
(2011) 07 RAJ CK 0071

In the Rajasthan High Court

Case No : Civil Writ Petition No. 224 of 2010

Vishnu Kumar Singhal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 19(6), 21, 300A
Mines and Minerals (Development and Regulation) Act, 1957 — Section 4A(2)
Rajasthan Forest Act, 1953 — Section 10, 11(I), 12, 13, 14

Citation : (2012) 1 RLW 494

Hon'ble Judges : Arun Mishra, C.J;Bela M. Trivedi, J

Bench : Division Bench

Advocate : Kamlakar Sharma, assisted by Prashant Gupta, R.P. Garg and Rajeev Sogarwal, for the Appellant; Dinesh Yadav, Additional Advocate General and Ashwini Chobisa, for the Respondent

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—In the writ petitions, the petitioners have prayed for declaring Section 29 of the Rajasthan Forest Act, 1953 (hereinafter referred to as "the Act of 1953") ultra vires the Constitution of India being violative of Articles 14, 19(1)(g), 21 and 300A of the Constitution of India, Prayer has also been made to quash the notification dated 13.11.2009 and to direct the respondents not to interfere in the mining operation of the petitioner in the mining lease. Facts are being noted from Civil Writ Petition No. 224/2010. Petitioner has submitted that mining lease had been granted in area one hectare for a period of twenty years w.e.f. 6.9.2000 in Village Angrawali, Tehsil Kaman, District Bharatpur. The petitioner had started working in the mining lease and has deployed machines including pock land, JCB, dumpers etc. Much investment has been made and 20 employees were also employed and in addition thereto, more than 30 labourers are working in the mining area and he has also set up huge establishment to carry out mining activities. The State Government under the pressure of some Saints and Sadhus vide order dated 27.1.2005, has closed the mining activities

in 500 metres on either side of bridge Chaurassi Kos Parikrama Marg. On 29.5.2007, the State Government has issued notification under the Rajasthan Minor Mineral Concession Rules, 1986 determining the route of the said bridge. Thereafter, on 20.6.2007, meeting of Sadhus and Saints was held and it was decided that no mining or crusher activity will be carried out within 500 metres. The mines of the petitioner fall beyond 500 metres. It is more than 1 km. from the bridge. Leases of fifteen mines which were within 500 metres have already been cancelled. The State Government acting upon Section 29 of the Act of 1953, vide order dated 20.4.2008 prematurely terminated the mining lease. Thereafter, the State Government vide notification dated 13.11.2009 declared the land in question as protected forest. Under the said provision of Section 29 of the Act of 1953, the Government has been given uncontrolled and unlimited power, Thus, proviso to sub-section (3) of Section 29 of the Act of 1953 is ultra vires the Constitution of India. Opportunity of hearing has not been granted. Thus, the provision and the action of the State are against the principle of "audi alteram partem." No enquiry has been done. The land belonging to the khatedars cannot be declared as protected forest. As huge amount has been invested, it is unfair to cancel the lease. The decision has been taken without due application of mind and amounts to colourable exercise of power.

2. A detailed reply has been filed by the respondents denying the averments made in the writ petitioners. It has been stated that the proviso to Section 29(3) of the Act of 1953 cannot in any manner be regarded as unjust, arbitrary and ultra vires the Constitution of India. The power to declare the area in question as protected forest has been rightly exercised by the State Government and the same is well within the framework of law. Hence, no interference is called for and the writ petitions deserve to be dismissed.

3. Mr. Kamalakar Sharma, learned Senior Counsel appearing on behalf of the petitioners has submitted that proviso to Section 29(3) of the Act of 1953 is ultra vires and unconstitutional as it is repugnant to the provisions of Article 19(1)(g) of the Constitution of India. The land has not been finally declared as reserve forest. Consequently, mining activities could not have been ordered to be stopped, particularly when the petitioners have invested huge amount and deployed the labour. The notification which has been issued invoking the proviso to Section 29(3) of the Act of 1953 is also illegal and liable to be quashed. It was also submitted that the action of the respondents restraining the mining operations and termination of the leases is violative of the principles of natural justice as no opportunity of being heard was afforded.

4. Shri Dinesh Yadav, learned Additional Advocate General appearing on behalf of the State has submitted that the proviso to Section 29(3) of the Act of 1953 was inserted in the year 1957 and holding the field for the last more than fifty years, it is too late to make prayer to declare the provision as ultra vires. Proviso has been carved out with a view to take care of the interregnum period in which enquiry is required to be made u/s 29(3) of the Act of 1953 to ascertain nature

and extent of rights of the State Government and the private persons in or over the forest land or waste land. The proviso to Section 29(3) enables the State Government in case it thinks that enquiry and record are necessary but the same will consume time which may endanger the rights of the State Government, in such exigency, the State Government may declare such land to be protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

5. Notification dated 13.11.2009 mentions that the forest area in the Schedule is the Government property or the Government is having entitlement in the forest produce or part thereof. The State Government desires to declare the forest land and waste land as protected forest under the provision of Section 29(1) of the Act of 1953. It is necessary to determine the rights of the State Government and rights of the private persons before finally issuing notification under. Section 29(1) of the Act of 1953 and the said process will occupy such length of time as in the meantime there is imminent apprehension of endangering the rights of the State Government, The State Government has appointed settlement officers to record aforesaid rights of the State Government and private persons and to conduct enquiry under Sections 6, 7, 8, 10, 11(I), 12, 13, 14, 17 and 19 of the Act of 1953. The State Government by invoking provision of Section 29(3) in the interregnum period has declared the forest land and waste land as protected forest so as not to abridge or affect any existing rights of individuals or communities.

6. The State Government has also issued notification reserving trees etc. invoking power u/s 30 and prohibited from the date fixed by the notification activities like quarrying of stone or the burning of lime or charcoal or the collection or subjection to any manufacturing process or removal of any forest produce in any such forest and the breaking up or clearing for cultivation for building for such herding cattle or for any other purpose of any land in any such forest has been prohibited. Schedule-1 of notification contains description of forest land and waste land. Schedule II contains details of trees. Order dated 28.4.2008 (Annexure-1) filed in writ petition No. 224/2010 is of termination of the lease passed on the ground that the area in question is "Brij" area in Kaman and Deeg Tehsils which is of religious significance and to protect the same, to provide the security to the devotees taking parikrama, protection of natural environment, preventing pollution in the area, to protect health of the citizens, to protect the religious places and the leased area is in forest. Hence, notice was given u/s 4A(2) of the Mines and Mineral (Development and Regulation) Act, 1957. Reply was submitted which was not tenable considering larger public interest involved, considering various decisions of the Apex Court restraining mining in the area, the mining activity in the area is also prohibited under the provision of the Forest Conservation Act, 1980. Thus, it was decided to order premature termination of the lease.

7. The proviso to Section 29(3) of the Act of 1953 is with the avowed purpose of

protection of forest land or waste land in the interregnum period till final notification u/s 29(1) is issued, the nature of existing rights of the State Government and the private persons are required to be inquired into and recorded u/s 29(3) of the Act of 1953 which is necessary exercise for issuing notification u/s 29(1) of the Act of 1953. Section 30 of the Act of 1953 prohibits cutting of trees and mining activities after issuance of notification. Section 29 and 30 of the Act of 1953 read thus:-

Sec. 29. Protected Forests.-(1) The State Government may by notification in the Official Gazette declare the provisions of this Chapter applicable to any forest land or waste land which is not included in a reserve forest, but which is the property of the State Government or over which the State Government has proprietary rights or to the whole or any part of the forest produce of which the State Government is entitled.

(2) The forest land and waste lands comprised in any such notification shall be called a "Protected Forest."

(3) No such notification shall be made unless the nature and extent of the rights of State Government and of private persons in or over the forest land or waste land comprised therein have been inquired into and recorded at a survey or settlement or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that if, in the case of any forest land or waste land, the State Government thinks that such inquiry and record are necessary but that they will occupy such length of time as in the meantime to endanger the rights of the State Government, State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

(4) The State Government may, by notification in the Official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof declared as a protected forest by a notification issued under sub-sec. (1) shall cease to be a protected forest.

(5) From the date so fixed, under sub-sec. (4), such forest or portion thereof shall cease to be a protected forest, but the rights, if any; which have been extinguished therein shall not revive in consequence of such cessation.

Sec. 30. Power to issue notification reserving trees etc.- The State Government may, by notification in the Official Gazette-

(a) declare any trees or class of trees in a protected forest to be reserved, from a date fixed by the notification;

(b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the State Government thinks fit, and that the rights of private persons if any, over such portion shall be

suspended during such term, provided that the remainder of such forest be sufficient and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed; or

(c) prohibit, from a date fixed as aforesaid, the quarrying of stone or the burning of lime or charcoal or the collection or subjection to any manufacturing process, or removal of, any forest produce in any such forest and the breaking up or clearing for cultivation, for building or herding cattle or for any other purpose, of any land in any forest.

8. The aforesaid provisions of Section 29(3) are wholesome and cannot be said to be violative of rights enshrined under Article 19(1)(g) of the Constitution of India. Article 19(1)(g) protects rights to practise any profession, or to carry on any occupation, trade or business. Article 19(6) of the Constitution of India provides that nothing in Article 19(1)(g) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. It is open to the State to impose reasonable restriction on exercise of the rights enshrined under Article 19(1)(g).

9. It is worthwhile to mention here that the Indian Society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology. Sages and Saints of India lived in forests. Their preachings contained in vedas, upanishads, smritis etc. are ample evidence of the society's respect for plants, trees, earth, sky, air water and every form of life. The main motto of social life is to live in harmony with nature. It was regarded as a sacred duty of everyone to protect them. In those days, people worshiped trees, rivers and seas which were treated as belonging to all living creatures. The children were educated by elders of the society about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora and fauna and every species of life.

10. With a view to protect the Forest Wealth and Wild Life of the areas, the Act of 1953 was enacted. Thereafter, in order to check deforestation which ultimately results in ecological imbalance and leads to environmental deterioration, the Forest Conservation Act, 1980 was enacted.

11. Nowadays, the ecological imbalances and the consequent environmental damage has become alarming due to reckless mining operations. Preservation of forest, flora and fauna is necessary for human existence, There is great and urgent necessity to preserve such forests. There are complaints in Rajasthan that mining has become a menace. There are complaints of illegal mining below the railway lines due to that railway routes are to be changed. There are complaints that damage to the Air Force fighter planes had been caused due to illegal mining taking place in the border areas.

12. The scale of injustice occurring in Indian soil is catastrophic Hundreds of thousands of factories are functioning without pollution control devices.

Thousands of Indians go to mines and undertake hazardous work without proper safety protection. Every day millions of litres of untreated raw effluents are dumped into rivers and millions of tons of hazardous waste are dumped on the earth. Environment has become so degraded that instead of nurturing the people, it is poisoning them. In this scenario, in a large number of cases, the Apex Court intervened in the matter and issued directions from time to time in public interest to protect and preserve forest cover, ecology, environment, wildlife etc.

13. In *Tarun Bharat Sangh, Alwar Vs. Union of India and others*, , the Apex Court has laid down in the context of mining operation carried out under license granted by the State Government impairing the environment and wildlife within the Sariska Tiger Park (in Alwar District in State of Rajasthan) declared by notifications as reserve forest, game reserve and sanctuary, statutory notifications were violated. State Government while professing to protect the environment by means of the notifications and declarations, itself permitting degradation of the environment by authorizing mining operations in the area. The Apex Court has appointed Committee headed by a retired Judge constituted to ensure enforcement of the State notifications and orders of the Supreme Court and to prevent devastation of environment and wildlife within the protected area. Direction was also issued that no mining operation of whatever nature shall be carried on within the protected area. The Apex Court also considered the provisions of Section 29(3) of the Act of 1953 and laid down that mining rights are not the private rights in or over the forest land.

14. In *T.N. Godavarman Thirumulpad vs. Union of India & Ors.*, AIR 1998 SC 2253, the Apex Court has directed that there shall be no felling of the khair trees in the forests of Jammu & Kashmir, nor any of the khair trees, if already felled, shall be removed from the forests.

15. In *T.N. Godavarman Thirumulpad (through K.M. Chinnappa) Vs. Union of India (UOI) and Others*, , the Apex Court has observed that environmental law is an instrument to protect and improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. The tide of judicial considerations in environmental litigation in India symbolizes the anxiety of courts in finding out appropriate remedies for environmental maladies. At global level, the right to live is now recognized as a fundamental right to an environment adequate for health and well being of human beings. There is increase in awareness of the compelling need to restore the serious ecological imbalances introduced by the depredations inflicted on nature by man. There may be boundless progress scientifically which may ultimately lead to destruction of man's valued position in life. The Constitution has laid the foundation of Articles 48A and 51A for a jurisprudence of environmental protection. Today, the State and the citizen are under a fundamental obligation to protect and improve the environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. Duty is cast upon the Government under Article 21 to protect

the environment and the two salutary principles which govern the law of environment are: (i) the principles of sustainable development, and (ii) the precautionary principle.

16. In *M.C. Mehta v. Union of India and Ors.*, (1991) 2 SCC 137 , it has been laid down that the duty under Article 48A can be enforced through a letter based on Article 21 and the duty casts can be enforced by the public interest litigation as laid down in *Satish vs. State of Uttar Pradesh*, 1992 Supp (2) SCC 94 and *Tarun Bharat Singh vs. Union of India & Ors.* (supra).

17. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the Apex Court constituted a Monitoring Committee with a view to monitor the overall eco-restoration efforts in the Aravalli Hills and came to the following conclusions:-

96. 1. The order dated 6.5.2002 as clarified hereinbefore cannot be vacated or varied before consideration of the report of the Monitoring Committee constituted by this judgment.

2. The notification of environment assessment clearance dated 27.1.1994 is applicable also when renewal of mining lease is considered after issue of the notification.

3. On the facts of the case, the mining activity in areas covered under Sections 4 and/or 5 of the Punjab Land Preservation Act, 1900 cannot be undertaken without approval under the Forest (Conservation) Act, 1980.

4. No mining activity can be carried out on area over which plantation has been undertaken under the Aravalli Project by utilization of foreign-funds.

5. The mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions.

6. The Aravalli hill range has to be protected at any cost. In case despite stringent conditions, there is an adverse irreversible effect on the ecology in the Aravalli hill range area, at a later date, the total stoppage of mining activity in the area may have to be considered. For similar reasons such step may have to be considered in respect of mining in Faridabad District as well.

7. MOEF is directed to prepare a short term and long term action plan for the restoration of environmental quality of Arvalli hill in Gurgaon district having regard to what is stated in final report of CMPDI within four months.

8. Violation of any of the conditions would entail the risk of cancellation of mining lease. The mining activity shall continue only on strict compliance of the stipulated conditions.

18. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the Apex Court directed the monitoring Committee to inspect the mining activity being carried on in the area in question and report the impact, if any, of continuing mining activity on the environment and the safeguards, if any, adopted to minimise the adverse

effects on the environment and any other suggestions relevant to the issue of impact of mining activity on degradation of the environment.

19. In *T.N. Godavaraman Thirumulpad Vs. Union of India (UOI) and Others*, , the Apex Court held that adherence to the principle of sustainable development is now a constitutional requirement. The courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under the Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity.

20. In the case of *T.N. Godavarman Thirumulpad (supra)* mining of bauxite deposits is required to take place on the top of Niyamgiri Hills. MOEF has given an environmental clearance for alumina refinery project, which is a joint venture between Company V and Company O (State undertaking). CEC has objected to the grant of clearance and submitted that Niyamgiri Hills would be vitally affected if mining is allowed in the above area as Niyamgiri Hills in an important water source for two rivers. The project would also destroy flora and fauna of the entire region and it would result in soil erosion. Use of forest land is an ecologically sensitive area like Niyamgiri Hills should not be permitted. The Apex Court observed that there is picture of abject poverty in which the local people (including the tribal people) are living in the area concerned. There is no proper housing. There are no hospitals. There are no schools and people are living in extremely poor conditions. Indian economy for the last couple of years has been growing at the rate of 8% to 9% GDP. It is a remarkable achievement. However, accelerated growth rate of GDP does not provide inclusive growth. Keeping in mind the two extremes, the Apex Court thought of balancing development vis-a-vis protection of wildlife ecology and environment in view of the principle of sustainable development. Thus, the court is not against the project in principles. Safeguards are necessary to protect nature and sub serve development. Mining is an important revenue-generating industry. However, one cannot allow our national assets to be placed into the hands of companies without a proper mechanism in place and without ascertaining the credibility of the user agency. Thus, in the circumstances of the case, the Project does not deserve to be cleared.

21. In *T.N. Godavarman Thirumulpad (60) vs. Union of India & Ors.*, (2009) 17 SCC 764, mining activity in Aravalli Hills, especially in that part which has been regarded as forest area or protected under Environment (Protection) Act was prohibited and banned by the Apex Court. Chief Secretaries of Haryana and Rajasthan were directed to file compliance report.

22. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the Apex Court has held that when mining leases were granted, requisite clearances for carrying out mining operations were not obtained which have resulted in land and environmental degradation. Despite such breaches, approvals were granted for subsequent slots because in the past the authorities had not taken into account

the past the authorities had not taken into account the macro effect of such wide-scale land and environmental degradation caused by the absence of remedial measures (including rehabilitation plan). Time has now come, therefore, to suspend mining in the Aravalli hill range till statutory provisions for restoration and reclamation are duly complied with, particularly in cases where pits/quarries have been left abandoned. Environment and ecology are national assets. They are subject to intergenerational equity. Time has now come to suspend all mining in the said area on sustainable development principle which is part of Articles 21, 48A and 51A(g) of the Constitution of India. Mining within the principle of sustainable development comes within the concept of "balancing" whereas mining beyond the principle of sustainable development comes within the concept of "banning". It is a matter of degree. Balancing of the mining activity with environment protection and banning such activity are two sides of the same principle of sustainable development. They are parts of precautionary principle. It has further been held that the provisions of Rule 27(1)(s)(i) of the Mineral Concession Rules, 1960, Rules 34 and 37 of the Mineral Conservation and Development Rules, 1988 and the guidelines issued under the said Rules of 1988 have not been complied with. Hence, all mining operations in the Aravalli hill range falling in the State of Haryana within the area of approximately 448 sq. km. in the districts of Faridabad and Gurgaon, including Mewat have been suspended.

23. In the instant case, the Govt. is trying to protect the area which is in the forest and is of religious significance and the mining which is taking place is detrimental to the environment and hazardous to the health of inhabitants and those taking parikrama. The State Government has notified the intention to declare it a protected forest and has appointed officers to make the record of the rights envisaged u/s 29(3) of the Act of 1953 before issuing notification u/s 29(1) of the said Act. In our opinion, the proviso to Section 29(3) imposing reasonable restriction in the interest of general public and reasonable restriction on exercise of rights enshrined under Article 19(1)(g) is unassailable in view of Article 19(6) of the Constitution of India.

24. The provision which is sought to be declared ultra vires is holding field for more than fifty years, and thus, now it is not appropriate to unsettle the law which is prevailing for last more than fifty years. Even otherwise, the provision cannot be said to be illegal or arbitrary or violative of any of the rights of the petitioners. Mining is not the only activity which is required to be protected. It cannot be at the cost of ecological imbalance and detrimental to the environment. Any development has to be sustainable. On the other hand, environmental damage due to reckless mining has assumed alarming proportion and once the State Government has decided to ultimately declare the area in question to be protected forest, no mining operation could have been permitted, same is a precautionary measure. We find that the notifications which have been issued on 13.11.2009 are fully in accordance with Articles 14, 21 and the statutory provision contained in Sections 29 and 30 of the Act of 1953.

25. The duty is cast under Article 48A that the State shall make endeavour to protect and improve the environment and to safeguard the forests and wildlife. Article 48A of the Constitution of India was inserted by 42nd Amendment w.e.f. 3.1.1977. Article 51A contains fundamental duties. Article 51A(g) provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Article 51A(f) contains duty to value and preserve the rich heritage of our composite culture. Thus, we find that the rights of the petitioners to carry on mining operations are subjected to the directives under Article 48A and fundamental duties enshrined under Article 51A(f) and 51A(g) which are also supreme and cannot be violated under the guise of rights under Article 19(1)(g). Thus, it cannot be said that there is any violation of the rights of the petitioners rather their action to carry on mining activities in such circumstances may cause damage to the rich heritage of our composite culture and natural environment including forests, lakes, rivers etc.

26. Considering the aforesaid, the State Govt. has rightly declared the intention to declare area as protected forest u/s 29(1) and has issued notification invoking proviso to Sec. 29(3) of the Act of 1953, declaring area to be protected forest. Notification u/s 30 has also been rightly issued. As such, no mining activity can be permitted to take place as provided under the aforesaid provisions. The action of the State Govt. restraining mining operations in the area in question as precautionary measure is perfectly within the framework of law and the same is in conformity with the law laid down by the Apex Court in the aforesaid decisions. It does not suffer from the vice of arbitrariness rather it has been taken in the public interest to protect area which is in the forest and is having religious significance apart from to take care of activities detrimental to environment and hazardous to the health of inhabitants and those who take parikrama. The action cannot also be said to be in violation of the principle of natural justice.

27. So far as the submission raised by the petitioners that they had invested huge amount as such premature termination of the leases could not be said to be proper is concerned, the same cannot be accepted as public interest and interest of ecology, environment health, safety and that of composite culture and rich heritage cannot be compromised under the private rights, development has to be sustainable. Individual rights have to give way to the larger public interest. Such a plea that since the leaseholders had invested sums of money in mining operation, it was the duty of the authorities to renew the lease, was also rejected by the Apex Court in the case of M.C. Mehta Vs. Union of India (UOI) and Others, . Hence, we find no merit in the aforesaid submission. Termination of leases cannot be said to be illegal.

28. For the reasons mentioned above, the proviso to Section 29(3) of the Act of 1953 cannot in any manner be said to be unconstitutional and violative of Articles 14, 19(1)(g), 21 and 300A of the Constitution of India. Resultantly, we

find no merit in the writ petitions. They are hereby dismissed. However, we leave the parties to bear their own costs.