

CASE NO.:
Writ Petition (civil) 4677 of 1985

PETITIONER:
M.C. Mehta

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 13/04/2006

BENCH:
Y.K. Sabharwal & C.K. Thakker

JUDGMENT:
J U D G M E N T
IA NO. 1785 IN IA NO. 22
IN
WRIT PETITION (C) NO. 4677 OF 1985

Y.K. Sabharwal, CJI.

The question for consideration at this stage is whether the mining activity carried out in Villages Khorl Jamalpur and Sirohi in District Faridabad in Haryana are in violation of the orders passed by this Court on 6th May, 2002. According to the State Government and leaseholders, the mining activity is carried on in an area measuring 75.05 hectares in Khorl Jamalpur and 50.568 hectares in Sirohi, totaling 125.618 hectares and it is neither in violation of the orders of this Court nor of law. On the other hand, the petitioner and learned Amicus Curiae, submit that the mining activity is in violation of the order dated 6th May, 2002 and in any case, the mining activity results in degradation of environment.

On 6th May, 2002 this Court directed the Government of Haryana to stop all mining activities and pumping of ground water in and from an area upto 5 kms. from the Delhi-Haryana border in the Haryana side of the ridge and also in the Aravalli hills. The mining activity in question does not fall within the limit of 5 kms. According to the petitioner, the limit of 5 kms. is not applicable in respect of mining in Aravalli hills in Haryana. For deciding this aspect, reference to other orders is also necessary.

An order dated 29th/30th October, 2002 was passed on considering Second Monitoring Report of the Central Empowered Committee (CEC) dated 28th October, 2002 in respect of mining in Aravalli hills. The report mentioned that Members of CEC on visiting the affected area, namely the forest areas in the Aravalli hills \026Kote and Alampur villages, found that mining operations are being carried out in the area which is forest area where plantation was made under the Aravalli Mining Programme funded by the Japan Government in early 1990s. In view of this report, order dated 29th/30th October, 2002 was passed prohibiting and banning all mining activities in the entire Aravalli hills. Further, in the order dated 31st October, 2002 it was observed that on the principle of sustainable development, no mining

activity can be carried out without remedial measures taking place. It was further noted in that order that before any mining activity is permitted, it is necessary that the environment impact assessment is done and the application for the said purpose is dealt with.

The State of Haryana filed an application (IA No. 839) and sought directions for modification and clarification of the aforesaid order dated 29th/30th October, 2002 as to whether the order would be applicable only in respect of illegal and unauthorized mining in reserve and protected forest in Aravalli hills. On 9th December, 2002, the Court while noting that the order prohibits and bans all mining activities in the entire Aravalli hills, directed the Chief Secretaries of Haryana and Rajasthan to file the compliance report.

On 16th December, 2002 aforesaid application (IA No. 839) along with other applications were considered and certain directions were issued. This order is bone of contention between the parties. According to the State of Haryana and lease-holders, mining in entire Aravalli hills was banned not on 6th May, 2002 but by order dated 29th/30th October, 2002 which was modified on 16th December, 2002. According to them, after order dated 16th December, 2002, there is no prohibition in carrying out mining activity in area in question. The relevant part of the order dated 16th December, 2002 reads as under:

"\005\005No mining activity would be permitted in respect of areas where there is a dispute of applicability of F.C. Act, till such time the dispute is resolved or approval under the FC Act is accorded, in addition to order already passed in Writ Petition No. 4677/1985.

For the present, no mining will be permitted in the areas for which notification under Sections 4 and 5 of the Punjab Land Preservation Act 1900 have been issued for regulating the breaking up of the land etc. and such lands are or were recorded as "Forest" in Government records even if the notification period has expired, unless there is approval under the FC Act.

Learned Attorney General and Solicitor General will assist the Court on the aforesaid aspects on the next date of hearing.

In respect of suggestion 7 and 8, the Union of India will respond on the next date of hearing.

The order dated 29/30th October, prohibiting and banning the mining activity in Aravalli hills from Haryana to Rajasthan is modified insofar as the State of Rajasthan is concerned to the following effect:

Wherever requisite approval/

sanctions in the said State have been obtained under FC Act and EP Act, and the mining is not prohibited under the applicable Acts or notifications or orders of the Court, mining can continue and to such mining the order aforesaid will not apply.

This order will be applicable to non-forest land covered for the period prior to the date of modification of the order dated 29th November, 1999 in the State of Haryana.

This variation will not apply to the area in the Alampur District in the State of Haryana."

The word 'Alampur District' is a mistake. It should be 'Alampur Village'.

The question is whether order dated 6th May, 2002 bans mining in the entire Aravalli hills irrespective of limit of 5 kms. Further question is whether after aforesaid order dated 16th December, 2002, can it be said that order dated 29th/30th October, 2002 entirely prohibiting mining activity in Aravalli hills continues in respect of area in question.

The significance and importance of the Aravalli hills has been noticed in M.C. Mehta v. Union of India & Ors. [(2004) 12 SCC 118]. The main question considered in that case was whether the mining activity in area upto 5 kms. from the Delhi-Haryana border on the Haryana side of the ridge and also in the Aravalli hills causes environmental degradation and what directions are required to be issued. With a view to monitor the overall restoration efforts in the Aravalli hills and to provide technical support to the implementing organizations and also to monitor implementation of recommendations contained in reports referred to in the judgment, a Monitoring Committee was constituted. The Monitoring Committee was directed to inspect the mines in question in the said case and file a report, inter alia, containing suggestions for recommencement of mining in individual cases. It was further directed that the Aravalli hill range has to be protected at any cost. In case despite stringent condition, there is an adverse irreversible effect on the ecology in the Aravalli hill range area, at a later date, the total stoppage of mining activity in the area may have to be considered. For similar reasons such step may have to be considered in respect of mining in Faridabad District as well. Since the direction was in respect of mining in Gurgaon district, this observation in respect of mining in Faridabad district was made.

We have examined the orders dated 6th May, 2002, 29-30th October, 2002, 16th December, 2002, the judgment dated 18th March, 2004 in M.C. Mehta (supra) and affidavits placed on record. It seems clear that the order dated 6th May, 2002 was confined to the limit of 5 kms. and did not prohibit mining in the entire Aravalli hills in the State of Haryana. The mining in entire Aravalli hills was prohibited and banned by order dated

29th/30th October, 2002. This order was, however, modified and clarified on 16th December, 2002. It further seems that the mining activities in the two villages in question was stopped not pursuant to the order dated 6th May, 2002 but pursuant to the order dated 29-30th October, 2002. The mines in the two villages in question were also not inspected by Environmental Pollution Control Authority (EPCA). The present question came up for consideration on filing of large number of photographs depicting the ongoing mining operations and movement of large number of trucks in the area in question. According to the stand of State of Haryana, the area totaling 125.618 hectares in the two villages in question does not fall under any category of prohibition. It is free from Sections 4 and 5 of Punjab Land Preservation Act 1900; it is not in forest area and there is no plantation with the aid of foreign funds under Aravalli project, the same having been excluded with the result that now area stand reduced from 135.70 hectares to 125.618 hectares. To this effect, Deputy Commissioner of Faridabad has filed an affidavit dated 9th February, 2006. We have no reason to doubt the correctness of the factual statements made in this affidavit. The stand of the State Government seems to be correct and it does not appear that area in question falls under any category of prohibition for carrying out mining activity. In view of above, the carrying out of mining activity in question does not appear to be in contravention of the order dated 6th May, 2002 or any subsequent order. But another aspect that remains to be examined is about impact of mining in the villages in question on environment.

From the reports and affidavits including the affidavit filed on behalf of State Government, it appears that in Sirohi and Khorji Jamalpur area, approximately 2000 trucks of metal and masonry stone operate every day but what impact it has on environment and whether necessary precautions are taken, deserves to be examined. As held in M.C. Mehta's case the risk of harm to the environment or to human health is to be decided in public interest, according to "reasonable person's test". It has been further observed that for carrying on any mining activity close to the township which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by those conducting mining operations. The mining activity can be permitted to be continued without degrading the environment or minimizing the adverse effects thereupon by applying requisite safeguards. While conducting study of environmental problems of Aravalli hills and preparation of action plan for restoration of environmental quality in Gurgaon district, the Central Mine Planning and Design Institute Limited (CMPDI), had inter alia noted that in Aravalli hills, large number of activities, operations of stone crushers and deforestation besides other activities are causing environmental degradation. These mines are usually located in the clusters in remote mineral rich districts/areas where living standards are lower and understanding of people towards environmental impact is also poor. In the past, the mine operators took no note of

environmental damage. In fact, they were not even conscious about it. The attitude of the mining community is to ignore the environmental concerns. In the majority of the cases, the environmental concerns are ignored for making quick profits. The small mines (less than 5 hectares) and the mining of minor minerals which are no doubt small individually but have damaging characteristics when in clusters, e.g. the mines of granite, marble, slates, quartzite etc. (falling under minor minerals) are no less damaging than the others, especially when the processing is taken into consideration. The mining activities results in disturbance of land surface, altering drainage pattern and land use, besides the pollution problems, which may lead to the environmental problems of air, water and noise pollution and solid waste pollution.

The CMPDI further observed that measures for protecting the environment can be undertaken without stopping mining operations. This Court, however, came to the conclusion that before permitting restart of mining in Aravalli range in Gurgaon district, having regard to the enormous degradation of the environment, the safer and proper course is to constitute a Monitoring Committee, so that a report can be obtained. After considering the report, lifting of ban imposed in terms of order dated 6th May, 2002 can be considered on individual mine to mine basis.

In the present case, however, at this stage, we do not think that merely on the basis of photographs or plying of large number of trucks per day, a direction deserves to be made for stopping the mining activity. At the same time, it is necessary to obtain an independent report to determine the impact of mining activity on environment, the safeguards, if any, that are taken and whether it is possible to continue mining by strictly complying with the requisite safeguards to save the environment from degradation and if not, to consider the issue of directions prohibiting the mining activity.

Under the aforesaid circumstances, the Monitoring Committee constituted in terms of directions in M.C. Mehta's case (supra) is directed to inspect the mining activity being carried on in 75.05 hectares in village Khorl Jamalpur and in 50.568 hectares in village Sirohi in Faridabad district and report the impact, if any, of continuing mining activity on environment and the safeguards, if any, adopted to minimize the adverse effect on environment and any other suggestions relevant to the issue of impact of mining activity on degradation of environment. The report shall be filed within three months.