

Allahabad High Court

Daya Shankar Tripathi, Son Of Sri ... vs The State Of Uttar Pradesh, ... on 19 October, 2006

Bench: R Misra, S Kumar

JUDGMENT

R.P. Misra and Shishir Kumar, JJ.

1. These writ petitions have been filed for quashing the notices issued to the petitioners not to use the machines in the mining operations on the basis of the Government Orders issued by the State Government from time to time i.e. 30.11.2002 and 5.2.2003. As common questions are involved in all the writ petitions, as such, they are being decided by a common judgment.

2. The submission raised on behalf of the petitioners is that neither under the terms and conditions of the lease deed nor under any statutory rule there is any restriction or prohibition against the use of machines for the purposes of excavation of sand. As the petitioners are using machines for carrying on mining operations from the river bed and no restrictions whatsoever were placed on the use of machines by the respondents. In view of Rule 40 (c) of the rules, specifically mentions the use of machines for carrying on mining operations. The condition of the lease deed provide for the removal of machines etc. after the expiry of the lease deed meaning thereby that using of machines are permitted. The impugned orders mentioned that uses of machines are prohibited by the Government Order. It has further been submitted on behalf of the petitioners that that the Government Order dated 30.11.2002 stating therein that inclusion of the condition of prohibition against the use of machines in the lease deed is without any basis and is against the statutory Rule 40. Further the Government Order dated 5.2.2003 has been issued on the basis of recommendations of Director, Geology and Mining, dated 16.1.2003. Under Section 4(1) of the Act no prospective license or mining lease can be granted otherwise than in accordance with the provisions of the Act and Rules made there under. Section 4 of the Act is being reproduced below:

Section 4. Prospecting or mining operations to be under licence or lease-

(1) No person shall undertake any prospecting or mining operation in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease granted under this Act and the rules made thereunder:

Provided that nothing in the sub-section shall effect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement.

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Automatic Minerals Division of the Department of Atomic Energy of the Central Government, the directorate of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government Company within the meaning of Section 617 of the Companies Act. 1956.

(2) No prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the Rules made under Section 18, undertake prospecting or mining operations with respect to any minerals specified in the First Schedule in any area within that State which is not already held under any prospecting licence or mining lease.

3. That under Rule 3(2) of 1963 Rules no mining lease or permit can be granted except in accordance with the provision of 1963 Rules. Rule 3 of the 1963 is being quoted below:

Mining operations to be under a mining lease or mining permit :

(1) No person shall undertake any mining operations in any area within the State of any minor mineral to which these rules are applicable except under and in accordance with the terms and conditions of a mining lease or permit granted under these rules:

Provided that nothing shall affect any mining operations undertaken in accordance with the terms and conditions of a mining lease or permit duly granted before the commencement of these rules.

(2) No mining lease or permit shall be granted otherwise in accordance with the provisions of these rules.

4. No condition, which is not a statutory in nature can be imposed against the petitioners. The prohibition of the use of machine is a condition of lease deed and the Government Order, the same is no binding upon the petitioners. Under the statutory rules, there is no restriction or prohibition against the use of machines for the purposes of excavation of sand, as such, the impugned order is liable to be quashed. The issuance of Government Order dated 30.11.2002 will be against the statutory Rule 40 of the Rules. Rule 40(C) is specifically mentioned the use of machine for carrying on mining operations. According to Rule 4(1) of the Act no prospecting licence or mining lease can be granted, otherwise than in accordance with the provisions of Act and Rules made thereunder. The State Government has got no power under Rule 3(2) of the U.P. Minor Minerals (Concession) Rules 1963 provides that no mining lease shall be granted except in accordance to the provisions of Rules or to impose any condition which is contrary to the provisions of the Act and Rules. As the mining operation also includes the use of machines, therefore, the State Government has got no jurisdiction to issue a Government Order restricting for use of machine, as such, it has been submitted that the State Government cannot impose any condition or restriction in exercise of powers under Section 15 of the Act. Rule 40 is being reproduced below:

40. Liberties, Powers and privileges- 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, drifts, levels waterways or other works;

(c) to erect and construct on the lands and machinery, plant dressing, floors, furnances, brick-klins, workshops, store house and other buildings of the like nature;

(d) to make any roads and other ways over the said lands and to use and pass over the same;

(e) to quarry and get stone gravel and other building and road materials and clay and to use the same and to manufacture such clay into bricks or tiles and to use such bricks or tiles but not to sell any such material, bricks or tiles;

(f) to use a sufficient part of the surface of the said lands for the purpose of storing or depositing any produce of the mines or materials and substance dug or raised, and

(g) subject to the existing rights of others and save as provided in Clause (d) of Rule 41, to clear, undergrowth and brushwood and to fell, and utilize an trees or timber standing or found on the said lands, provided that the lessee may be asked by the District Officer to pay for any trees or timber felled and utilized by him at the rates

to be determined, having regard to their market value by District Officer.

5. The petitioners have placed reliance upon the judgments of this Court in State of Uttar Pradesh and Ors. v. K.P. Sui and Anr. . The another judgment relied upon by the petitioners in Jawahar Lal Jaiswal v. State of Uttar Pradesh and Ors. Full Bench and two other judgments in

Charan Sinsh v. State of U.P. and Ors. reported in 2005 (3) AWC 2302 (Para 13 and 14 are relevant) and in Inam v. State of U.P and Ors. reported in 2002 (3) AWC 1977 (Para 5 of the judgment).

6. In view of the aforesaid fact, the petitioners submit that the restriction is wholly arbitrary and against the provisions of act and rules. Though it has been stated on behalf of the petitioners that the Government Orders of 2003 and 2002 have already been superceded.

7. On the other hand, Sri Alok Kumar Singh, the learned Standing Counsel submits that Mines and Minerals (Development and Regulation) Act, 1957, Section 4A(1) provides as under:

4A. Termination of prospecting licences or mining leases-

(1) Where the Central Government, after consultation with 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 conservation of mineral resources or for maintaining safety in the mines or for such other purposes, as the Central Government may deem fit, it may request, the State Government to make a premature termination of a prospecting license or mining Lease in respect is any Mineral other than a Minor Mineral in any area or part thereof and, on receipt of such request the State Government shall make an order making a premature termination of such prospecting license or mining lease with respect to the area or any part thereof.

(2) Where the State Government, is of opinion that it is expedient in the interest of regulation of mines an 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 license or mining lease with respect to the area or any part thereof covered by such licence or lease:

Proviso (omitted)

(3) No order making a premature termination of a prospecting licence or mining lease shall be made except after giving the holder of the licence or lease a reasonable opportunity of being heard.

8. The further submission has been made on behalf of the respondents that as the Government Orders of 2002 and 2003 have already been withdrawn, therefore, all the writ petitions filed on behalf of the petitioners have become infructuous and no relief can be granted to the petitioners. It has further been submitted on behalf of the respondents that the State Government on 16.10.2004 issued a Government Order regarding mining policy in which the Condition No. XIII provides the restriction, of using heavy machine for excavation. The Rule 41 g provides as under:

(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 operations and also maintain ecological balance of the area. If at any time it is found that the mining operation are leading to environmental pollution of imbalance of ecology, then after giving an opportunity of being heard, the lease may be prematurely terminated.

9. Taking into consideration all the relevant provisions in the Government Order dated 16.10.2004, a condition/restriction of using heaving machine to keep environment pollution free has been incorporated, as such, there is no illegality in the Rule 41(g) of the Rules as well as in the Government Order. The State Government has full authority to impose any condition to check the mine operators. The grounds taken by the petitioners challenging the Government Order on various grounds it has been submitted that the State Government has got full authority and can impose any condition by issuance of any Government Order in view of the provision of Section 4A of the Mines and Minerals (Regulation and Development) Act, 1957. The district authorities are bound according to Rules to verify and see that there should not be any damage of the river and minerals. In case, the lease-holder makes an application before the relevant authority after the permission by the District Magistrate, it can be considered and decided regarding use of machine.

10. It has further been submitted that in view of Section 15 of the Act 1957, the State Government has been authorized to make rules in respect of Mines and Minerals. Rule 41(g) which clearly provides that if at any time it is found that the mining operation are leading to environmental pollution of imbalance of ecology, then after giving an opportunity of being heard, the lease may be prematurely terminated. Further submission has been made on behalf of the respondents that Rule 68 empowers the State Government that if in his opinion and in the interest of mineral development it is necessary to do so then by order in writing and for reasons to be recorded authorized 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. Meaning thereby the State Government is full authority to issue the Government Orders from time to time only in the interest of minerals.

11. I have considered the submission made on behalf of the parties and perused the record and the relevant provisions of the Act and Rules.

12. From the perusal of the various provisions it is clear that the State Government has full authority to issue the Government Orders from time to time only in the interest of mineral and to regulate the mining lease. Now it has been brought to the notice of the Court that the Government Orders of 2002-2003 have already been withdrawn and another Government Order dated 16.10.2004 has been issued and Clause 13 is as follows:

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13. It clearly goes to show that there can be a restriction in using the machines but if the using of machines damages the river as well as it effects the atmosphere then the authority can restrict the same. From the perusal of the aforesaid Government Order, it is clear that now the use of machine has been permitted but a restriction or observance will be of the authorities not to misuse the same.

14. In view of the aforesaid fact, as the earlier Government Orders have already been withdrawn and there is no challenge of Government Order dated 16.10.2004 in which using of machine has been permitted but there will be an observance of the district administration.

15. In view of the aforesaid fact, no relief can be granted to the petitioners. The petitions are dismissed accordingly. It is also made clear that in view of Rule 41(g) the State Government is fully authorized that if at any time it is found that mining operation are leading to environmental pollution of imbalance of ecology then after affording an opportunity to the relevant party, the lease can be terminated or use of machine can be stopped.

16. There shall be no order as to costs.