
(2008) 04 AHC CK 0259
In the Allahabad High Court

Zunaid Ahmad

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Constitution of India, 1950 — Article 19

Mines and Minerals (Development and Regulation) Act, 1957 — Section 2, 4A

Citation : (2008) 4 AWC 3616 : (2008) 105 RD 395

Hon'ble Judges : S.P. Mehrotra, J; Janardan Sahai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Janardan Sahai and S.P. Mehrotra, JJ.—In these three Writ Petitions identical controversy is involved and as such all these Writ Petitions have been heard together and are being disposed of by a common order. Counter and rejoinder affidavits have been exchanged in these cases and the counsel for the parties are agreed that the Petitions may be disposed of finally.

2. The petitioners are mining lease holders of Sand on the Yamuna River bed in portions of District-Kaushambi. They were granted mining leases in the year 2006 which are operative for a period of three years i.e. till 2009. There is a condition in the lease deed that they will not conduct mining operations by use of machines except with the permission of the District Magistrate. It is not in dispute that the petitioners have not obtained any permission from the District Magistrate. The petitioners are aggrieved by the stoppage of mining operations on the basis of oral orders of the District Magistrate. Other contentions have also been advanced by Shri S.P. Singh, learned Senior Counsel assisted by Shri Deo Prakash Singh, counsel for the petitioners challenging the condition in the lease prohibiting them from using machines without permission of the District Magistrate.

3. Before examining the various contentions advanced by Shri S.P. Singh learned Senior Counsel appearing for the petitioners, and the learned Standing Counsel

appearing for the respondents, it is necessary to refer to the Government Orders upon the point which have been issued from time to time.

4. By the Government Order dated 30.12.2000, the Government of Uttar Pradesh replaced the system of grant of lease by auction under Chapter IV of the U.P. Minor Minerals (Concession) Rules, 1963 by the system of grant of lease on application under Chapter II. The Government Order notices the fact that use of machines by the Thekedars under the auction system has an adverse effect upon the environment and natural flow of the river and also causes damage to the river banks besides causing loss of job opportunity to persons belonging to castes traditionally engaged in the excavation of sand and morrum for their livelihood. In Rule 9(2)(e) of the U.P. Minor Minerals (Concession) Rules, 1963 the names of several castes traditionally engaged in excavation of sand/morrum for their livelihood, have been given in the context of giving preference to them in the grant of leases. This Government Order directs the lease granting authority to incorporate a condition in the lease deed prohibiting use of machines in mining work. In the Subsequent Government Order dated 30.11.2002, which too is applicable to grant of leases by auction system, paragraph 3 contains a condition that use of machines will be prohibited in excavation work and this fact be intimated to the bidders at time of auction and the condition be incorporated in the lease documents. It appears that the Directorate of Geology had doubts about the validity of incorporation of a blanket condition prohibiting the use of machines in excavation work. A letter dated 16.1.2003 was sent by the Director of Geology and Mines to the State Government. This letter was in reference to the condition in paragraph 3 of the Government Order dated 30.11.2002 relating to the prohibition to the use of machines. The letter states that a lease holder was free to do all such things as were covered under conditions (a) to (g) of Rule 40 and that the nature of activity covered by these clauses suggests that the lessee was free to use machines in excavation work if such use would cause no damage. It was stated that the condition prohibiting the use of machines altogether was inconsistent with Rule 40 and a recommendation was made that the blanket ban on the use of machines directed to be imposed in the terms of the lease is not proper and such condition be not imposed unless it was felt that the use of machine would cause damage to the environment or would obstruct the natural flow of the river. The Secretary to the Government of Uttar Pradesh by a letter dated 5.2.2003 addressed to the Director, Geology and Mines informed him that the proposal sent, had met the approval of the State Government. The latest Government Order upon the point is the Government Order dated 16.10.2004. This Government Order was issued in the wake of auction system again being replaced by the system of settlement of leases under Chapter II. Condition (xiii) of paragraph (3) of this Government Order permits use of machines in the mining operations but provides that the lease deed would contain a condition that if the authorities are satisfied that the use of machines would cause damage to the environment or to the river bank or to the natural flow of the river, it would be open to the authorities to stop the use of machines.

As regards the letter of the Director, Geology and Mines, which has been approved by the State Government upon which Sri Singh relied it is enough to say that the said letter stands superseded by the new policy of the Government comprehended in the government order dated October 16, 2004.

5. Shri S.P. Singh learned Senior Counsel for the petitioners submitted that use of machine is not prohibited in the Government Order and in fact it can be prohibited only if the use of machine is likely to adversely affect the environment or the natural flow of the river or would damage the banks. The learned Counsel placed reliance upon Rule 40 of the U.P. Minor Minerals (Concession) Rules, 1963, particularly clauses (a), (b) and (c) of that Rule. Referring to these clauses, it was contended that the nature of the activity contemplated in these clauses by implication permits the use of machine as the works, such as mining, boring, digging, drilling etc. can only be performed by the use of machines. Rule 40, Clauses (a), (b) and (c) are quoted below:

40. Liberties, powers and privileges of the lessee.- Subject to the restrictions and conditions mentioned in Rule 41, a person holding a mining lease under these rules may have the liberty, power and privilege:-

(a) to enter upon the lands mentioned in the lease and to search for mine, bore, dig, drill or win, work, dress, process, convert, carry away and dispose of the mineral for which the lease is held;

(b) to make in the said lands any pits, shafts, inclines, levels, waterways or other works;

(c) to erect and obstruct on the lands any machinery, plant, dressing, floors, furnaces, brick-kilns, workshops, storehouses and other building of the like nature;

(d) to (g) ...

6. It was, thus, contended that the condition in the lease deed prohibiting altogether the use of machines is repugnant to the letter dated 16.1.2003 of the Director and of the Secretary, Government of Uttar Pradesh dated 5.2.2003 communicating the approval of the State Government to the Director's proposal and to the Government Order dated 16.10.2004 as well as to Rule 40 of the U.P. Minor Minerals (Concession) Rules, 1963. Learned Standing Counsel appearing for the State submitted that Rule 40 of the U.P. Minor Minerals (Concession) Rules, 1963 is subject to Rule 41 of those Rules. He referred to Rule 41(g) of the U.P. Minor Minerals (Concession) Rules, 1963, which is as follows:

41. Restrictions and conditions as to exercise of the liberties, powers and privileges of- The holder of a lease shall exercise the liberties, power and privileges mentioned in Rule 40 subject to the following restrictions and conditions:

(a) to (f) ...

(g) the lessee is bound to keep vigilance for not polluting the environment of the lease-hold area and nearby area in connection with mining operation and also maintain ecological balance of the area. If at any time it is found that the mining operation are leading to environmental pollution or imbalance of ecology, then after giving an opportunity of being heard, the lease may be prematurely terminated.

Clause (g) of Rule 41 permits premature termination of lease if the mining operations lead to environmental pollution or imbalance of ecology. These are words of wide meaning and effect upon the natural flow of the stream or damage to the banks would also be covered under the expression. If the use of machines has such an effect, it can be stopped. If a lease can be prematurely terminated if ecological imbalance or environmental pollution is caused, it is implicit that any condition which has the effect of protecting the environment or ecology including a condition prohibiting the use of machines in mining operations can be imposed.

7. The Standing Counsel also relied upon Rule 68 of the U.P. Minor Minerals (Concession) Rules, 1963 which provides relaxation of Rules in special cases. The said Rule is quoted below:

68. Relaxation of rules in special cases.- The State Government may, if it is of opinion that in the interest of mineral development it is necessary so to do, by order in writing and for reasons to be recorded authorise in any case the grant of any mining lease or the working of any mine for the purpose of winning any mineral on terms and conditions different from those laid down in these rules.

Sub-section 2 of Section 4A of the Mines and Minerals (Development and Regulation) Act, 1957 is also relevant and is being quoted below:

4A. Termination of prospecting licences or mining leases - (1) ...

(2) Where the State Government, is of opinion that it is expedient in the interest of regulation of mines and mineral development; preservation of natural environment, control of floods, prevention of pollution or to avoid danger to public health or communications or to ensure safety of buildings, monuments or other structures or for such other purposes, as the State Government may deem fit, it may, by an order, in respect of any minor mineral, make premature termination of a prospecting licence or mining lease with respect to the area or any part thereof covered by such licence or lease.

(3) to (4) ...

This Section gives very wide powers to the State Government to make a premature termination of a mining lease in the interest of regulation of mines and minerals development, for preservation of natural environment, control of floods, prevention of pollution or to avoid danger to public health or communications or to ensure safety of buildings, monuments or other structures or for such purposes as the State Government may deem fit.

8. The words "for such purposes as the State Government may deem fit" have a wide sweep. They would cover even the Directive Principles of State policy under Chapter IV of the Constitution which though not enforceable by Court, are nevertheless fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws.

9. Thus, even though there may not be any condition in the lease deed prohibiting the use of machines, the State Government may, in the circumstances specified in Sub-section (2) of Section 4A, prematurely terminate the lease. If the State Government has powers to terminate a lease prematurely in the wide range of circumstances specified in Sub-section (2) of Section 4A without there being such a condition in the lease deed, it is implicit that such a condition can be imposed in the lease if such condition relates to a matter specified in subsection (2) of Section 4A. The State Government may also use the provisions under Rule 68 of the U.P. Minor Minerals (Concession) Rules, 1963 and grant lease on terms and conditions different from those provided under the Rules. In view of the provisions of Rule 41 and 68 and Section 4A of the Mines & Mineral (Development and Regulation) Act, 1957, a condition in the lease prohibiting the use of machines can be incorporated. It also appears that even in the absence of any such condition prohibiting the use of machines, the Government may stop the use of machines if such use adversely affects the environment or for any of the purposes specified in Section 4A(2) of the Mines & Mineral (Development and Regulation) Act, 1957.

10. The learned Standing Counsel relied upon the averments made in paragraph 13 of the counter affidavit that the use of machines also creates a social problem of unemployment of mining labourers who are traditionally engaged in this profession, causing law and order problem also. Various provisions from the Constitution of India have been cited to drive home the fact that the interest of labour belonging to the castes traditionally occupied in the mining work has to be taken into account in regulating the right of the lessees to carry on mining activity with the use of machines. Special reference was made by the Standing Counsel to the Directive Principles of State Policy including Article 38 of the constitution of India which provides that the State shall strive to secure a social order for the welfare of its people; Article 39(a) of the Constitution of India which provides that the State will provide adequate means of livelihood to the citizens; Article 41 of the Constitution of India which provides that the State shall make effective provision for securing the right to work; Article 46 which provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Schedules Tribes and shall protect them from social injustice and all forms of exploitation; Article 48-A of the Constitution of India which provides that the State shall endeavour to protect and improve the environment.

11. Article 19(1)(g) of the Constitution of India gives right to every citizen to carry on any occupation, trade or business but the right is subject to imposition

of reasonable restrictions under Article 19(6) of the Constitution of India in the interests of general public or for providing professional or technical qualifications necessary for practising any profession or carrying on any occupation etc. or for creating monopoly in favour of the State in respect of any trade etc.

12. In *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, , the Supreme Court has emphasised that a balance be struck between the fundamental rights given in Part -III of the Constitution of India and the Directive Principles contained in Part-IV of the Constitution of India. Rule 40 of the U.P. Minor Minerals (Concession) Rules, 1963 is a facet of the fundamental right given in Article 19(1)(g) of the Constitution of India while Rule 41 of the U.P. Minor Minerals (Concession) Rules, 1963 as well as Section 4A(2) of the Mines and Minerals (Development and Regulation) Act, 1957 are facets of the reasonable restrictions contemplated in Clause (6) of Article 19 of the Constitution of India as also the Directive Principles pertaining to the preservation of environment.

13. The term in the lease deed regarding prior permission of the District Magistrate before use of machines strikes a balance between the right to carry on mining operations with the preservation of environment etc. Such a clause in the lease deed is in consonance with the principles laid down in the *Minerva Mills* case (supra).

14. u/s 4A(2) of the Mines & Mineral (Development and Regulation) Act, 1957, the State Government can prematurely terminate the lease in the circumstances specified in that Section and "for such other purposes as the State Government may deem fit". The words "other purpose" are wide enough to cover the Directive Principles of State policy. It follows by implication that if the State Government can permanently terminate the lease in order to give effect or to secure the objects given in Section 4A(2), it can also impose conditions in lease which are different from those express or implicit in Rule 40. This can be done under Rule 68 and even otherwise under Rule 41(g). The condition in the lease that the lessee shall not use machines in mining work without permission of the authorities is not repugnant to the provisions of the Government Order.

15. It appears that the prohibition on the use of machines can be made not only on account of the fact that the use of machines will cause damage to the environment or would affect the natural flow of the river but also if it is found that the use of the machines will displace the persons of castes traditionally engaged in mining. The importance of this aspect is also clear from the provisions of Rule 9(2)(e) of the U.P. Minor Minerals (Concession) Rules, 1963 which provides that even leases can be granted on preferential basis to such persons. The validity of new Rule 9(2)(e) of the U.P. Minor Minerals (Concession) Rules, 1963 was challenged but it has been upheld by this Court in Civil Misc. Writ Petition No. 467 70 of 2004, *Satyendra Kumar Tripathi v. State of U.P. and Ors.*, decided on 23.12.2004 in certain circumstances.

16. The contention of Shri S.P. Singh, learned Senior Counsel appearing for the

petitioner that the condition is violative of the Government Order or of Rule 40 of the U.P. Minor Minerals (Concession) Rules, 1963, in our view, cannot be accepted in view of the fact that Rule 40 is subject to Rule 41 and to the relaxation power of the State Government under Rule 68 of the U.P. Minor Minerals (Concession) Rules, 1963 and also in view of the provisions of Section 4A (2) of the Mines and Minerals (Development and Regulation) Act, 1957.

17. Moreover, there is another important aspect in respect of these cases. The condition regarding the prohibition on the use of machine is part of a contract between the State of Uttar Pradesh and the lease holder and if the lease holder has accepted the imposition of the condition and has acted upon the contract by taking the lease, it is not open to the lease holder to turn back and to retract from the condition. We find that there is no illegality in the imposition of the condition in the lease deed and the condition is not in breach of any Government Order nor in breach of any Statute or constitutional provision. In view of the condition that the lessee has no right to carry on mining operations without the permission of the District Magistrate in writing contained in lease the petitioner has no right to resist stoppage of user of machine for mining.

18. Shri S.P. Singh, learned Senior Counsel appearing for the petitioner also drew our attention to the Newspaper Report in the Amar Ujala of 29.02.2008 (Annexure-7 to the Writ Petition). This Report says that about 5000 labour traditionally engaged in excavation of sand who were rendered unemployed on account of use of machines launched an agitation on the river bank of Yamuna in the Kaushambi and Allahabad Districts and destroyed machines and one Thekedar had also fired to protect his machines and had thereby severely wounded a labourer. The Report goes on to say that the unemployed labourers had been agitating against the use of machines by the Thekedars for a long time but the district administration paid no heed. Even a week before the incident the workers had held a meeting warning the district administration but even that had no impact upon the administration. No doubt a Newspaper Report is not admissible as primary evidence, but it has also been stated in paragraph 13 of the counter affidavit of the State that use of machines creates a social problem of unemployment which in turn leads to a law and order problem. In paragraph 14 of the counter affidavit the incident relating to destruction of machines has been referred to. Although there may be different versions about the incident but the occurrence reported in the newspaper has not been denied. The shape which the agitation took takes time to ferment. It appears that timely intervention of the district administration stopping the use of machines and response to the grievances of the people could have averted the incident referred to in the Newspaper. The sentiment of the people in the situation of this case may be expressed in the following words:

For ages has the Yamuna brought From Mountains high the golden sands And we did make a living bare From the bounty strewn on the submerged lands. But now the minerals have been leased To people who have better means They use

machines to suck the stream And employment for us a wishful dream. While they get richer day by day Our right to live has been snatched away Oh injustice and thine serpent "hisss"! We wont bear thee but strike against this!

19. And it is stated in paragraph 2 6 of the writ petition a fact not denied in the counter affidavit that on 27.2.2008 thousands of persons of the Nishad community marched in procession against the use of loader machines and damaged and burnt them. We part by saying that an indifferent attitude of the administration to peoples grievances can result in people taking law into their own hands for securing justice.

20. In view of the aforesaid discussion we are of the opinion that the Writ Petition lacks merits and is liable to be dismissed. We do so accordingly.