

(2017) 01 UK CK 0005

In the Uttarakhand High Court

Case No : Writ Petition (PIL) No. 66 of 2014 With Review Application No. 856 of 2015 Review Application No. 858 of 2015 Delay Condonation Application in Review No. 14328 of 2015 Delay Condonation Application in Review No. 14329 of 2015 Review Application No. 58230

Vijay Ram Sharma

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 12-01-2017

Acts Referred:

Citation : (2017) 7 FLT 315

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

Bench : Division Bench

Advocate : Mr. D.S. Patni, Advocate, for the Petitioner; Mr. Paresh Tripathi, Chief Standing Counsel, for the State of Uttarakhand; Mr. Piyush Garg, Advocate, for the Respondent No. 10; Mr. Kishore Kumar, Advocate, for the Review Applicants in Review Application No. 858 of 2015; Mr. M.C. Pant, Advocate, for the Respondent No. 4; Writ Petition (PIL) No. 41 of 2015 With Recall Application No. 660 of 2016; Ms. Menka Tripathi, Advocate, for the Petitioner; Mr. A.S. Rawat, Special Counsel with Mr. Paresh Tripathi, Chief Standing Counsel, for the State of Uttarakhand; Mr. J.P. Joshi, Senior Advocate assisted by Mr. Sushil Vashistha, Advocate, for the Intervener

Final Decision : Dismissed

Judgement

K.M. Joseph, C.J. (Oral)—Heard learned counsel for the parties on the applications for condonation of delay in filing the review petitions. In the circumstances, the delay will stand condoned and the applications will stand allowed.

2. MCC No. 856 of 2015 has been filed by a person, who was a party, namely, respondent no. 4. MCC No. 858 of 2015 has been filed by a person, who was not a party. MCC No. 5823 of 2016 has been filed by the State of Uttarakhand and another.

3. These three review petitions have been filed in the Writ Petition (PIL) No. 66 of 2014, whereas, MCC No. 660 of 2016 has been filed in Writ Petition (PIL) No. 41 of 2015.

4. The first petition, which was disposed of, was Writ Petition (PIL) No. 41 of 2015. Writ Petition (PIL) No. 66 of 2014 was disposed of following the judgment in Writ Petition (PIL) No. 41 of 2015.

5. The issue relates to the requirement of obtaining consent under the Wildlife (Protection) Act for doing mining activities in the vicinity of National Park, Sanctuary and Protected areas.

6. See the prayers in Writ Petition (PIL) No. 66 of 2014, which are on the same lines:

"(1) To direct the respondents to forthwith stop any mining activity 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 25.4.14 (Annexure no. 20 to the petition) whereby and where under the respondents have held the illegal mining being done by private respondents as legal and valid mining."

7. We have heard Mr. D.S. Patni, learned counsel for the petitioner in writ petition no. 66 of 2014, Mr. Piyush Garg, learned counsel for respondent no. 10 in writ petition no. 66 of 2014, Mr. Kishore Kumar, learned counsel for the review applicants in Review Application No. 858 of 2015, Mr. M.C. Pant, learned counsel for respondent no. 4 in writ petition no. 66 of 2014, Ms. Menka Tripathi, learned counsel for the petitioner in writ petition no. 41 of 2015, Mr. A.S. Rawat, learned Special Counsel with Mr. Paresh Tripathi, Chief Standing Counsel for the State of Uttarakhand and Mr. J.P. Joshi, learned senior counsel for the intervener in Writ Petition No. 41 of 2015.

8. This Court proceeded to take the view that despite the notification, which was issued on 09.09.2013, in view of the order dated 02.12.2009, the requirement to obtain consent under the Wildlife (Protection) Act will continue. As far as MCC Nos. 856 and 858 of 2015 are concerned, they are filed by persons who obtained mining lease near the Assan Wetland Conservation Reserve, which is located in the Doon Valley. This Court has in paragraph no. 3 held that it is a protected area. Primarily, what is argued by Mr. M.C. Pant and Mr. Kishore Kumar, who wish to have mining operations in and around the Assan Wetland Conservation Reserve, is that the property, which is the subject matter of mining is less than 5 hectares. Secondly, they would contend that the judgment may not apply to

Assan Wetland Conservation Reserve as the embargo will not apply to the Assan Wetland Conservation Reserve.

9. In fact, Mr. Paresh Tripathi, learned Chief Standing Counsel appears in Review Petition No. 5823 of 2016 and which review petitioners had challenged the original judgment of this Court before the Hon''ble Apex Court, wherein the Hon''ble Apex Court passed the following order:

"Mr. Rakesh Dwivedi, learned senior counsel seeks leave to withdraw this special leave petition reserving liberty for the petitioner to urge before the High Court in the review petition the salient point that the Notification in question does not apply to conservation reserve.

The special leave petition is dismissed as withdrawn with liberty prayed for.

We make it clear that in case the review petition fails the petitioner shall have the liberty to approach this Court to urge the limited issue whether the Notification in question actually applies to conservation reserve."

10. He would point out that Assan Wetland Conservation Reserve land is not a notified area. In this regard, reliance is placed on averments made in paragraph 6 of Review Petition No. 5823 of 2016, which read as follows:

"6. That the Ministry of Environment and Forests, Government of India vide communication dated 31.07.2013 to all the State Chief Secretaries, Chief Wildlife Wardens conveyed that the area of 10 Kms. From the boundary of the protected areas will be the eco-sensitive zone of such protected area. The list enclosed with the said communication mentioned details of the Wildlife Sanctuaries and National Park of 19 States including State of Uttarakhand. The National Park and Wildlife Sanctuary mentioned against the State of Uttarakhand included following only:-

- 1) Corbett National Park
- 2) Gangotri National Park
- 3) Govind National Park
- 4) Nanda Devi National Park
- 5) Rajaji National Park
- 6) Valley of Flowers National Park
- 7) Ascot Musk Deer Wildlife Sanctuary
- 8) Binsay Wildlife Sanctuary
- 9) Govind Pasu Vihar Wildlife Sanctuary
- 10) Kedarnath Wildlife Sanctuary
- 11) Mussorie Wildlife Sanctuary

12) Sona Nadi Wildlife Sanctuary"

11. He would submit that in the said list, Assan Wetland Conservation Reserve does not figure. Therefore, it goes to show that it is not covered by the embargo against mining.

12. Mr. J.P. Joshi, learned senior counsel appearing on behalf of the applicant/intervener in MCC No. 660 of 2016, who is not a party, primarily seeks to rely on the notification dated 07.10.2014, which according to him was not considered.

13. We may first notice that the review petitioners in Writ Petition (PIL) No. 66 of 2014 have not sought review of the order passed in Writ Petition (PIL) No. 41 of 2015. That apart, we would also see that there is no merit in the matter. We must consider the matter in the confines of the review jurisdiction. The arguments advanced, as already noticed, by Mr. M.C. Pant and Mr. Kishore Kumar is that Assan Wetland Conservation Reserve will not come within the scope of the prohibition.

14. Per contra, it is pointed out by Mr. Piyush Garg that the protected area is defined in the Wildlife (Protection) Act as follows :

"(24A) "protected area" means a National Park, a sanctuary, a conservation reserve or a community reserve notified under sections 18, 35, 36A and 36C of the Act.

15. He would submit that this area has been notified. The said notification reads as follows:

Ministry Of Environment & Forests

(Department of Environment, Forests & Wildlife)

New Delhi, the 1st February, 1989 Notification

Notification under 3(2) (v) of Environment (Protection) Act, 1986, and Rule 5(3) (d) of Environment (Protection) Rules, 1986, restricting location of industries, mining operations and other development activities in the Doon Valley in Uttar Pradesh.

S.O. 102(E).- Whereas notification under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, inviting objections against the imposition of restriction on location of industries, mining operations and other development activities in the Doon Valley, in Uttar Pradesh was published vide No. S.O. 923 (E), dated the 6th October, 1988.

And whereas all objections received have been duly considered by the Central Government:

Now, therefore, in exercise of the Powers conferred by Clause (d) of sub-rule (3) Rule (5) of the said rules, the Central Government hereby imposes restrictions on the following activities in the Doon Valley, bounded on the North by Mussoorie

ridge, in the North-East by Lesser Himalayan ranges, on the South-West by Shivalik ranges; river Ganga in the South-East and river Yamuna in the North-West, except those activities which are permitted by the Central Government after examining the environment impacts:

(i) Location / sitting of industrial units-It has to be as per guidelines given in the annexure or guidelines as may be issued from time to time by the Ministry of Environment & Forests, Government of India.

(ii) Mining-Approval of the Union Ministry of Environment & Forests must be obtained before starting any mining activity.

(iii) Tourism-It should be as per Tourism Development Plan (TDP) to be prepared by the State Department of Tourism and duly approved by the Union Ministry of Environment & Forest.

(iv) Grazing-As per the plan to be prepared by the State Government and duly approved by the Union Ministry of Environment & Forests.

(v) Land Use-As per Master Plan of development and Land Use Plan of the entire area, to be prepared by the State Government and approved by the Union Ministry of Environment & Forests.

(No. J-20012/38/86-1A)

K.P. Geethakrishnan

Secretary

Annexure

Guidelines for permitting / restricting industrial units in the Doon Valley area

Industries will be classified under Green, Orange and Red Categories, as shown below for purposes of permitting / restricting such industrial units in the Doon Valley from the environment and ecological considerations.

Category Green

A. List of Industries in Approved Industrial Areas, which may be directly considered for issue of no objection certificate without reference to (Ministry of Environment & Forests) (In case of doubts reference will be made to Ministry of Environment & Forests)

All such non-obnoxious and non-hazardous industries employing upto 100 person. The obnoxious and hazardous industries are those using inflammable explosive, corrosive or toxic substances."

16. Mr. Paresh Tripathi, learned Chief Standing Counsel even though made an attempt to contend that even though it is not notified, does not reply when this question was posed to him. Therefore, it appears that Assan Wetland Conservation Reserve was notified as a protected area under the Wildlife

(Protection) Act. The significance of this lies in the notification dated 14.09.2006. Besides this, the respondents also would point out that the Assan Wetland Conservation Reserve is also notified as an eco-sensitive area by notification dated 01.02.1989. Therefore, we would not find any merit as such in the contention of the review petitioners led by the Mr. Paresh Tripathi, Chief Standing Counsel, Mr. M.C. Pant and Mr. Kishore Kumar. Our attention was drawn to a communication dated 01.12.2015 addressed to the Principal Secretary (Forest), which reads as follows :

"F.No.6-109/2015 WL

Dated:1st December 2015

The Principal Secretary (Forest)

Government of Uttarakhand

Dehradun.

Sub: Collection of minor minerals from Yamuna nadi bayan kinara Dhola river in the district Dehradun, Uttarakhand to channelise the natural course and project the river banks and adjoining forest area and habitat from flood, Uttarakhand. The proposed site is 7.78 km away from the Asan Conservation Reserve.

Ref: Letter No.1930/X-2-2015-19(05) dated 31st July 2015 from the Principal Secretary, Government of Uttarakhand.

Sir,

Kindly refer to tout above mentioned proposal, Ministry would like to know the reasons for seeking recommendation of Standing Committee of NBWL. Projects located within 10 Km or notified ESZ around National Parks/Sanctuaries/Tiger Reserves & requiring EC need to be referred to Standing Committee of NBWL for recommendation.

It is, therefore, request to you to furnish the basis of seeking recommendation of SC-NBWL for the aforesaid proposal.

Yours faithfully,

(Rajasekhar Ratti)

Scientist "C"/Deputy Director (WL)

Email: ra.rati@gov.in

Copy to: The Chief Wildlife Warden, Government of Uttarakhand, Dehradun."

17. We would think that this cannot form the foundation for us to come to the conclusion that Assan Wetland Conservation Reserve is excluded. There is a notification under Section 3(2) (v) of Environment (Protection) Act. There is also a notification under the Wildlife (Protection) Act, treating it as a protected area.

The further aspect, which is to be noticed in all these cases is that the effect of the order dated 02.12.2009 has been culled out by us in our judgment. This is despite the notification issued under the Environment Protection Act amending the earlier notification of 2006. We have held that the projects, which are of greater importance are to be screened at the national level and the projects which are of lesser importance they are to be screened as Category B at the State level. It may be true that in regard to areas, where mining is done if it is less than 5 hectares, it would not be treated as Category A to be screened at the central level, though general conditions would apply, as has been made clear in the latest notification relied on by Mr. J.P. Joshi, learned senior counsel. This only has the effect of permitting screening to take place at the state level and not at the central level. It does not have anything to do with the obligation to secure consent under the Wildlife (Protection) Act.

18. Lastly, attempt was made to draw our attention to the judgment of the Hon"ble Apex Court in the case of Goa Foundation v. Union of India and others reported in (2014) 6 Supreme Court Cases 590. The question whether the Court has banned mining, we think, need not detain us in deciding these review petitions.

19. In such circumstances, the review petitions fail and are dismissed. No order as to costs.