

Allahabad High Court

Kamla Kant Pandey vs Prabhagiya Van Adhikari And Ors. on 20 November, 2004

Equivalent citations: AIR 2005 All 136, 2005 (1) AWC 877

Author: A Sahi

Bench: R Mishra, A Sahi

JUDGMENT

A.P. Sahi, J.

1. The issue raised by the petitioner in the present writ petition is as to whether the State Government was justified in cancelling the mining lease of the petitioner and restraining him from transporting minor minerals from the area known as Kaimur Wild Life Sanctuary situate in a tract of Vindhyan plateau. The issue raised is one of the prime importance as it involves the powers of the respondent-State Government in permitting mining operations in areas which have been declared as a Wild Life Sanctuary under the Wild Life (Protection) Act, 1972. As has been brought on record the Kaimur Wild Life Sanctuary preserves within its fold some very rare species of flora and fauna including the prized Black Buck and such other animals. It is also evident from the management plan of the Kaimur Wild Life Sanctuary appended as Annexure-8 to the supplementary-rejoinder-affidavit that diversity of habitat includes tigers, panther, cheetal, sambhar, sloth, bear, hyaena, fox, jackal, wolf, wild boar, langoor, etc. Not only this the said management plan also indicates that the sand stone mining and other modernizing activities of excavation are causing threat to the sanctuary. The harvesting of mineral sand stone is also one of the reasons- Another notable excerpt from the said management plan is to the following effect :

"The river Sone which forms the southern boundary of the sanctuary had a large number of gharials & magars in the recent past. But due to indiscriminate hunting & habitat loss, they are on the verge of extinction. The decline of fish population due to heavy fishing, has also affected its population. The gharial rehabilitation programme was implemented in the upper portion of the river which falls in M.P. and in recent past a few gharials have been released in this river in U.P. also."

2. The State Government, by the order impugned in the present writ petition on a report submitted by the Wild Life Department, passed an Order to the effect that the mining lease granted to the petitioner violates the provisions of Sections 2(12) B, 18A & 29 of the Wild Life (Protection) Act, 1972. The impugned orders dated 21.5.2004 and 29.5.2004 are sought to be impeached by the petitioner on several grounds and primarily on the ground that the orders reflect complete non-application of mind and are in violation of principles of natural justice inasmuch as the same were passed without making any proper inquiry in the matter and without providing any proper opportunity to the petitioner in this regard and further on the ground that the grant of mining lease to the petitioner does not in any way violate the provisions of the Wild Life (Protection) Act, 1972. It has been further urged that the area for which the lease has been granted to the petitioners, even otherwise, does not fall within the area of the Sanctuary and, therefore, there is no question of violating the provisions of the Act on the basis whereof the mining lease of the petitioner has been cancelled. In short the cancellation of mining lease of the petitioner is liable to be set aside and the petitioner deserves to be permitted to carry on his mining activities as the lease was granted to him on 12.3.2003 for a period of 3 years, i.e., up to 11.3.2006.

3. The respondent-State Government in its endeavour to protect the flora and fauna of Kaimur Wild Life Sanctuary has tried to justify, the passing of the impugned Order by refuting the submissions advanced on behalf of the petitioner. The contention on behalf of the State is to the effect that the mining operations including that of mining minerals is clearly prohibited and which cannot be permitted in view of the provisions of the Wild Life (Protection) Act, 1972. Even otherwise if the same were held to be permissible, it could only have been done with the permission granted under the orders of the authorities under the Wild Life (Protection) Act, 1972 and not by the State Government alone under the Minor Mineral (Concessions) Rules. In essence the grant of mining lease to the petitioner was itself illegal as it violated the provisions of the Wild

Life (Protection) Act, 1972 and, as such, the same has been rightly cancelled and the petitioner does not deserve any relief in this regard.

4. Thus, the bone of contention centres round the grant of mining lease to the petitioner which is to operate w.e.f. 12.3.2003 to 11.3.2006 and which has been cancelled by the impugned order dated 21.5.2004 and the consequential order of the District Magistrate dated 29.5.2004.

5. We have heard Shri Dinesh Dwivedi, learned senior advocate, along with Shri W.H. Khan and Sri J.H. Khan for the petitioner and Shri Sanjai Goswami, learned standing counsel on behalf of the respondents.

6. The facts that emerge from the pleadings of the parties are that on 10.8.1982 a notification was issued by the State Government under the then existing Section 18 of the Wild Life (Protection) Act, 1972 which is quoted hereinbelow :

"18. Declaration of Sanctuary. --(1) The State Government may, by notification, declare any area to be a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment.

(2) The notification referred to in Sub-section (1) shall specify, as nearly as possible, the situation and limits of such area."

7. The aforesaid section as it then stood made the declaration final upon the notification issued by the Governor. Thus, the notification which was issued on 10.8.1982 declared the Kaimur Wild Life Sanctuary to be comprised of an area referred to in the said notification. The notification which had been brought on record in the pleadings of the parties indicates that an area of 921.8 hectares of village Kanach and an area of 1406.7 hectares of village Pakari is included within the area of Sanctuary. The mining lease which has been granted to the petitioner is situate in the aforesaid 2 villages. The boundaries of the sanctuary on the southern side are defined to be up to Sone river. The allegation of the petitioner is that the area for which the mining lease has been granted is situate over 2 plots of the aforesaid 2 villages but which do not form part of the sanctuary. It is important to refer to one more document at this stage which has been appended as Annexure-7 to the supplementary-affidavit filed on behalf of the petitioner wherein a report has been submitted to the Tehsildar, Tehsil-Robertsganj, district Mirzapur, indicating that the entire area of village Kanach is 2626.81 hectares and that the entire area of village Pakari is 1828.79 hectares. What is sought to be indicated on behalf of the petitioner is that the entire area of both the villages is not within the notified area of the Sanctuary as per the notification dated 10.8.1982.

8. It appears that with growing economic and social activities in this area, the State Government found that the existing Wild Life (Protection) Act required amendments for effective protection of the Wild Life and, therefore, brought about an amendment in the year 1991 known as Wild Life Protection (Amendment) Act, 1991 (44 of 1991). By the said amending Act several provisions were added under the then existing Act and one such amendment which is necessary for the adjudication for the present controversy is the amendment which was brought about in Section 18 of the Wild Life (Protection) Act, 1972 which is quoted hereinbelow for ready reference :

"18. Declaration of sanctuary. --[(1) The State Government may, by notification, declare its intention to constitute any area, other than an area, comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment.]

(2) The notification referred to in Sub-section (1) shall specify, as nearly as possible, the situation and limits of such area."

9, Section 26A was also added by the said amending Act. A further amendment was brought about by way of Act No. 16 of 2003, which was enforced w.e.f. 1.4.2003. The two notable amendments for the purposes of the present controversy are Sub-section (3) of Section 26A which is quoted hereinbelow :

"26A. (3) No alteration of the boundaries of a sanctuary shall be made by the State Government except on a recommendation of the National Board."

And Section 29 which came to be substituted in the following manner :

"29. Destruction, etc. in a sanctuary prohibited without a permit.--No person shall destroy, exploit or remove any wild life including forest produce from a sanctuary or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the sanctuary, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the Board that such removal of wild life from the sanctuary or the change in the flow of water into or outside the sanctuary is necessary for the improvement and better management of wild life therein, authorizes the issue of such permit:

Provided that where the forest produce is removed from a sanctuary the same may be used for meeting the personal bona fide needs of the people living in and around the sanctuary and shall not be used for any commercial purpose."

10. Apart from the aforesaid provisions, it is to be kept in mind that Sections 20 and 24, which prohibit accrual of rights and provide for settlement of claims in respect of the acquisition of rights, were in existence from the very inception of the Act. However, Clause (c) of Sub-section (2) of Section 24 came to be added for the first time by way of amending Act No. 44 of 1991 which permits the Collector to allow, in consultation with the Chief Wild Life Warden, the continuation of any right of any person in or over any land within the limits of the sanctuary.

11. Another important amendment which requires to be noted at this stage is the inclusion of the word "Forest Produce" as contained in the amended Section 29 introduced w.e.f. 1.4.2003 as well as the definition of the said words contained in Section 2(12)(v) quoted hereinbelow :--

"29. Destruction, etc. in a sanctuary prohibited without a permit.-- No person shall destroy, exploit or remove any wild life including forest produce from a sanctuary or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the sanctuary, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the Board that such removal of wild life from the sanctuary or the change in the flow of water into or outside the sanctuary is necessary for the Improvement and better management of wild life therein, authorizes the issue of such permit :

Provided that where the forest produce is removed from a sanctuary the same may be used for meeting the personal bona fide needs of the people living in and around the sanctuary and shall not be used for any commercial purpose."

"12 (12B) "forest produce" shall have the same meaning as In Sub-clause (b) of Clause (4) of Section 2 of the Indian Forest Act. 1927 (16 of 1927) ;]"

12. The present writ petition came to be initially filed assailing the orders dated 16.5.2004 and 17.5.2004 issued by the forest officials, contained in Annexures-1 & 2 to the writ petition respectively, whereby the petitioner who had a subsisting mining lease was informed that he was not entitled to transport the minor minerals through the Dala range and Gurma range of forest. When the writ petition was filed, an impleadment application was moved on behalf of one Shri Parmeshwar Dayal a Member of the Legislative Assembly,

through Shri V.K. Singh, advocate, and along with which was filed a report of the forest official of Kaimur Wild Life Forest area, Mirzapur, dated 24.2.2004, wherein a request was made to the District Magistrate, Sonbhadra to cancel all such leases including the mining lease of the petitioner as they had been granted in violation of the provisions of the Wild Life (Protection) Act, 1972 and the Indian Forest Act, 1927. Another document which was brought on record was a direction by the Secretary, Government of Uttar Pradesh dated 7.4.2004 to the District Magistrate to take steps for cancellation of the lease granted to the petitioner in accordance with Rules and in view of the report of forest official dated 24.2.2004. It appears that the lease was cancelled by the State Government vide order dated 21.5.2004 and a consequential order was also passed by the District Magistrate on 29.5.2004, as such, the petitioner moved two amendment applications challenging the same.

13. Having set out the facts in brief and the relevant provisions that are required to be considered we now advert to the contention advanced on behalf of the parties.

14. The grounds for challenge to the aforesaid orders are that the Impugned orders have been passed without giving any proper opportunity to the 'petitioner, the impugned orders overlook the own correspondence between the officials of the State in this regard and, as such, there is non-application of mind to the same and that the order does not consider the reply of the petitioner to the show cause notice Issued In this regard.

15. Shri Dinesh Dwivedi, learned senior counsel, has further urged that the entire action of the State is incoherent inasmuch as the respondents are themselves not sure about the basis of passing of the order and the same has been passed in a hurry without due application of mind to the relevant provisions applicable in this regard as also the various documents which indicate that the mining lease granted to the petitioner is not hit by any of the provisions on the basis whereof the impugned Order has been passed.

16. Shri Dwivedi in this regard has invited the attention of the Court to show cause notice dated 8.4.2004, which is contained in Annexure-17 to the writ petition and the reply dated 24.4.2004 made by the petitioner in this regard. The petitioner has alleged that he was not supplied any copy of the documents which were made the basis for passing of the impugned order. It is further alleged that the forest officials as well as the District Magistrate wrote letters for collecting Information with regard to ascertain the fact as to whether the area of the mining lease fell within the notified sanctuary area or not.

17. Reliance has also been placed upon a survey report dated 30.4.2004 as also the letter of the District Magistrate dated 19.5.2004 on the basis whereof it is contended that the State Government itself was still collecting Information for the purposes of ascertaining the fact of the boundaries of the sanctuary and that the State Government itself did not have any information while passing the impugned order in this regard.

18. Shri Dwivedi has further raised a contention that in view of the fact that the lease was granted on 12.3.2003, i.e., prior to the amending Act which came w.e.f. 1.4.2003, the rights of the petitioner under the mining lease could not be curtailed retrospectively as the amended Section 29 came to be enforced w.e.f. 1.4.2003, i.e., after the lease had already been granted to the petitioner. He has further submitted that even assuming for the sake of argument that Section 29 as amended on 1.4.2003 is pressed into service, still the words "forest produce" would not cover the mining operations of the petitioner inasmuch as the operation of the mining area of the petitioner was not within a forest as defined in Sub-clause (B) of Clause 4 of Section 2 of the Indian Forest Act, 1927. He has further contended that even after the coming into force of Section 29, there is no finding in the impugned order that the mining activity of the petitioner in any way tends to destroy, damage or divert the habitat of any wild life whatsoever and, therefore, the State Government fell in error by cancelling the lease invoking powers under Section 29 of the Wild Life (Protection) Act, 1972. The contention in essence is that there is no bar under the Wild Life (Protection) Act, 1972 which prohibits the petitioner from carrying out mining operations in view of the facts stated in the writ petition and the aforesaid contentions. The submission on behalf of the petitioner is that the lease could not have been cancelled without ascertaining the fact as to whether the area was within the notified sanctuary area or not and as to whether the

petitioner could be prohibited under the provisions of the Act, that too even without providing any proper opportunity in this regard and after considering the material as indicated hereinabove.

19. To further buttress his submission on the question of lapses on the part of the respondent-State Government while determining the lease of the petitioner, Shri Dinesh Dwivedi has relied upon the decision in the case of Essar Oil Ltd. v. Halar Utkarsh Samiti and Ors., JT 2004 (2) (SC) 210, on the strength whereof it is urged that there is no absolute prohibition under the Wild Life (Protection) Act, 1972 on mining operation and further that the same requires determination in accordance with law which according to him has not been done by the State Government in the present case.

20. In response to the submission made by the petitioner, the learned standing counsel Shri Sanjai Goswami has placed reliance on 3 decisions in Order to persuade the Court to hold that the activities for which the petitioner has made a prayer for permitting him to carry inside the area of the sanctuary are impermissible in view of the objects and reasons of the Wild Life (Protection) Act, 1972 and the activities would be in clear teeth of the provisions thereof and further the petitioner has no right whatsoever to claim the continuance of mining activities over the land in question. The decision relied upon by the learned counsel for the respondents are Pradeep Krishen v. Union of India and Ors., AIR 1996 SC 2040 (paragraphs 13 to 16) in particular, Nagar Palika Parishad, Mussorie v. State of U.P. and Ors., AIR 1998 All 232, and T.N. Gondavarman Thirumalpad v. Union of India and Ors., 2002 (7) Supreme 620.

21. Apart from the said decisions, the learned standing counsel has also relied upon the very same decision as cited on behalf of the learned counsel for the petitioner in the case of Essar Oil Ltd. (supra) with special reference to paragraphs 30 to 37 of the said decision.

22. Shri Goswami has urged that mining cannot be permitted without the prior permission of the wild life authorities and in the instant case since no permission was even sought ; the order impugned is perfectly Justified and does not deserve any interference. He has further urged that there is a complete bar to accrual of any right whatsoever including the mining rights,'which cannot be even granted by the State Government inside the sanctuary. In response to the argument on the applicability of the amended Section 29 Shri Goswami asserts that even though the words "forest produce" came to be added w.e.f. 1.4.2003, yet in the absence of any. permission from the wild life authorities for either entering into the sanctuary or carrying out any such activity inside the sanctuary, the petitioner could not have been allowed to operate the mining lease. Shri Goswami insists that the State Government itself has no power to create any such right and further asserts that after Section 29 was amended, the list could not be allowed to operate on that ground as well inasmuch as the terms and conditions of the lease clearly provide that the lease was being made subject to any provisions of law that would limit prospects of any future mining. In other words he contends that the future mining operations by the petitioner after 1.4.2003, were clearly prohibited and such provision would apply to the petitioner as well in view of the limitations imposed in the lease deed itself.

23. Shri Dwivedi, in the rejoinder-affidavit, has submitted that for the purpose of finding out as to whether the area lay within the sanctuary or not, the State Government was itself not clear about the same as is evident from the correspond ence that has ensued between forest authorities, district officials and the State Government and secondly the orders have been passed without deciding the Issue as to whether the area is within the sanctuary or not and without considering the aforesaid objection of the petitioner. He further contends that there was no material available before the State Government to arrive at the conclusion that the area fell within the sanctuary area and even if that be so the words "forest produce" could only be pressed into service for deciding the issue in the event the said produce was within the forest area as defined in Section 2(4)(b) of the Indian Forest Act, 1927 which is quoted hereinbelow :

"2 (4) (b) the following when found in, or brought from, a forest, that is to say--

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

- (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,
- (iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and
- (iv) peat, surface soil, rock and minerals (including lime-stone, late rite, mineral oils, and all products of mines or quarries);"

24. Upon having examined the rival contentions, the controversy has to be decided keeping in view the objects and reasons of the Wild Life (Protection) Act, 1972 :

THE WILD LIFE (PROTECTION) ACT, 1972

INTRODUCTION

The rapid decline of wild -animals and birds in India has been a cause of grave concern. Some wild animals and birds have already become extinct in the country and others are in the danger of being so. Areas, which were once teeming with wild life, have become devoid of it and even in Sanctuaries and National parks the protection afforded to wild life needed to be improved. The Wild Birds and Animals Protection Act, 1912 (8 of 1912) had 'become completely outmoded. The existing State laws were not only outdated but provided punishments which were not commensurate with the offence and the financial benefits which accrued from poaching and trade in wild life produce. An urgent need for introducing a comprehensive legislation, which would provide protection to wild animals and birds, was felt by the Government. But the Central Government had no power to make a law In this regard as the subject-matter relating to entry 20 of the State list in the Seventh Schedule. Different State Legislatures also found that the State laws were not adequate to deal with the matter effectively. The Legislatures of the States of Andhra Pradesh. Bihar, Gujarat, Haryana, Himachal Pradesh,

Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal passed resolutions empowering Parliament to pass the necessary legislation on the subject. Accordingly the Wild Life (Protection) Bill was introduced in the Parliament.

Statement of Objects and Reasons

The rapid decline of India's wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this country and others are in the danger of being so. Areas, which were once teeming with wild life, have become devoid of it and even in Sanctuaries and National Parks the protection afforded to wild life needs to be improved. The Wild Birds and Animals Protection Act, 1912 (8 of 1912), has become completely outmoded. The existing State laws are not only outdated but provide punishments which are not commensurate with the offence and the financial benefits which accrue from poaching and trade In wild life produce. Further such laws mainly relate to control of hunting and do not emphasise the other factors which are also prime reasons for the decline of India's wild life, namely, taxidermy and trade in wild life and products derived therefrom.

2. Having considered the relevant local provisions existing in the States, the Government came to the conclusion that these are neither adequate nor satisfactory. There is, therefore, an urgent need for introducing a comprehensive legislation, which would provide for the protection of wild animals and birds and for all matters connected therewith or ancillary and incidental thereto.

3. Legislation in respect of the aforesaid subject-matters relatable to entry 20 of the State List in the Seventh Schedule to the Constitution, namely, protection of wild animals and birds and Parliament has no power to make a law in this regard applicable to the State (apart from the provisions of Articles 249 and 250 of the

Constitution) unless the Legislatures of two or more States pass a resolution in pursuance of Article 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject. The Legislatures of the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal have passed such resolutions.

4. The Bill seeks to--

- (a) constitute a Wild Life Advisory Board for each State ;
- (b) regulate hunting of wild animals and birds ;
- (c) lay down the procedure for declaring areas as Sanctuaries, National Parks, etc.;
- (d) regulate possession, acquisition or transfer of, or trade in wild animals, animal articles and trophies and taxidermy thereof;
- (e) provide penalties for contravention of the Act."

(The aforesaid quotation has been extracted from pages 1 and 2 of the Wild Life (Protection) Act, 1972, published by Universal Law publishing company).

25. Apart from the aforesaid objects and reasons, the Apex Court In the decision of Pradeep Krishen (supra) in paragraph No. 15 has ruled as under :

"15, Now as pointed out earlier, since Parliament had no power to make laws for the States except as provided by Articles 249 and 250 of the Constitution, the States were required to pass resolutions under Article 252(1) to enable Parliament to enact the law. After as many as 11 States passed resolution to that effect, the Act came to be enacted to provide for the protection of wild animals and birds and for matters . connected therewith or ancillary or inserted in the Constitution by the 42nd Amendment oblige the State and the citizen, respectively, to protect and improve, the natural environment and to safeguard the forest and wildlife of the country. The statutory as well as the constitutional message is therefore loud and clear and it is this message, which we must constantly keep in focus while dealing with issues and matters concerning the environment and the forest area as well as wildlife within those forests. This objective must guide us in interpreting the laws dealing with these matters and our interpretation must, unless the expression or the context conveys otherwise, sub serve and advance the aforementioned constitutional objectives. With this approach in mind we may now proceed to deal with the contentions urged by parties."

26. Keeping in view what has been stated hereinabove, it is clear that mining activities or for that matter any other activity which is detrimental in any way to the protection of wildlife is prohibited unless permitted in accordance with the provisions of the Wild Life (Protection) Act. The limitation put forth under the Act are stringent enough to prevent any activity in the name of economic development except with the permission of the wildlife authorities and appropriate orders from the State Government. However, in order to strike a balance between the two, i.e., the protection of wildlife and carrying out any such activity which is not detrimental to wildlife, what has to be seen is as to whether the activity so permitted ends up in irreparably and irreversibly putting an end to wildlife. The words used in Section 29 of the Act also go to further indicate that any activity which may cause damage or divert a habitat of any wildlife or such activities also stand prohibited unless there is a permit granted by the Chief Wild Life Warden. The permission has to be granted after a satisfaction is recorded by the State Government in consultation with the State Government Board for wildlife as constituted under the said Act. There is a further provision for constitution of an Advisory Committee by the State Government which may also make recommendations for the protection of wildlife. While considering the effect of the aforesaid provisions, the Apex Court in the case of Essar Oil Ltd. has Indicated that ample precaution should be taken before any such permissions are granted, after getting the

matter assessed from the wild life authorities and experts in this field. In essence the Apex Court had issued directions that it is a question of fact to be determined in each case and the State Government will have to come to the conclusion that the proposed activities should result in, the betterment of and not in any way detrimental to wild life, before it can be allowed.

27. The Apex Court in the aforesaid decision has indicated as to how the Government will have to balance the conflicting interest of economic development on the one hand and ecology and wild life on the other, The relevant paragraphs of the said decision are paragraphs No. 25 to 32, 35 and 36 which in the opinion of this Court puts at rest the question of interpretation of the provisions of the Wild Life (Protection) Act and the manner in which it should be construed by the respondent-State Government.

28. From a perusal of what has been stated above, it is apparent that certain activities can be permitted even inside the sanctuary but not without a permit. Prior to 1.4.2003, i.e., prior to the amendment of Section 29, the permission was required with regard to entry in any sanctuary and carrying out any other activity. After the amendment some more prohibitions have been specifically imposed including removal or exploitation of forest produce. The power conferred on the wild life authorities to grant a permit is to be exercised which subserves the Interest of protection of wild life.

29. The aforesaid position will have to be taken into consideration by the State Government in the light of the controversy presently involved on the banks of river Sone. Thus, the State and its authorities, are in law, obliged to objectively assess all such factors which may arise for consideration of permitting any activity in a wild life protected area. The aforesaid exercise as would be evident from the facts of the case have, in our opinion, not been undertaken in the manner prescribed by law.

30. The submission of Shri Dwivedi is to the effect that even assuming that amended Section 29 was applicable, the mining activities of the petitioner for excavating sand would not fall within the definition of forest produce inasmuch as the plots over which mining operations are being carried out are not within the forest as per the definition contained in Section 2(12)(b) of the Wild Life Act read with Section 2(4)(b) of the Indian Forest Act, 1927. To support the aforesaid submission, Shri Dwivedi has relied on the counter affidavit filed on behalf of the State as also the communication brought on record to indicate that the area in which the mining operations are being carried out is not a forest area and, therefore, the mining of minerals by the petitioner do not fall within the definition of "forest produce". A perusal of the impugned orders would indicate that there has been no adjudication on this aspect as well in order to ascertain whether the plots are situate within the forest area or not. The State Government and the District Magistrate has simply recorded conclusions presuming that the activities are in violation of the aforesaid provisions unsupported by any material in the orders impugned or applying mind to the aforesaid aspect of the matter. It is apparent from the pleadings that what is sought to be contended before this Court on affidavit, was not considered by the State Government or by the District Magistrate while passing the impugned orders. The objections of the petitioner in this regard which are Indicated hereinabove to the effect that the mining area was not within the sanctuary has also not been adjudicated after collecting material and providing proper opportunity to the petitioner in this regard.

31. The essence of dispute in the present case relates to the core question, as to whether the mining lease of the petitioner is within the sanctuary limits or not. As noted in para 7 of this judgment and as is evident from the perusal of Annexure-7 to the

supplementary-rejoinder-affidavit, it prima Jade appears that the entire area of the 2 villages is not within the sanctuary area. The State Government even before passing of the orders had sought information and the Information was still in the process of being collected and placed before the State Government to verify the actual physical position of the area of mining operations situate in the two villages presently Under dispute. The State Government does not appear to have taken any of these factors into consideration so as to exactly locate the area of mining operations of the petitioner and fix the identity of the land either within or outside

the sanctuary area.

32. The respondent-State Government as well as the respondent-District Magistrate both have passed the orders impugned on the basis of the report dated 24.2.2004, which Itself was prepared ex parte to the petitioner and had been pressed into service without notice or opportunity to the petitioner on that score. The show cause notice, which was issued to the petitioner on 8.4.2004, did not include any details nor any material was supplied to the petitioner which formed the basis of the show cause notice as also the report dated 24.2.2004. The directions of the State Government, as contained in the letter of the Secretary dated 7.4.2004, has been mechanically reproduced in the order dated 21.5.2004, without applying mind and without recording any cogent reasons. The order dated 21.5.2004 being in violation of the principles of natural justice is, therefore, unsustainable. Since the Order dated 29.5.2004, passed by the District Magistrate is equally bad in law, the same also deserves the same fate.

33. The submissions of Shri Dwivedi to the effect that the determination to be made by the State Government is quasi-Judicial in nature has to be accepted. The grant of mining lease and the subsequent cancellation thereof is governed by the provisions of the Minor Mineral (Concession) Rules, 1963, The power to cancel a lease necessarily implies the adjudication of the rights of the petitioner and, therefore, the power exercised by the State Government is of a quasi-judicial nature and is not merely an administrative power. The authorities cited by the learned counsel for the petitioner clearly support the aforesaid submissions. Reference may be had to AIR 1952 SC 16 and AIR 1962 SC 1110. The authority, which has to decide the matter, has also to exercise the jurisdiction independently and has not to proceed simply on the behest of any report or direction of any other authority. The facts of the instant case clearly lead to the conclusion that decision making process has been concluded hastily without complying the provisions of natural justice and without applying mind in correct perspective and recording adequate and cogent reasons. Therefore, the contention of the learned counsel for the petitioner that the impugned orders are in violation of the principles of natural justice has to be accepted.

34. The contention of the learned standing counsel to the effect that the State Government itself is prohibited from issuing any such permit of mining leases has also to be countenanced. It is to be noted that once an area is declared to be within a sanctuary, no such activity, as in the present case, can be permitted except without a permit from the wildlife authorities and the State Government under the Wild Life (Protection) Act.

The Wild Life (Protection) Act being a special Act is clearly intended to have over-riding effect in so far as it relates to the activities prohibited under the said Act. This necessarily means that a mining lease or permit granted Under the Minor Mineral (Concession) Rules is subject to permission being granted under the Wild Life (Protection) Act, 1972, provided the area within which the mining operations are to be carried out are within the territorial limits of the sanctuary. The State Government to this extent, has limited powers to grant mining leases and permits under the Minor Mineral (Concession) Rules, 1963 and related laws, subject to the limitations as indicated under the Wild Life Protection Act.

35. The State Government has also not considered this aspect of the matter as to what are the nature of rights, which are being claimed by the petitioner. In our opinion, a perusal of Section 20 of the Wild Life (Protection) Act, 1972 would indicate that the bar of accrual of rights does not completely prohibit activities on the basis of such rights, which are permissible upon a permit being granted Under the Wild Life (Protection) Act, 1972. The suggestion of the learned standing counsel that the State Government is absolutely denuded of powers to confer such rights as is involved in the present case cannot be accepted. The silting and accumulation of excessive sand and clay in river beds can cause flooding of rivers resulting in ecological imbalance. Such a situation has also to be taken Into consideration while interpreting the provisions of grant of permit for activities that are beneficial for the protection of wildlife. It is not for this Court to decide as to whether the mining activities of sand in the area concerned are beneficial or detrimental to the protection of wildlife. It is for the State Government to objectively assess such a situation after consulting the wildlife authorities and after Judging the viability of grant of such permits strictly in accordance with the provisions of the Wild Life

(Protection) Act, 1972. In the considered opinion of this Court, permission to carry out such activities has to be necessarily and compulsorily modulated in accordance with the Wild Life (Protection) Act and for that matter the consultative process as well as the decision making process both have to include the officials Under the Wild Life (Protection) Act, 1972.

36. The contention of the learned standing counsel that the grant of mining lease in favour of the petitioner was void and completely impermissible, as being totally prohibited cannot be accepted in view of the findings arrived at hereinabove. However, one of the arguments advanced by the learned counsel for the petitioner to the effect that the provisions of Section 29 as amended on 1.4.2003 cannot be pressed into service for terminating the lease dated 12.3.2003 of the petitioner as there cannot be any retrospective effect given to the said provisions also cannot be accepted for the following reasons.

Firstly clause 6 of the lease deed clearly imposes restriction and the lease is hedged by limitations as contained in the deed itself. Thus, it cannot be said that the petitioner is at liberty to operate the lease unconditionally in spite of the enforcement of the provisions of Section v amended on 1.4.2003 whereby the words "forest produce" were introduced in Order to curtail mining operations in a protected area under the Act.

Secondly Rule 41 of the Minor Mineral (Concession) Rules, 1963 with special reference to Sub-rule (g) would leave no room for doubt that the petitioner is under legal obligation not to carry out any mining operation which may result in any imbalance of ecology. The Government in such a situation has been conferred with the power to terminate the lease prematurely.

Thirdly the introduction of the amended provisions of Section 29 whereby mining of forest produce was prohibited is a substantive piece of legislation which has been enforced with immediate prohibitory effect. A lease or contract of the said nature has to be in consonance with the said provisions. The contention of the learned counsel for the petitioner, that the existing rights as under the lease cannot be interfered with, is not acceptable inasmuch as the binding force of law is sufficient to limit the said existing rights even in an existing contract. In case the argument of the petitioner is accepted, the same would clearly amount to permitting the petitioner to continue mining operation in defiance of law under the Wild Life (Protection) Act. Such a situation cannot be permitted. The question as to whether a contract would frustrate in such a situation or not has been dealt with by the Apex Court in the case of Satyabrata Ghose v. Mugneeram Bangur and Co. and Anr., AIR 1954 SC 44.

In the instant case, the contract of lease stands temporarily suspended so long as the authorities do not take a decision in the light of the observations made in this judgment keeping in view the provisions of the Wild Life (Protection) Act. Section 29 in its amended form would apply with full force to the existing lease of the petitioner in view of what has been stated hereinabove. In case the wildlife authorities chose to grant permission, the petitioner will be at liberty to operate the mining lease for the period of its subsistence. The lease of the petitioner does not confer any unlimited rights to continue mining operation and in the considered opinion of the Court is hedged with the limitation as explained hereinabove. The petitioner, therefore, cannot be permitted to operate the lease in defiance of Section 29 as amended w.e.f. 1.4.2003. Thus, the contention that the provisions of Section 29 will not have retrospective operation appears to be misplaced and the said contention deserves to be rejected for the reasons stated hereinabove. Even the State Government per force of law has to condition the lease accordingly and the lease deed has to be interpreted keeping in view the amended provisions of the Section 29 of the Act.

37. The contention on behalf of the petitioner that in order to determine as to whether such an activity can be permitted or not, the lease has to be in existence or else there cannot be any consideration of the proposed mining activities under the lease by the wildlife authorities. The contention of the petitioner to some extent is correct that rights of the petitioner can only be considered and adjudicated under the Wild Life (Protection) Act, 1972 only if there is a valid subsisting lease. However, this aspect of the matter has also to be kept in

mind that whether the petitioner can be permitted to operate the mining lease or not is yet to be adjudicated in view of the findings recorded hereinabove. In view of this, the petitioner cannot be permitted, in our considered opinion, to operate the mining lease unless and until the exercise is undertaken by the respondents and decisions arrived at in the manner indicated hereinabove and also keeping in view the law laid down by the Apex Court in the case of Essar Oil Ltd. (supra).

38. In view of what has been concluded hereinabove, we refrain from quashing the orders initially challenged in the writ petition, i.e., the Orders dated 16.5.2004 & 17.5.2004, by which the petitioners had been restrained from transporting the mining material excavated by them from the forest ranges as indicated in the said Order. In our opinion unless and until the State Government defines the limits of the sanctuary as per the notification of 1982 and unless and until findings are recorded in the light of the provisions of the Wild Life (Protection) Act, 1972 and the directions contained hereinabove, it would not be appropriate to permit the petitioners to continue their mining operations.

39. Accordingly, we direct that the petitioners shall not be permitted to carry out their mining operations and transportation thereof unless and until the matter is decided by the respondent as Indicated herein.

40. The writ petition, therefore, succeeds partly and the Orders dated 21.5.2004 and 29.5.2004 passed by the State Government and the District Magistrate respectively are hereby set aside. The State Government shall now proceed to investigate and decide the issues raised by the petitioner. Since the notification of 1982 has been issued by the State Government, it is the State Government which has to ascertain the boundaries of the sanctuary as defined Under the said notification. However, this exercise shall be undertaken by the State Government in consultation with the Chief Wild Life Warden and the Advisory Board in this regard. This direction is being issued because of the reason that the boundaries of a declared sanctuary cannot be altered except with the prior concurrence of the Central Government as Is evident from the provisions of Section 35 of the Wild Life (Protection) Act. The State Government and the other authorities under the Wild Life (Protection) Act shall abide by the boundaries under the notification in view of the provisions of the Sub-clause (2) of Section 18 of the Wild Life (Protection) Act. 1972 read with the explanation thereunder. The aforesaid exercise shall be completed within a period of 6 weeks. In case it is found that the plots in question are within the sanctuary limits then the petitioners shall be obliged to seek permits under the Wild Life (Protection) Act from the Chief Wild Life Warden.

41. The writ petition succeeds partly to the extent indicated hereinabove and is allowed subject to the directions contained herein. The Secretary, Audyogik Vikas Anubhag-5 is directed to reconsider the entire matter In the light of the directions contained in this judgment and pass a fresh order within a period of 6 weeks from the date of presentation of the certified copy of this order after giving opportunity of hearing to the petitioner in accordance with law,

42. The writ petition is partly allowed. No order as to cost.