

PETITIONER:
RURAL LITIGATION AND ENTITLEMENT KENDRA AND ORS.

Vs.

RESPONDENT:
STATE OF U.P. AND ORS.

DATE OF JUDGMENT 04/05/1990

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
SAWANT, P.B.
RAMASWAMY, K.

CITATION:
1990 SCR (3) 72 JT 1990 Supl. (2) 391
1990 SCALE (1) 97

ACT:
Constitution of India, 1950: Article 32--Doon Valley--Loss caused to ecology--Mining operations to stop--No petition to be entertained by Registry.

HEADNOTE:

Disposing of on 30.8.1988 Writ Petitions Nos. 8209 and 8821 of 1983 this Court had come to the conclusion that the entire mining operation in the Doon Valley should come to a halt excepting in the case of a selected few, for reasons indicated in that order. Since then from time to time several applications had been moved by the ex-lessees seeking permission for removing the stacked material or extension of time for appropriating the mined material. In allowing or rejecting each such application this Court has been expressing itself clearly that the Doon Valley should be made available for afforestation to make good the loss caused to the ecology.

By today's order while disposing of all the pending applications including one fresh Writ Petition in the light of the report of the Monitoring Committee appointed by this Court, the Court,

HELD: No application either for original permission or for extension of time shall hereafter be entertained by this Court and the Registry is directed by this order not to entertain such petitions. It may be that such direction may affect some one who has not been vigilant or has on account of some other difficulty or hardship not been able to remove the stacked material within his leasehold area in the Doon Valley; but taking the broad interest of the entire Valley into account such individual losses or inconveniences have to be sacrificed and/or overlooked and equities can no longer be allowed to be invoked. [76A-B]

A detailed report on the afforestation scheme may now be placed by the Monitoring Committee by 30th June, 1990 for consideration of the Court on 23rd July, 1990. The rehabilitation scheme which has already been furnished by the appropriate committee should also be

73
placed before the Court for orders on the said date. [80B-C]

JUDGMENT:

ORIGINAL JURISDICTION: I.A. Nos. 1, 3 and 10 of 1989 and 12 of 1990.

IN

Writ Petition (C) No. 8209 of 1983 etc.

(Under Article 32 of the Constitution of India).

V.A. Bobde, V. Gauri Shankar, M.K. Ramamurthy, Prashant Bhushan, T. Sridharan, Ms. Shobha Dixit and M.A. Krishna-murthy for the Petitioners.

Ms. Anil Katiyar, Ms. A. Subhashini R.P. Srivastava (NP), Promod Dayal, R.B. Mehrotra and Raju Ramachandran for the Respondents.

The Order of the Court was delivered by

RANGANATH MISRA, J. On 30th of August, 1988, while disposing of two writ petitions being Nos. 8209 and 8821 of 1983, this Court came to the conclusion that the entire mining operation in the Doon Valley should come to a halt. With a view to effectuating this conclusion all mining activity was directed to be stopped excepting in the case of a few for reasons indicated in that order.

Several applications thereafter came before this Court for permission to remove stacked material and almost for one and a half years now, many rounds of such applications have been filed before this Court which have led to inquiries being made by executive authorities, a joint inspection by the District Judge and the District Magistrate as also separate reports from the Monitoring Committee appointed by this Court. After hearing parties in some cases the court has granted permission for removal and extended time for appropriating the mined material. On the plea that within the time given by the Court removal was not possible, fresh extensions of extended dates have also been asked for.

At one stage, the Monitoring Committee reported that taking advantage of such extensions further mining was being illegally undertaken. The Monitoring Committee also pointed out that where the

74

mined material was spread over it had consolidated and grass as also other vegetations have started growing. In these circumstances, while either allowing or rejecting the applications for removal or extension or allowing removal under restrictions, this Court has been expressing itself clearly that the Doon Valley should be made available for afforestation to make good the loss that had been caused to the ecology and that work should no longer be interfered with.

A fresh set of applications have now been made for permission to remove the mined material, machinery and/or extension of time for the same. This Court had called for a report on the basis of joint inspection by the District Judge and the District Magistrate of Dehradun and after the said report was received, the Monitoring Committee has made its report on the basis of this Court's direction. A group of these applications had been heard on 12th of February, 1990, but as some other applications remained to be disposed of on the basis of the report of the Monitoring Committee which was yet to be received, no orders had then been made. The Monitoring Committee sent its report dated 6th of April, 1990, and the other group of applications which were then pending have in the meantime been heard on 26th of April, 1990. We proceed to dispose of all the pending applications by this order.

We have considered the submissions with some amount of anxiety particularly as we are of the definite view that the

Doon Valley should be left free to the planters for reafforestation and the mine-owners should be put out in every respect of the same. Two or three aspects have, however, to be borne in mind while dealing with a case of this type. Mining was stopped by our order all of a sudden within a month from 30th of August, 1988. Though fresh mining is stopped, mined material which had been appropriated by the mine-owner by his own efforts should ordinarily be allowed to be taken by him. There is no doubt that the mined material has been loosened from the original place by digging and even if it is allowed to be stacked, consolidation of such material is bound to take quite some time and within one year it is not likely to consolidate appropriately. The mined material has a market and with the closure of the mining operation substantially in the Doon Valley, this material seems to have been fetching good price as there is demand for the same. When mining was stopped, no compensation was provided and the only hope our order held out was rehabilitation.

At this stage, it is appropriate to extract a portion from the letter

75

Of the Chairman of the Monitoring Committee dated April 6, 1990, addressed to the Registrar of this Court. The Chairman is no other than the Secretary to the Government of India in the Ministry of Environment and Forests. He has pointed out: "The Committee would seek the indulgence of the Court to submit to the Hon'ble Justices that the areas ravaged by these mines including the roads leading to the mine areas are in immediate need of afforestation to consolidate the soil and prevent soil erosion. Permission granted to the miners will inevitably delay the process of afforestation and will destroy any natural vegetation that has come up along the roads and the mine areas since the last monsoon. Shri David Paul (Lease No. 99) in fact broke several check dams in the process of lifting material taking advantage of this Court's orders granting him permission to remove quarried material. The process of afforestation of these areas cannot even be started as long as various applications of these miners for removal of material are pending before this Hon'ble Court. It is humbly submitted that this Court must, therefore, once and for all, put an end to such applications, in order that the Monitoring Committee may vigorously take up the task of afforestation of these areas."

We can quite appreciate the anxiety of the Monitoring Committee that initial permission and extension of time for removal has disturbed afforestation. The Monitoring Committee must, however, appreciate that the enthusiasm which it is prepared to exhibit has to be sobered down in the initial period by such judicial directions as are called for taking the cause of equity and justice into consideration.

Even in such of the cases where permission or extension for removal would be granted now, we are of the view that the mine-owners should not be permitted to operate and the District Magistrate should set up a machinery under his control and subject to the supervision of the Monitoring Committee to enable removal. We do not propose to allow the process of removal to continue beyond 15th of June, 1990. The process of afforestation for the year would begin only by that time awaiting the onset of the monsoons. The ex-lessees in whose case original or extended orders permitting removal would now be made have, therefore, to contact the District Magistrate within one week of this order and the District Magistrate would work out removal on appropriate payment from the respective areas of the ex-lessees of

76

the extracted material as mentioned in this Court's order of today on or before 15th of June, 1990. We make it clear that no application either for original permission or for extension shall hereafter be entertained by this Court and the Registry is directed by this order not to entertain such petitions. It may be that such direction may affect some one who has not been vigilant or has on account of some other difficulty or hardship been not able to remove the stacked material within his leasehold area in the Doon Valley; but taking the broad interests of the entire Valley into account such individual losses or inconveniences have to be sacrificed and/or overlooked and equities can no longer be allowed to be invoked.

B

INTERLOCUTORY APPLICATIONS IN DISPOSED OF WRIT PETITION NO. 8209 OF 1983

1. A. NO. I OF 1989

This application is by the former lessee of lease No. 16--Ved Pal Singh Chaudhary. The mine closed down on 30th of September, 1988 in terms of this Court's direction dated 30.8.1988. The first report on the record is dated 18th of February, 1989, jointly given by the Additional District Magistrate, Dehradun, D.P. Sharma, Geologist of Dehradun and the Forest Range Officer, Mussoorie. This report indicated that limestone extracted was found lying scattered in different marble pits and also heaps of different shapes. The estimated quantity in the heaps appeared to be 11,500 metric tons. This Court permitted removal of the mined material and the report of the Monitoring Committee shows that between March and May, 1989, with extensions obtained from the Court, 11,539 metric tons have already been removed.

The joint inspection report of the District Judge and the District Magistrate has indicated that there was no fresh mining in the area after 30th of August, 1988, and it appeared that the scattered material had been collected and removed while the stack has remained untouched. The present petition is for removal of the stack which is claimed to be more than 11,000 metric tons.

The Monitoring Committee on the basis of the fact that 11,539 metric tons had been removed has assumed that there must have been fresh mining to justify the presence of the stack. It has also indicated in the report that there is no danger whatsoever of any scree or stacked

77

material rolling down and affecting and choking the streams. According to the Committee, giving fresh opportunity for removal would encourage illicit mining and several mine-owners are likely to carry on that clandestinely. Keeping the two reports in view, -we are inclined to hold that there has been no fresh mining and the stack now found is the old one; it would not be appropriate to assume that the stack has consolidated nor is it possible that the vegetation on such a stack would grow within a year. For the reasons we have already indicated earlier we think it appropriate that ex-mine-owner of lease No. 16 should be permitted to have the existing stacked material of 11,500 metric tons removed from the leasehold area but the same shall be through the agency set up by the district Magistrate on terms of payment and the removal shall be completed on or before the 15th June, 1990. It is made clear that the removal shall be supervised by the Monitoring Committee.

1. A. Nos. 3 and 10 of 1989 and 12 of 1990

These are applications made on behalf of Punjab Lime & Limestone Company for extension of time for lifting the

mined material lying in the first two lease areas held by the aforesaid lessee and for original permission for the lease No. 96. Under the final order of this Court dated 30th August, 1988, [1988 3 JT 787] in Paragraph 51 of the decision three mines including lease No. 96 valid up to 12.12.1989 were permitted to work. Therefore, mining activity in respect of lease No. 96 must have stopped after 12th December, 1989. The joint inspection report of the District Judge and the District Magistrate indicated that 2,269 metric tons of material were lying at the face of the mine in lease No. 14/ii while in regard to lease No. 14/i there was no material found and the scattered scree was reported to have totally stabilised. The Monitoring Committee has opposed removal from lease No. 14/ii by saying that permission to remove had been given and utilised. We are of the view that the petition in regards to lease No. 14/i should be rejected in view of the concurrent reports of the joint inspection and the Monitoring Committee that the scree has already consolidated. So far as 2,269 metric tons from lease No. 14/i are concerned there is no particular reason to take a different view and we direct that the same shall be removed through the machinery set up by the District Magistrate upon payment of the cost by the ex-mineowner. This removal shall also to be made prior to 15th June, 1990.

Lease No. 96 closed down operations on 12th December, 1989. 5000 metric tons of limestone are claimed to have been scattered over

78

the area and reliance is placed upon the rule permitting six months' time from the date of closing for removal of such material. 'The Monitoring Committee has reported that there was no scree lying on the leased area. It found that there is some scattered material on the surface of the mine which cannot conveniently be stacked up. Since this is the first application of the ex-lessee after the mining has been closed, we would have directed the Monitoring Committee to make a fresh inspection in the presence of the ex-mine-owner but in view of the clear report that there was no stacked material found by the Monitoring Committee and the further fact stated in the report that the scree has already consolidated even during the currency of the mining lease, we do not think it will be appropriate at this stage to permit any removal. The petition is accordingly dismissed.

1. A. Nos. 5 and 6 of 1989

This petition is by the legal representatives of C.G. Gujral who as lessee of lease No. 76. The first petition is for substitution of his legal representatives. It is allowed. So far as the second one is concerned, the legal representatives of Shri Gujral, ex-mine-owner requests for permission for removal of the extracted mineral as also some machine parts from the leasehold area. At the instance of Shri Gujral this Court on 30.1.89 had made the following order:

"Heard learned counsel in C.M.P. for permission to remove the mining material already lying at the quarry site. Subject to the verification by the Collector either personally or by a responsible officer that the allegation is correct, removal may be permitted. The entire stock either near the quarry or stocked in the stacking site should be removed within four weeks from the day permission is granted

It is alleged that soon after on 18th September, 1989, C.G. Gujral, original mine lessee died and his legal representatives had instituted a suit. The suit has now been dismissed by a separate order of this Court and interim relief granted has also been vacated. This petition filed in

July, 1989, seeks permission for removal of the stacked material and for permission to remove the machinery which comprises of compressors and tools said to be lying at the mine-site. The joint inspection report indicates that the mine site was not accessible. 16 Kms. pathway had been damaged and even walking was not possible. If we permit the roadway to be repaired, there is apprehension of

79

damage to the land in the locality. If the work is left to the legal representatives of the ex-mine-owner they are likely to collect material for the purpose of repair which would definitely affect the ecology. Yet there are valuable machines apart from the mined material to be collected. We leave it to the Collector and the Monitoring Committee to find out if by some convenient path or any other process by which the machinery and the mined material can be moved out. The legal representatives of the ex-mine-owner may now contact the Collector and the Monitoring Committee to find out the modality of removal and in case some convenient way is found out the stacked material and the machinery may be removed with the help of the agency of the Collector subject to the payment of the cost on or before 15th June, 1990.

C.M.P. No. 18702 of 1989

This application is by the ex lessee of lease No. 31. The joint inspection report indicates that the mining was stopped on 12th March, 1985 and there has been no fresh quarrying. The report indicates:

"Under the mining faces in the slopes and in the river beds scree and fine material were seen lying and scattered. Natural vegetation is overgrown. Plants like were growing. At some spots pine plants and furns were also found growing indicating that there is existence of humus and the already quarried material has compacted and settled binding the soil."

In this view of the matter it becomes difficult to entertain this petition at this stage; the petition is accordingly dismissed.

1. A. No. 4 of 1989

This application is by the ex-lessee of mine No. 17 asking for permission for removal of already extracted mineral lying at the mine site. In the joint inspection report it has been indicated that this Court had granted some time for removal. The ex-lessee had also obtained an order from the Addl. District Judge of Dehradun. The report indicated that there was no sign of fresh mining. We have taken all aspects into account and we are of the view that this application has to be rejected.

80

C.M.P. No. 18703 of 1989

This application is on behalf of the ex-lessee of lease No. 8 for extension of time for lifting of mined mineral. The joint inspection report indicates that mining in this area was stopped as early as 12th March, 1985, and "Natural vegetation has overgrown in and around the mining faces. Considerable quarried material was lying scattered in the slopes, the quantity of which could not be ascertained or measured. The Monitoring Committee in its report dated 10.8.89 assessed that approximately 7,000 metric tons of the mining material was lying scattered in the mining area." We have no intention to permit any meddling to unsettle the settled situation. As the mining has stopped for more than five years and the report is that there has been overgrowth of natural vegetation we do not intend to permit extension of time as prayed for. The petition is accordingly dismissed.

C.M.P. 11756 of 1988

The two writ petition Nos. 8209 and 8821 of 1983 clearly relate to the Doon Valley and mining activity falling within the district of Tehri-Garhwal was not be the subject-matter of those two writ petitions. The CMP filed by the State of Uttar Pradesh is dismissed leaving it open to the State to agitate its contentions in regard to mining activity in Tehri-Garhwal separately.

W.P. No. 151 of 1990

This is an application under Art. 32 of the Constitution asking for grant of leases in respect of five mines falling within the 'A' category of the Bhargava Committee Report as also Category (1) of the Working Group Report to the Calcium Carbonate Manufacturers Association for carrying out limited mining activity to meet the essential and captive need of the Calcium Carbonate Industry. When the main writ petitions were pending, CMP 30707/87 had been filed for the self-same relief and it wanted to be impleaded in those two writ petitions. The application was rejected on 30th of August, 1988, by saying:

"From time to time, Civil Miscellaneous Petitions had been moved and orders were made. We do not see any justification to make any further order in such cases. All CMPs are disposed of."

Thereafter, the petitioner made another application for the same relief

81

but the Registry did not entertain it in view of the final order of 30th August, 1988. The present writ petition, in these circumstances, is not maintainable. That apart, this Court had come to the conclusion on 30th of August, 1988, that mining activity in the Doon Valley area must ultimately stop. The Court has taken into consideration the need for availability of minimum supply of the mineral in question and to make available such supply, controlled and regulated mining activity has been permitted. Mining leases are not granted by this Court and in view of the conclusion already reached that no fresh mining activity should be carried on, we see no justification for entertaining this writ petition. Contempt Petition No. 25 of 1989

There is already an order that the proceeding for contempt is misconceived. We do not find any justification to give any further time for lifting or removal. The contempt petition is accordingly dismissed.

1. A. No. 9 of 1989

This application is by the Monitoring Committee appointed by this Court and the prayer is to recall the order of 19th October, 1989, and to direct the State of Uttar Pradesh to sell the material and utilise the proceeds for the purposes of reafforestation and conservation. In view of the steps we have taken in the connected matters, no particular directions are necessary.

C

The only other question that is left for consideration is the recommendation of the Monitoring Committee that the payment of Rs.5 per metric ton of the extracted material fixed by this Court in 1988 should be raised to Rs.20 per metric ton. We have heard counsel for the parties. We have also perused the report and the papers produced on behalf of the lessees who are still running. We are inclined, on the materials placed, to take the view that the rate should be enhanced to Rs. 10 from Rs.5 with effect from 1st June, 1990. Since this will not have any retrospective effect the liability for such payment would be only in respect of the lessees who are running by permission of the Court given in

the main judgment of August 30, 1988.

It has been contended by some of the lessees before us that the money which has been collected on the basis of Rs.5 per metric ton has

82

not yet been utilised for plantation. We hope and trust that there is no basis for the criticism but would like to advise the Monitoring Committee to activate its steps in the proper direction.

A detailed report on the afforestation scheme may now be placed by the Monitoring Committee by 30th June, 1990, for the consideration of the Court on the 23rd July, 1990.

The rehabilitation scheme which has already been furnished by the appropriate Committee should now be placed before the Court for orders also on 23rd July, 1990

R.N.J.

Petition dis-

posed of.

83