

Kinkri Devi and Another Vs State of Himachal Pradesh and Others

Court: High Court of Himachal Pradesh

Date of Decision: May 29, 1987

Acts Referred: Constitution of India, 1950 Article 226, 48A, 51A

Citation: AIR 1988 HP 4 : (1988) 1 ShimLC 32

Hon'ble Judges: P.D. Desai, C.J; R.S. Thakur, J

Bench: Division Bench

Advocate: Kamlesh Sharma, for the Appellant; L.S. Panta, Dy. A.G. and K.D. Sood, for the Respondent

Judgement

P.D. Desai. C.J.

1. The petitioners have have instituted the present petition seeking the reliefs, inter alia, that the mining lease for the excavation of limestone from

Khasra No. 2107/1979/1 situate in village Sangrah, Tehsil Renuka, District Sirmaur, granted in favour of the third respondent by the first

respondent (State of Himachal Pradesh) be ordered to be cancelled, that the third respondent be restrained from operating the mines covered by

the lease in such a manner as to pose danger to the adjoining lands, water resources, pastures, forests, wildlife, ecology, environment and

inhabitants of the illaqua, that a Commission be appointed to assess the damage caused to the environment, ecology, natural resources, inhabitants

of the illaqua and the right-holders of village Sangrah as a result of the uncontrolled quarrying of the limestone by the third respondent and the

respondents be directed to pay compensation for such damage, that the State Government be directed to prepare a scheme for treating the land,

water resources, pastures, forests, wildlife, ecology and environment and for repairing the damage ef al.

2. The petition, which is in the nature of a social action litigation, was instituted on March 31, 1987 and it was notified for preliminary hearing on

April 8, 1987. The learned counsel for the petitioners was permitted on that day to place on record an article published in the daily edition dated

April 6, 1987 of the "Indian Express" under the heading "Progress or People's Nightmare" which purports to highlight the damage caused to the

Shivalik hills in the Sirmaur District which are being "ruthlessly blasted for extracting limestone" and the danger and hazards faced by the inhabitants

and the disturbance to the environment and ecology as a consequence thereof. The article is stated to have been based on an investigative exercise

undertaken by a team of journalists who visited a number of mining sites in the District. Notice was ordered to issue to the respondents on the same

day and it was made returnable on April 28, 1987. The respondents were directed to file separate affidavits-in-reply to the petition and to deal also

with the contents of the newspaper article in their affidavits. The first respondent was also directed to place on record the affidavits of the following

officers specifically dealing with the allegations made and the grievances ventilated in the petition and the facts disclosed in the newspaper report

insofar as they concerned the respective field of operation of each of them :

1. The Conservator of Forests, Sirmaur District at Nahan.
2. The Conservator of Forests (Soil Conservation), Shimla.
3. The Conservator of Forests (Wildlife), Shimla.
4. The Superintending Engineer, Irrigation and Public Health Department, District Sirmaur.

Each one of those Officers as well as the second respondent (Deputy Commissioner, Sirmaur) was directed to pay a visit to village Sangrah and to

personally verify the situation on the spot on the basis of the official record, if any, available and to report whether the allegations made in para-6 of

the petition as well as in the newspaper article were true. The Court reserved for further consideration the prayer of the learned counsel for the

petitioners to appoint a Commission to investigate and report on the matters in issue pending the filing and consideration of those affidavits.

3. The directions issued on April 8, 1987 have been substantially complied with. The affidavits as directed have been filed by and on behalf of the

respondents and reports on affidavit have been submitted by the concerned Officers after spot verification. The third respondent has filed as many

as four affidavits annexing thereto certain documents some of which, according to him, support the version set-out by him in those affidavits. Upon

a perusal and consideration of the material accordingly brought on the record, a curious picture emerges. The affidavit of the second respondent

(Deputy Commissioner, Sirmaur) and the reports of the four senior Officers of the State Government tend to reveal that the contents of the petition

as well as of the newspaper article and the apprehensions therein expressed with respect to the danger to the hilly tracts of the Sirmaur District and

to its environment, ecology, natural resources et al and to the well being of the inhabitants because of the quarrying of the limestone in the area in

what appears to be an unscientific and uncontrolled manner are true to a large extent. However, the affidavit filed on behalf of the first respondent

(State of Himachal Pradesh) and those on behalf of the third respondent present a totally different picture. The third respondent has naturally

refuted every allegation made in the petition concerning the hazards resulting from the mining operations undertaken by him. The first respondent,

while reluctantly admitting that the mining operations cause disturbance to the environment and stating that with a view to protecting the

environment and checking the reckless or indiscriminate mining operations in the area a decision was taken not to entertain any mining lease

application received after December 5, 1986 and to : undertake a detailed study as to the quality and quantity of the mineral deposits, the

geological formations, physiography of the area et al, still proclaims that all is well in the State of Denmark. The Court cannot help observing that

the stand of the State Government is wholly irreconcilable with the versions of its own Officers of rank in-charge of the concerned fields of activity

and that it is really difficult to appreciate such inconsistency of approaches and that upon a most charitable view being taken it is capable of being

explained only on the basis of a total lack of communication at different levels and organs of the Government machinery. The case has been argued

at length before us even at this stage and ample opportunity has been given to the third respondent to place before the Court all the relevant facts

and circumstances bearing upon the grant of the mining lease in his favour and the operation of the mines by him.

4. This is the first case of its kind in the State involving issues relating to the environment and ecological balance. The questions arising for

consideration and decision are of considerable importance and significance not only from the point of view of the requirement of adopting adequate

regulatory measures devised on the basis of scientific study and investigation for the exploitation of the mineral resources of the State keeping in

view the need for industrial growth and development but also from the angle of the awareness of its impact upon the ecology, the environment and

the natural resources and its implications on the livelihood and living conditions of the people residing in the area in which the mining leases are

granted. The reports submitted by the four senior officers, who were directed to verify facts on the spot, the affidavit of the second respondent

(Deputy Commissioner, Sirmaur), who is authorised also to exercise the powers and to perform the duties of an Inspector (subject to the general

or special orders of "the Central Government) u/s 5 of the Mines Act, 1952 (hereinafter referred to as "the Mines Act"), and the other material on

record including the note dated April 19, 1983, Annexure P-4, of the then Forest Minister, the letter dated July 18, 1986, Annexure P-5, of Shri

K. D. Sultanpuri, M. P., the newspaper article, etc., point in the direction that emergent action is necessary to avert real danger, present and

potential, to the soil, the environment, the ecology, the natural resources, the forests, the flora and fauna and the living conditions of the people

inhabiting the area. According to the affidavit of the second respondent, the mining area of the third respondent forms part of the Shamlat land

which had vested in the State Government under the provisions of the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974

(hereinafter referred to as "the Vesting and Utilization Act") and which was set apart for allotment to landless persons or persons whose holdings

were less than one acre to make such holdings one acre under Clause(B) of Section 8 of the said Act read with the Scheme framed by the State

Government in that regard. The consideration and/or object of the mining lease granted in respect of a land which fell within the area reserved for

such allotment, at a point of time when Section 8A of the Vesting and Utilization Act was not on the statute book, would appear, prima facie, to be

of a nature which would defeat the provisions of Section 8 of the said Act. The lease, therefore, appears, prima facie, to be hit by the provisions of

Section 23 of the Contract Act, 1872 and consequently suffering from the vice of voidness ab initio. On a conspectus of the entire material on

record, it transpires, prima facie, that the mining operations are being carried out in the area and, more particularly, in the mine operated by the

third respondent, in a somewhat uncontrolled and unscientific manner causing damage to and/or posing an imminent and real threat to the soil, the

rivers, streams and nallahs, the water resources and the water supply scheme, the ecology, the environment, the flora and fauna, the forest wealth

and to the life and well-being of the inhabitants of the locality and their cattle and that, as observed earlier, immediate steps are required to be

taken in the direction of prohibiting and/or regulating the mining operations in the area and taking conservative measures. The document(s), which

the third respondent has annexed to his affidavits, although some of them may on a cursory reading seem to support his version, disclose on a

careful scrutiny that the mining operations are not being carried out by him entirely in a proper or scientific manner and that certain remedial actions

were suggested to be taken by him, which it is not known, whether they have taken. More or less similar is the position with respect to some of the

documents annexed to the affidavit filed on behalf of the first respondent insofar as they concern the working of the mines by the third respondent.

At this stage, the Court does not consider it expedient in the interest of justice to enter into a detailed discussion and feels justified to make only the

above observations on a prima facie basis on the strength of the totality of the material on record.

5. The question relating to the dangerous implications of the haphazard mining operations of the limestone quarries engaged the attention of the

Supreme Court in Rural Litigation and Entitlement Kendra, Dehradun v. State of U. P. In as many as four reported judgments/orders, the highest

Court has highlighted the gravity of the problem and the necessity of regulatory measures being undertaken so as to bring about a proper balance

between the conservation of natural resources and the protection of the environment and the ecology on one hand and the need for development

and of the industrial growth of the country on the other. Those judgments/orders, which also incorporate the directions, interim and final, issued in

that case, are reported in Rural Litigation and Entitlement Kendra, Dehradun and Others Vs. State of U.P. and Others, and Rural Litigation and

Entitlement Kendra and Others Vs. State of Uttar Pradesh and Others, The problems which ordinarily arise on account of the erratic, irrational and

uncontrolled mining operations of limestone were highlighted in the said case in the following words in the judgment reported in Rural Litigation and

Entitlement Kendra and Others Vs. State of Uttar Pradesh and Others, :

Mining operations in these areas have led to cutting down of the forest. Digging of limestone and allowing the waste to roll down or carried down

by rain water to the lower levels has affected the villages as also the agricultural lands located below the hills. The naturally formed streams have

been blocked. Blasting has disturbed the natural quiet, has shaken the soil, loosened the rocky structures and disturbed the entire ecology of the

area. For removing the limestones quarried from the mine, roads have been laid and for that purpose the hills have been interfered with; traffic

hazard for the local population both - animals and men has increased.

Almost all these features or factors seem to be present even in the present case as disclosed by the material which has come on record. Sounding a

note of caution, it was observed further in that case :

Government- both at the Centre and in the State- must realize and remain cognizant of the fact that the stake involved in the matter, is large and

far-reaching. The evil consequences would last long. Once that unwanted situation sets in, amends or repairs would not be possible. The greenery

of India, as some doubt, may perish and the Thar desert may expand its limits.

Consciousness for environmental protection is of recent origin. The United Nations conference on World Environment held in Stockholm in June

1972 and the follow-up action thereafter is spreading the awareness. Over thousands of years men had been successfully exploiting the ecological

system for his sustenance but with the growth of population the demand for land has increased and forest growth has been and is being cut down

and man has started encroaching upon Nature and its assets. Scientific developments have made it possible and convenient for man to approach

the places which were hitherto beyond his ken. The consequences of such interference with ecology and environment have now come to be

realised. It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be

sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact... ..

We are not oblivious of the fact that natural resources have got to be tapped for the purposes of social development but one cannot forget at the

same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any

serious way, there may not be any depletion of water resources and long term planning must be undertaken to keep up the national wealth. It has

always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation

Preservation of the environment and keeping the ecological balance unaffected is a task which not only Government but also every citizen must

undertake. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Article 51A(g) of the

Constitution.

6 . It would be pertinent to mention at this stage that Part-IV of the Constitution which incorporates the Directive Principles of State Policy

contains Article 48-A which prescribes that the State shall endeavour to protect and improve the environment and to safeguard the forests and

wild life of the country. Part-IVA, which enshrines the Fundamental Duties, provides similarly in Article 51A, Clause (g), that it shall be the duty of

every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living

creatures. Thus there is both a constitutional pointer to the State and a constitutional duty of the citizens not only to protect but also to improve the

environment and to preserve and safeguard the forests, the flora and fauna, the rivers and lakes and all the other water resources of the country.

The neglect or failure to abide by the pointer or to perform the duty is nothing short of a betrayal of the fundamental law which the State and,

indeed, every Indian, high or low, is bound to uphold and maintain.

7. In 1985(2) Sc 906: (1986 (1) Sup 287), Amarendra Nath Sen, J., who was one of the members of the Bench which dealt with the

abovementioned case at the earlier stages, made the following pertinent observations :

I wish to observe that though exploitation of mineral resources in the interest of industrial growth of the country is necessary, yet such mines should

be so worked as not to disturb the ecology and not to affect the livelihood and the living conditions of a very large number of the people.

Advantage gained by working the mines for industrial growth and national development in a manner which may seriously prejudice the interests of a

large number of human beings and disturb the ecological balance, may very much be out-weighed by the serious consequences which are likely to

follow. Industrial development is necessary for economic growth of the country in the larger interests of the nation. If, however, industrial growth is

sought to be achieved by haphazard and reckless working of the mines resulting in loss of life, loss of property, loss of basic amenities like supply

of water and creation of ecological imbalance there may ultimately be no real economic growth and no real prosperity. It is necessary to strike a

proper balance. In my opinion, the appropriate authorities at the time of granting leases should take all these facts and factors into consideration

and should while granting lease of mines for exploitation of mineral provide for adequate safeguards. Had appropriate safeguards been provided at

the time of granting of leases, it would not indeed, have been necessary for us to direct the closure of so many mines and a good deal of sufferings

of the people of the locality would have been avoided.

8. These various observations reflect the concern and the anxiety of the highest court about the situation arising out of the indiscriminate grant of

mining leases and the unchecked and unscientific exploitation of the mines by the lessees, especially in the hilly tracts and regions of the Himalayas,

which, in all likelihood, might result in evil consequences having a far-reaching and lasting impact on the natural wealth and resources of the country

and the local population, human as well as cattle. If the wise and sagacious counsel imparted to the Government, at the Centre as well as in the

States, to strike a just balance between the tapping of the natural resources for the purposes of the socio-economic development and the

preservation and protection of the ecology, the environment and the natural wealth and resources by the adoption of a long-term perspective

planning is not heeded and effective steps in the direction of implementing the same are not taken with the utmost expedition, there will not only be

a total neglect and failure on the part of the administration to attend to an urgent task in the national interest but also a violation of the fundamental

rights conferred by Article 14 and 21 of the Constitution. The judicial organ of the State having sounded a note of caution at the highest level, this

Court cannot remain silent spectator if there is a complaint that the warning has fallen on deaf ears. To ensure the attainment of the constitutional

goal of the protection and improvement of the natural wealth and environment and of the safeguarding of the forests, the lakes, the rivers and the

wildlife and to protect the people inhabiting the vulnerable areas from the hazardous consequences of the arbitrary exercise of the power of

granting mining leases and of indiscriminate operation of the mines on the strength of such leases without due regard to their life, liberty and

property, the court will be left with no alternative but to intervene effectively by issuing appropriate writs, orders and directions including the

direction as to the closure of the mines, the operation whereof is proving to be hazardous and the total prohibition of the grant or renewal of mining

leases till the Government evolves a long-term plan based on a scientific study with a view to regulating the exploitation of the minerals in the State

without detriment to the environment, the ecology, the natural wealth and resources and the local population. However, the need for judicial

intervention may not arise even in those cases where the court's jurisdiction is invoked, if the administration takes preventive, remedial and curative

measures meanwhile.

9. Against the aforesaid background and against the backdrop of the factual data which has come on the record of the case even at this early

stage, the Court considers it expedient and necessary in the interest of justice to issue the following interim directions :

(1) The State Government, will, within a period of one week of the receipt of a certified copy of this order, set up a Committee under the

Chairmanship of the Chief Secretary and consisting of the Secretaries in the departments of Industry, Public Works, Forest? Agriculture and

Science, Technology and Environment to examine, inter alia, the question whether the grant of mining leases in respect of lime-stone in Tehsil

Paonta Sahib, Renuka and Rajgarh, as per the particulars furnished in the annexure to the affidavit dated May 8, 1987, filed by the Deputy

Commissioner, Sirmaur, and, more particularly, the grant of such leases in or around village Sangrah, Tehsil Renuka, District Sirmaur, and

specifically to the third respondent, is in accordance with the relevant statutory provisions and whether the need of maintaining a proper balance

between the tapping of the mineral resources for the development and industrial growth on one hand and the ecology, environment etc. on the

other has been kept in view while making such grant and whether those mines are being scientifically operated or worked in an erratic and

uncontrolled manner posing a present and potential danger to the soil, the agriculture, the forests, the water resources and the water supply

schemes, the rivers, streams and nahallas, the flora and fauna, the ecology, the environment and life and living conditions of the people and their

property. The Committee will hold such inquiry as it thinks fit for the purposes of arriving at a considered opinion in regard, inter alia, to the

abovementioned matters and it will be at liberty to take the assistance of experts in order to gather the necessary scientific and technological

information and data so as to formulate its findings. The report, which the Committee will submit to this Court as well as to the State Government,

will contain not only its conclusions on the matters abovementioned but also incorporate its recommendations for the evolution of a long-term plan

and/or scheme for the grant of mining leases in the State in light of all the relevant and material factors and suggest the preventive, curative and

regulatory measures and machinery in order to ensure that the mining leases are operated in a scientific manner. If the Committee finds that on

account of indiscriminate mining operation carried out in District Sirmaur and, more particularly, in or around village Sangarah, damage of any

nature affecting the natural wealth and resources and the local population has been caused, it will consider and suggest the remedial measures for

the repair of such damage and the treatment of the affected natural wealth and resources and for the payment of compensation to the people

inhabiting the area. The Committee will submit its report on or before July 30, 1987. The matter requires urgent attention and the Court, therefore,

expects the Committee to complete its deliberations and to submit the report within the time-limit above-mentioned.

(2) The Deputy Commissioner, Sirmaur, will attend the Court on June 4, 1987, and will produce for the perusal of the Court the proceedings

culminating into the attestation of mutations Nos. 1154 and 1146 dated August 9, 1975 in respect of Khasra Nos. 2107/1970/1 and 2107/1979/1

and the consequential demarcation of the land as provided in subsection (2) of Section 8 of the Vesting and Utilization Act.

(3) The third respondent, who is present in the Court, has orally undertaken through his counsel not to carry out mining operations in the areas

leased to him through blasting till further orders and to carry out such operations in other manner, if any, strictly in accordance with the instructions

which may be issued to him by the Deputy Commissioner, Sirmaur. The written undertaking on affidavit in the aforesaid terms will be filed by the

third respondent in the Registry of this Court on or before June 2, 1987. The Deputy Commissioner will, while issuing such instructions, take into

consideration the reports on affidavits submitted by different senior officers of the State Government in the course of this proceeding and Annexure

R-3/2 to the affidavit dated May 12, 1987 of the third respondent and Annexures R-2 and R-3 to the affidavit dated May 14, 1987, filed by the

Deputy Secretary (Industries) to the State Government, in so far as they require the compliance, if any, of any of the matters therein mentioned and

will ensure that the mining operations, if any, are carried out by the third respondent in future strictly on scientific lines. The Deputy Commissioner

will, for the purposes of giving such directions, be at liberty to take the assistance of any other officers/authorities including those who have

submitted their reports therein.

(4) No lease for the mining of lime-stone will be granted or renewed nor temporary permits, if any, will be issued in District Sirmaur till the

Committee, which has been directed to be appointed as aforesaid, has submitted its report and the second respondent will meanwhile maintain

strict superintendence and supervision over the exploitation of the mines under the existing leases in the Sirmaur District in the same manner as

indicated in the interim direction No. (3) hereinabove. Adjourned to June 4, 1987. Dasti copy on usual terms.