL) No. 41 of 2015 we direct the 2nd respondent to forthwith enforce prohibition of mining being done by private respondents Nos. 4, 5, 6, 7 & 8.

8. Shri M.C. Pant, learned counsel for the 4th respondent would submit that the Chief Wildlife Warden should be given direction to determine the boundaries. It is submitted by Shri D.S. Patni, learned counsel for the petitioner that the boundaries have already been determined. In such circumstances, we would think that similar directions can be issued as we have given in the earlier judgment. We would direct the additional respondent No.12, in association with an officer to be deputed by the District Magistrate, who is familiar with surveying, to measure the distance of the property of respondent Nos. 4, 5, 6, 7, 8 and 9 from the boundary of "Assan Wetland Conservation Reserve" and if it is found that it is beyond ten kilometers, we further direct that the respondent Nos. 4 to 8 will be free to carry on the mining as per law.

9. As far as the 9th respondent also is concerned, unless it is found that the distance is within 10 Kms, the 9th respondent will be free to continue to mine as per law; whereas if it is found that it is within 10 Kms., as we have prima facie found in respect of respondent Nos. 4 to 8, if it is within 10 Kms., the mining will not be allowed to be carried out by the 2nd respondent. The survey will be carried out and measurement will be done within a period of three weeks from the date of production of a certified copy of this judgment before the additional 12th respondent. The District Magistrate will indeed cooperate by deputing a person as ordered at the earliest on intimation being given by the additional 12th respondent. It is also made clear that the measurement will be made with due notice to the party respondents, namely, respondent Nos. 4 to 9 & respondent No. 10 also.

10. We also further direct that the principle we have laid down, namely, in regard to the requirement of permission under the Wildlife (Protection) Act, will be borne in mind by all the official respondents in the matter of any fresh grant or renewal of lease and, in regard to those, who have already been granted, we leave it open to the petitioner to challenge the same arraying the affected parties. We have not pronounced anything on the validity of the leases as such

otherwise.

11. The petition is disposed of accordingly.