

(2016) 06 AHC CK 0018

In the Allahabad High Court

Case No : Public Interest Litigation (PIL) No. 29569 of 2016

Vikram

APPELLANT

Vs

State of U.P. And 6 Ors.

RESPONDENT

Date of Decision : 29-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 21, 23A

Citation : (2016) 6 ADJ 835 : (2016) 5 AllWC 5195 : (2016) 6 FLT 883 : (2016) 132 RD 447

Hon'ble Judges : Arun Tandon and Mrs. Sunita Agarwal, JJ.

Bench : Division Bench

Advocate : Ashish Malhotra, Advocate, for the Appellant; C.S.C, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard M.C. Chaturvedi, learned counsel for the petitioner assisted by Sri Ashish Malhotra.

2. This writ petition in the nature of public interest petition has been filed challenging the directions, issued under letter dated 28.3.2016 of the Principal Secretary, respondent No.2 as well as the order dated 29.3.2016 passed by respondent No.4 permitting respondent Nos.6 & 7 to lift the auctioned sand by extending the period for such lifting beyond the term as fixed under the conditions of auction/agreement on the plea that certain period could not be utilised for lifting for various reasons.

3. The ground of challenge is that the very conduct of auction of the seized minor minerals on 29.6.2015 by the District Magistrate was an illegal act, without authority of law being in teeth of the judgment and order of the High Court in Writ Petition No. 11489 of 2015 (Rajendra Singh v. State of U.P. & Ors.) decided on 10.3.2015.

4. Facts in brief relevant for consideration of the interim application are as follows:-

Certain quantity of minor minerals were seized by the District Administration of District Saharanpur on 12.11.2014 and 30.12.2014.

5. According to the District Administration, mining transportation & storage of the said minor minerals was illegal. The seized minor minerals were put to auction by the District Magistrate on 22.1.2015 but nobody participated. Fresh auction took place on 29.6.2015 under the control and supervision of the District Magistrate. Respondent Nos. 6 & 7 are stated to have offered highest bid in respect of the seized minor minerals, they also deposited the required money in terms of the condition of the auction and an agreement was executed on the required stamp paper.

6. It appears that under the order dated 23.2.2016 of the Joint Secretary (Ministry of Mining and Geology), the District Administration prevented the lifting/ transportation of the said seized minor minerals by the auction purchaser. Against the direction of the Joint Secretary dated 23.2.2016 and the order of the District Magistrate, the auction purchasers moved Original Application Nos. 125 of 2016 and 126 of 2016 before the National Green Tribunal Principal Bench, New Delhi. It was their case before the tribunal that they have a right to transport the seized mineral purchased in the auction held on 29.6.2015.

7. The orders of the National Green Tribunal dated 21.3.2016, passed in Original Application No.125 of 2016 and Original Application No.126 of 2016 as also the orders passed in Original Application No.171 of 2016 dated 8.4.2016, 19.5.2016 and 6.6.2016 with connected matters have been placed before us and we have pursued the same.

8. According to the petitioner the issue for consideration before this Court is as to whether the District Magistrate has any competence to put the seized minor minerals to auction in view of the statutory provisions of Mines and Mineral (Development and Regulation) Act, 1957. The legal position, in that regard is no res-integra inasmuch as a Division Bench of this Court has examined the statutory provisions which confer a power of seizure upon the District Authorities and for the manner/procedure, for the seized goods to be disposed of.

9. We may reproduce the findings which have been returned by the Division Bench of this Court on the issue, which read as:-

"8. We may record that sub-clause (1-A) of Section 4 of the Act 1957 prohibits transportation, storage or cause to be transported or stored any mineral otherwise than in accordance with the provisions of the Act 1927 and the rules framed thereunder. Section 21 of the Act 1957 make the contravention of the provision of Section 4 (1A) of the Act 1957 as punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twenty five thousand rupees or with both. Section 23A of the said Act provides that the

offence committed under this Act may be compounded by the person authorised under Section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify. Sub Section 2 of Section 23A provides that once the offence has been compounded under subsection (1) of Section 23A against the offender, no proceeding or further proceeding, as the case may be, shall be taken against the offender, and, if the offender is in custody, he shall be released forthwith.

9. Section 4 (1-A), Section 21 (1) and Section 23A read as follows:

"4(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder." " 21. (1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both."

"23A. Compounding of offences. (1) Any offence punishable under this Act or any rules made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under Section 22 to make a complaint to the Court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify:

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under subsection (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith."

10. What logically flows from the simple reading of Section 4 (1-A), Section 21 (1) and Section 23A is that the offender can get the offence committed under Section 21 compounded by tendering the money demanded by the person authorised for such compounding under Section 23A. What consequence flow because of such compounding are contained in Section 23A sub clause 2 which provides that no further proceedings shall be taken against the offender and that the offender if is in jail, shall be released forthwith. We may record that the statute provides for no other consequence because of compounding of the offence as is apparent on simple reading of Section 23A of the Act 1957.

11. We may clarify that compounding of offence under Section 23A does not in any way reflect upon the tools, machinery etc. involved in the offence including the minerals in any manner, nor Section 21A confers any power upon the District Magistrate to release/deal with the goods, including minerals, vehicle, plant and machinery etc. involved in the illegal activity in any manner.

12. The tools, machinery, mineral, vehicles etc, which are used/part of the illegal

activity are dealt with under Section 21 sub clause 4, of Act 1857, which reads as follows:

"(4) Whenever any person raises, transports or causes to be raised or transported, without anylawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf."

13. Thus the minerals, tool, vehicle including the plant and machinery etc. referable to Section 24, have necessarily to be seized by the officer or authority specifically empowered in this behalf.

14. After such seizure the minerals, tool, vehicle etc. are made liable for confiscation by an order of the Court Competent to take cognizance of the offence under Subsection (4A) of Section 21 of the Act 1957 and have to be disposed of in terms of the directions to be issued by the said Court only. For ready reference, Sub-section 4A of Section 21 of the Act 1957 is quoted here under:

"(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court."

15. In our opinion, the Act of 1957 contains a complete procedure for dealing with the commission of the offences; penalty to be imposed, compounding of the offences and disposal of the seized goods.

16. The Act contemplates compounding of an offence by authorised officer only, which in the facts of the case, would be the District Magistrate. But so far as the confiscation and disposal of the minerals, tool, vehicle etc. is concerned, the same is controlled by Section 21 (4) read with Section 21 (4A) of the Act 1957.

17. The procedure contemplated in respect of inerals,tool, vehicles involved in an offence under Section 21 (4) and Section 21 (4A) is :-

(a) the mineral, tool, vehicle etc. have to be seized by the officer/authority empowered for the purpose;

(b) The mineral, tool, vehicle etc. have to be confiscated under an order of the Court, Competent to take cognizance of the offence under Sub-Section (1) of Section 21;

(c) The mineral, tool, vehicle etc. have to be disposed of in accordance with the direction of such Court;

18. It is the competent court only, which can direct the disposal of the seized goods including the mineral plant and machinery etc.

19. In our opinion, the District Magistrate has no power whatsoever to deal with

the seized minerals, tool, vehicle, plant and machinery etc. used in illegal activities as per the Act of 1957. The District Magistrate is not competent to release seized minerals, plant, machinery, vehicles etc. used offence under Section 21 of the Act 1957.

20. We may record that the High Court while deciding the earlier writ petition filed by the petitioner being writ petition no. 47730 of 2014 had only recorded that the application to be made by the petitioner for compounding under Section 23 A, may be disposed of. There was no direction in the order of the Court for release of the seized minerals. What is surprising for us to notice is that the District Magistrate in garb of the order dated 06.09.2014 passed by the High Court, has decided to release the minerals without disclosing as to under which statutory provision he is issuing the order in that regard. The order of the high Court has been made an instrument for release of the seized minerals when under law the seized minerals had necessary to be placed before the Court concerned for confiscation and for its disposal.

21. Counsel for the petitioner placed reliance upon a Division Bench Judgement of the High Court in the case of Chandar Bhushan Misra and another v. State of U.P. and others reported in 2012 (II) ADJ 286 (para 17) for suggesting that the District Magistrate while compounding an offence under Section 23A of the Act 1957 also has the power to release/dispose of the seized minerals and it is not necessary that such seized sand be confiscated by the Court, competent to take cognizance of the offence, and for appropriate order being made for its disposal under Section 21 (4A).

22. We may record that in the writ petition it is the case of the petitioner that he had purchased the minerals from a lease holder and that he had committed an offence of illegal storing of the same. It is also admitted by the petitioner that the sand was seized and thereafter given in the Suppurdagi of the petitioner by the Seizing Authority (Ref. Para 3 of the writ petition).

23. Seizure of sand as admitted to the petitioner can only take place in exercise of powers under Section 21 (4) of the Act 1957. There is no other provision for seizure under the Act. Once seizure under Section 21 (4) is admitted on record then the disposal of such seized mineral can only be effected under an order of the Competent Court in view of the provision of Section 21 (4A) of the Act 1957.

24. We also find that under the Act 1957 no power has been conferred upon the District Magistrate or for that purpose on any other authority to dispose of the seized good except upon the Court under Section 21 (4A).

25. We may record that in the facts of the case there is no finding by the District Magistrate that the sand was raised and transported by a person legally entitles to do so. There can be no storage of minor-mineral at a place different from the mine without it being raised and thereafter being transported to the place where it is stored. Therefore, in respect of stored minor-minerals unless it is specifically established by material evidence that the minor-mineral was raised and

thereafter transported by a person legally entitled to do so to the place where it is stored, the same, i.e, sand has to be seized under Section 21 (4) and thereafter confiscated and disposed of as per Section 21 (4A) of the Act 1957.

26. The judgment in the case of Chandar Bhushan Misra (supra) is on the facts of that case. The facts of the case in hand are much different to those of Chandar Bhushan Misra. It has been repeatedly held by the Hon"ble Supreme Court that a little difference in the facts or additional facts may make a lot of difference in the precedential value of a judgment (Reference Bhavnagar University v. Palitna Sugar Mills (P) Ltd. Ors. Reported in 2003 (2) SCC, 111, which has recently been followed in the case of Rajveer Singh v. Chaudhary Devi Lal, reported in AIR 2008 SCW 5817.

27. Accordingly, we hold that the release of the mineral (sand) in the facts of the case as directed by the District Magistrate, itself is without authority. The seized minerals have to be placed before the court concerned for confiscation and disposal in view of Section (4A) of the Act 1957.

28. Let necessary be done within four weeks from today. The petitioner is at liberty to make an application before the competent Court for disposal of the sand so seized. The application shall be considered in accordance with law by the court at the earliest.

29. We further direct that a copy of this order may be forwarded to the State Government for necessary information to all the District Magistrates to act strictly in accordance with provision applicable and not to release any seized tool, plant, machinery, vehicles, mineral etc., which are involved in an offence under Section 21 of the Act 1957. Confiscation and disposal of such plant and machinery, tool, mineral, vehicle, etc. must be effected only under the order of the competent Court as provided under Section 21(4A) of the Act."

10. We made a pointed query from the counsel for the State as to whether the judgment and order of Division Bench of this Court in the case of Rajendra Singh (Supra) has been challenged before the Apex Court or not. The answer given is in negative meaning thereby that the law as declared by this Court in respect of the powers of the District Magistrate to release/auction the seized minor minerals holds the field as on date.

11. We may also record that the Division Bench in Rajendra Singh (Supra) had required the Secretary of the State to forward a copy of the said judgment for necessary information to all the District Magistrates for its strict compliance with the specific direction that they shall not release the seized goods including the minerals and the disposal of all such goods/minerals must be affected only under the order of the competent Court as provided under Section 21 (4A) of the Act.

12. It appears that either the Secretary had not forwarded the order of the Writ Court to the District Magistrates for strict compliance and thereby, violated the directions issued or else the District Magistrate, Saharanpur has no regards to

the orders of the High Court. In both these situations, the State authorities have acted in clear contempt of the orders of the High Court.

13. On one hand, the State has chosen not to challenge the judgment and order of the writ court in the case of Rajendra Singh (supra), and on the other hand they are trying to defend the illegal act of the District Magistrate which is apparently in violation of the law declared by the Division Bench of this Court. Such practise cannot be approved.

14. We, therefore, deem it fit and proper to issue notice to the Principal Secretary namely respondent no. 2 as well as the District Magistrate, Saharanpur to show cause by filing their personal affidavits as to why the matter may not be referred for contempt to the Competent Court for flagrant violation of the judgment and order of this Court.

15. This takes us to the contentions which have been raised on behalf of the respondent auction purchasers represented by Sri S.P. Singh and Sri S.G. Hasnain learned Senior Advocates.

16. It is contended by the Senior Advocates that since the National Green Tribunal is seized of the matter of transportation/lifting of the stored minor minerals which had been put to auction and were purchased by the auction purchasers, this Court having regards to the orders/directions of the tribunal in the pending matters, may not interfere.

17. We may at the very out set record that the National Green Tribunal is not dealing with the issue as to whether the District Magistrate had the competence to auction the seized minor minerals in view of the law laid down by this Court in the case of Rajendra Singh (supra).

18. Secondly, so far as the original application filed by the respondents-auction purchasers are concerned, the National Green Tribunal vide order dated 21.3.2016 has refused to entertain their applications. It has held that if the applicants/auction purchasers are not being permitted to lift/transport the sand purchased by them in the public auction then the remedy is not before the tribunal. They are at liberty to approach the appropriate Authority/Court for appropriate relief.

19. By means of the order dated 8.4.2016 in Original Application No.171 of 2016, the tribunal has only appointed the Local Commissioner to submit report in respect of the illegal mining, if any, being carried on and also to the extent of the Sand lying at the banks of the river.

20. As far as the orders dated 19.5.2016 and 6.6.2016 passed by the tribunal in original application No.171 of 2016 connected with other matters are concerned, it appears that the pronouncement of this Court in Rajendra Singh (Supra) has not been brought to the notice of the tribunal resulting in the orders permitting the auction purchasers to lift/transport the seized minerals for certain period.

21. We may record that the tribunal is not dealing with the issue which has been raised before this Court.

22. Be that as it may, since we are of the prima facie opinion that the auction conducted by the District Magistrate in respect of the seized minor minerals is in violation of the provisions of Section 23A of the Mines & Minerals (Development and Regulation) Act, 1957 as also the law laid down by the Division Bench of this Court in the case of Rajendra Singh (supra) which holds the field, a case for the interim order is made out. We, therefore, direct that till the next date of listing, the District Magistrate, Saharanpur shall ensure that there shall be no further transportation/lifting of the seized minor minerals lying on the site without leave of the Competent Court of law.

23. At this stage, Sri S.P. Singh and Sri S.G. Hasnain learned Senior Advocates submitted before us that the District Magistrate may be directed to place the seized minor minerals at the hands of the competent Court in view of the judgment in the case of Rajendra Singh (supra) and the competent court may be directed to dispose of the same in accordance with law. The same would be in the interest of the auction purchasers as well as the State as the seized sand could be lifted/transported at the earliest.

24. In view of the said stand taken before us by the counsels for the private respondents, we further direct the District Magistrate to place the seized Sand before the concerned Court in accordance with the provisions of Section 23A of the Act, 1957 read with the other provisions applicable. It is open for the Court concerned to dispose of the seized goods in accordance with law as early as possible.

25. Learned counsels for the auction purchasers lastly placed reliance upon the order passed by this Bench itself dated 21.6.2016 passed in Writ-C No. 29000 of 2016 (Surat Nishad v. State of U.P. & 3 Ors.) along with the connected petitions, wherein we had permitted the transportation of the auctioned sand.

26. We may clarify that in the said writ petition there was no challenge before us qua the competence of the District Magistrate to put the seized sand for auction nor the judgment in the case of Rajendra Singh (Supra) was placed before us. In absence of the challenge to the competence of the District Magistrate to auction the seized mineral/sand, we had not examined the said aspect of the matter in that case.

27. Respondents may file counter affidavit within a period of three weeks.

28. List this matter on 28.7.2016 before appropriate Bench.