

A T. N. GODAVARMAN THIRUMULPAD
v.
UNION OF INDIA AND ORS.
B (I.A. Nos. 1424-1425 of 2005)
in
(Writ Petition (Civil) No. 202 of 1995)
C SEPTEMBER 14, 2018
[MADAN B. LOKUR, S. ABDUL NAZEER AND
DEEPAK GUPTA, JJ.]

Environmental Law:

D *Forest conservation – Interlocutory applications seeking*
direction to the State/Authorities to ensure that in the forest, non-
forest activities (including mining operations) are not carried out
in the garb of lease by the licensee – Also sought initiation of criminal
proceedings against the erring persons/officials etc. – Central
Empowered Committee constituted by the Court – Committee found
E *that grant of mining in favour of the licensee in question, was in*
violation of Forest Conservation Act and extraction of iron ore and
transportation thereof was in violation of approved mining plan
and also noted various other illegalities and irregularities –
Committee recommended recovery of sale proceeds, sale of
confiscated iron ore, criminal proceedings against the erring
F *officials and blacklisting of the licensee – State filed affidavit stating*
actions taken in compliance of the recommendation of the Committee
– Held: Report of the Committee is accepted – State has taken
necessary steps – Applications, in so far as licensee is concerned,
are disposed of.

G **Disposing of the applications, the Court**

HELD: The Report of the Central Empowered Committee is accepted. From a reading of the Report of the CEC, it is apparent that the licensee had flagrantly violated the law and had

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carried out mining in the forest areas. The affidavit of the State Government reveals that the State Government itself was alive to these violations and has taken necessary steps in the matter. The State has taken action not only to stop mining but also to initiate proceedings against the erring officials. The affidavit of the State shows that all mining activities in the forest areas have been stopped long time back. It is clear that steps have been taken to recover the entire sale proceeds of the CMT of iron ore that was mined and transported by the licensee. It is also clear that State Government has initiated disciplinary proceedings against its officials who were found to be guilty of professional misconduct. Disciplinary enquiry has also been ordered against the then Assistant Mining Officer, by the Mining Department of the Government of Chhattisgarh. The Department of Commerce and Industry of the State Government had already blacklisted the licensee. It is clear from the records that the confiscated iron ore has been mined from the adjoining forest land. The authorities concerned are free to auction the aforesaid confiscated iron ore in accordance with law. Therefore, it is not necessary to direct the CBI enquiry as prayed for in the applications. The applications are accordingly disposed of insofar as the licensee is concerned. [Para 7] [662-D-H; 663-A]

CIVIL ORIGINAL JURISDICTION: I.A. Nos. 1424-1425 of 2005 in Writ Petition (Civil) No. 202 of 1995.

Under Article 32 of the Constitution of India.

Harish N. Salve, Rakesh Dwivedi, Sr. Advs. A. D. N. Rao, Sudipto Sircar, Siddhartha Chowdhury, Ms. Aparajita Singh (A.Cs.), Prashant Bhushan, S. Shrivastava, Pranav Sachdeva, Siddharth Shukla, Farrukh Rasheed, Apoorv Kurup, A. C. Boxepatro, G. Kaushal, Siddharth Iyer, S. Wasim A. Qadri, D. L. Chidanand, Devasis Bharuka, Ms. Suhasini Sen, Ritesh Kumar, G. S. Makker, Ravindra Bana, Mrs. Anil Katiyar, Bajjnath Patel, Gopal Singh, Kumar Milind, Baij Nath Patel, P. S. Sudheer, Advs. for the appearing parties.

A The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.

I.A. Nos. 1424-1425 of 2005

B 1. Mr. Bhupesh Baghel, M.L.A., has filed I.A. Nos. 1424-1425
of 2005 in the above writ petition seeking the following reliefs:

- C (i) Direct the respondents 1 to 3 herein to ensure that no non-forest activities including mining operations are carried out by the respondents 4 to 7 herein in the forests under the garb of lease executed by the State of Chhattisgarh or permission granted by the State of Chhattisgarh in their favour;
- D (ii) Direct the respondents 1 to 3 to initiate criminal prosecution of the respondents 4 to 7 herein as also other officials of the State of Chhattisgarh with whose connivance, the respondents 4 to 7 herein have carried out and/or are carrying on non-forest activities in the forests;
- E (iii) Direct the C.B.I. to make an enquiry with regard to violation of the provisions of the Forest Conservation Act even after the order dated 12.12.1996 of this Hon'ble court by the State of Chhattisgarh after it came into existence on 01.11.2000 and to fix the responsibility of the officials who are responsible for granting lease or to permit non-forest activities in contravention of the provisions of Forest Conservation Act in forests in the State of Chhattisgarh and to fix responsibility and then to intimate departmental proceeding and/or their criminal prosecution;
- F (iv) Direct determination and recovery of compensation from respondents 4 to 7 herein for causing environmental losses by carrying on non-forest activities in the forest area for commercial purposes;
- G (v) Direct the respondents 2 & 3 to take immediate steps for forest protection and rehabilitation of mined area by planting sufficient number of trees and by taking immediate measures for compensatory afforestation of the area; and
- H (vi) SPass such other order or orders as this Hon'ble Court may deem fit and proper in the facts & circumstances of the case as well as in the interest of justice.”

2. In this case we are concerned with the illegal mining activities of by Mr. Anil Lunia (respondent No.4) in the State of Chhattisgarh. According to the applicant, Anil Lunia, an industrialist, on 31.10.1998 applied for a mining prospecting license in Bhainsakanhar, District Kanker, to mine iron ore at Bhainsa Kankar, District North Bastar Kanker. The Government of Chhattisgarh, Mining Department, accorded prospecting license on an area of admeasuring 18.27 hectares vide Khasra Nos. 123, 125, 127, 129, 130 and 139 vide letter dated 25.1.2002. Written permission was also accorded on 29.5.2002 along with certain conditions for the prospecting. A lease deed was executed on 26.5.2003 by the Collector, North Bastar Kanker in favour of Anil Lunia. In this deed it has been, *inter alia*, mentioned that the lessee shall not cut any tree without the sanction of authorities and shall not enter reserved forest or use forest roads for transporting purpose without the written sanction of DFO. It was also mentioned that the lessee has to allow inspection by State/Central authorities at any point of time. In the month of June-July 2003, Anil Lunia started mining operations but not as per the approved plan of IBM. He did not adhere to the conditions of lease and started cutting trees without permission. In a complaint made by one NGO, it was stated that thousands of trees have been chopped off by the licensee in violation of the Forest Conservation Act. Conservator of Forest Kanker constituted a 3-member inquiry team which gave its report on the basis of which Sub-Divisional Officer issued a letter dated 18.9.2003, *inter alia*, mentioned that how the notified protected forest was shown as non-forest revenue land just to facilitate the mining lease without complying with the provisions of Forest Conservation Act. The subsequent proceedings would show how a part of the State machinery was involved in allowing violation of Forest Conservation Act. The applicant has also referred to certain judicial proceedings initiated by Anil Lunia. That is how the aforesaid applications have been filed by him seeking the said reliefs herein.

3. Anil Lunia has filed his reply affidavit denying the allegations/ averments made in the application. On the basis of the order of this Court, a Central Empowered Committee (for short 'CEC') was constituted. The CEC after examining the matter during various dates of hearing and after site visit, filed its report on 25.9.2008. It has examined at length the documents in relation to grant of mining on various land in favour of Anil Lunia in violation of Forest Conservation Act and has

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- A come to a conclusion that iron ore have been extracted and transported in blatant violation of the approved mining plan. The mining lease was executed in violation of the statutory requirements. The irregularities/illegalities noted by the CEC are as under:
- B i) the prospecting license was granted even through Mr. Lunia was found to be involved in illicit felling of trees in the applied area. The recommendations of the Collector, Kanker against the grant of the prospecting license and thereafter for cancellation of the prospecting license were disregarded/ignored;
- C ii) iron ore mineral areas in District Bastar are reserved for Public Sector Undertakings. As an exception, permission of the Central Government under section 5(1) of the MMRD Act for grant of prospecting license as well as for mining license in favour of Mr. Lunia were obtained on the ground that iron ore will be captively used in the crushing – screening and sponge Iron Plant being set up by Mr. Lunia. In flagrant violation of the above, the iron ore extracted by Mr. Lunia was allowed to be sold;
- D iii) the mine till its closure operated without the requisite environmental clearance. This is in violation of the Environmental Impact Assessment Notification issued by the MoEF under the Environment (Protection) Act, 1986;
- E iv) as per the approved mining plan the permissible annual production was 6000 tonnes. As against this, 69,000 MT iron ore was extracted during 2003-2004. During 2004-2005 & 2005-2006 35400 MT & 18281 MT of iron ore respectively were extracted. Out of the above, 99,913 MT was transported. At no stage did the Mining Department object to these brazen violations;
- F v) at the time the extraction from the mine had just commenced, the Three Member Enquiry Committee set up by the Forest Department held that the mining lease area was in an undemarcated protected forest. In spite of the above, the Collector, Kanker did not put a stop to the mining. Instead, after keeping the matter pending for eight months, he took a baffling decision that it is only after the State agrees with the
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- proposal of the Forest Department to notify a “new forest” (i.e. reserved forest), that the cancellation of the mining lease will be considered; A
- vi) even after the Enquiry Committee constituted by the State Government held that the said area is a forest land, the mining was allowed to continue. What is more one Member of the Committee, after a gap of more than four months and out of the blue without giving any reasons, made a number of adverse observations against the earlier unanimously agreed report; B
- vii) no action for the cancellation of the mining lease was taken even after Mr. Lunia was found to be involved in illicit felling in the adjoining reserved forest; C
- viii) the detailed directions given in the State Government’s circular dated 12.1.2000 were not adhered to. Before grant of the mining lease the report of the Forest Department was required to be taken into consideration and which was not done. Significantly, the letter signed for this purpose was not dispatched on the request of Mr. Lunia. The procedure prescribed for field verification at the time of permitting mining in the area was not followed; and D
- ix) though in the enquiry conducted by the State, the then Collector, Kanker has been held responsible for committing a number of illegalities and irregularities no action has been taken against him on the ground that he has already retired. E
4. The recommendations made by the CEC are as under:
- a) The State of Chhattisgarh should be directed to recover the entire sale proceeds of the iron ore extracted and transported by Mr. Lunia at the then prevalent rates. An equal amount should be directed to be deposited by the State of Chhattisgarh as compensation for its failure to enforce the law of the land and comply with the orders of the Hon’ble Supreme Court; F
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- b) The iron ore confiscated by the State should be immediately sold by inviting tenders after giving wide publicity;
- c) Criminal proceedings should be initiated against the then Collector, Kanker for criminal breach of trust and other provisions of the Indian Penal Code; H

A d) Mr. Anil Lunia should be blacklisted by the State Government and debarred for at least a period of ten years and should be held ineligible for any public office.

5. The respondent-State of Chhattisgarh has filed affidavits on 30.9.2008 which detailed actions taken by the State of Chhattisgarh in response to the recommendations of the CEC. This was followed by a further affidavit dated 24.11.2008.

6. Pursuant to the replies filed to these affidavits, the State of Chhattisgarh has filed another affidavit giving latest position and steps that have been taken pertaining to this case. The contents of this affidavit are as under:

i) The State Government issued a demand notice dated 23.9.2008 for the recovery of the entire sale proceeds of the 1,22,686.16 CMT of iron ore that was mined and transported by Mr. Anil Lunia from Khasra Nos.123, 125, 127, 129, 130 & 139 of village Bhaisan Kanhar, Bastar. The said demand notice required Mr. Anil Lunia to deposit a sum of Rs.6,66,75,633.75/-. However, Mr. Anil Lunia failed to deposit said amount. Therefore, the Collector, North Bastar, Kanker issued a Revenue Recovery Certificate (RRC) to the Collector, Durg (where Mr. Anil Lunia resides), who then directed the Tehsildar, Durg to register a case for the recovery of revenue on 11.02.2010. The Tehsildar, Durg accordingly registered a revenue recovery case no. 01A/76/2009-10 against Mr. Anil Lunia and issued a summons dated 08.10.2010 to him for appearance in Court. The Tehsildar's Court thereafter issued a demand note on 29.12.2010 which was challenged by Mr. Anil Lunia by filing a civil suit (no. 46 A/2011) in the Court of the Ld. Eighth Civil Judge, Class II, Durg. The Ld. Eighth Civil Judge, Class II, Durg issued an injunction order on 04.04.2011, and the case is currently pending before that Court. A true translated copy of the order dated 04.04.2011 of the Ld. Eighth Civil Judge, Class II, Durg is annexed and marked as Annexure RCG-1.

ii) The Hon'ble High Court of Chhattisgarh had passed an order dated 16.12.2008 (in W.P. No. 6355/2005) directing the parties (i.e. the State of Chhattisgarh and Mr. Anil Lunia) to maintain

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status quo with regard to the confiscation proceedings against Mr. Anil Lunia. The said writ petition has subsequently been transferred to this Hon'ble Court vide order dated 24.12.2008 and has been re-numbered as Transferred Case No. 16 of 2018. A

The confiscated iron ore is currently lying at site and natural vegetation has grown over it. This can be observed from the latest photographs of the site, copies of which are being annexed and marked as Annexure RCG-2. B

iii) That, the State Government also initiated disciplinary proceedings against certain officials of the State Government, which are described below:- C

A. A disciplinary enquiry was ordered against Mr. R.A. Pathak, the then SDO, Bhanupratappur, by the Forest Department of the Government of Chhattisgarh under the Chhattisgarh Civil Service Rules, 1966. Mr. R.A. Pathak was found guilty of professional misconduct after giving him opportunity of being heard. Accordingly, and pursuant to the recommendation of the Chhattisgarh Public Service Commission, the State Government issued an order dated 30.01.2010 pursuant to Rule 10(5) of the Chhattisgarh Civil Service Rules, 1966, penalising Mr. R.A. Pathak by fixing his pay to the minimum pay scale. D E

B. A disciplinary enquiry was also ordered against Mr. M. Kalyani (the then Joint Collector, Kanker), by the General Administration Department of the Government of Chhattisgarh. Mr. M. Kalyani was also found guilty of professional misconduct, and the State Government issued an order dated 09.12.2011 pursuant to Rule 12 of the Chhattisgarh Civil Service Rules, 1966, which penalised him by fixing his pay at the minimum pay scale for three years. F G

C. A disciplinary enquiry was also ordered against Mr. S.K. Pandey, the then Assistant Mining Officer, by the Mining Department of the Government of Chhattisgarh under Rules 47 and 48 of the Chhattisgarh Civil Service Pension H

- A Rules, 1976. Mr. S.K. Pandey however filed a Writ Petition (No. 5748/2009) in the Hon'ble High Court of Chhattisgarh assailing the aforesaid action of the State Government and was granted injunctive relief vide order dated 24.10.2009.
- B D. By an order dated 28.9.2010, Mr. P.N. Naik, the then Assistant Grade II, was also found guilty of professional misconduct by the Directorate of Mining & Geology of the Government of Chhattisgarh, pursuant to a hearing granted to him. Mr. P.N. Naik was penalised by withholding two increments.
- C iv) The Department of Commerce and Industry of the Government of Chhattisgarh had blacklisted Mr. Anil Lunia by an order dated 22.9.2008. The order of blacklisting continued for six (6) years until 08.09.2014. However, the order dated 08.09.2014 stated that Mr. Anil Lunia could be blacklisted again in the event a Court of Law ruled against him in future.
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7. Having heard learned counsel for the parties, we accept the Report of the CEC. From a reading of this Report of the CEC, it is apparent that Mr. Anil Lunia had flagrantly violated the law and had carried out mining in the forest areas. The affidavit of the State Government reveals that the State Government itself was alive to these violations and has taken necessary steps in the matter. The State has taken action not only to stop mining but also to initiate proceedings against the erring officials. A bare reading of the affidavit of the State shows that all mining activities in the forest areas have been stopped long time back. It is clear that steps have been taken to recover the entire sale proceeds of the CMT of iron ore that was mined and transported by Mr. Anil Lunia from Khasra Nos. 123, 125, 127, 129, 130 and 139 of Village Bhaisan Kanhar, Bastar. It is also clear that State Government has initiated disciplinary proceedings against its officials who have found to be guilty of professional misconduct. Disciplinary enquiry has also been ordered against Mr. S.K. Pandey, the then Assistant Mining Officer, by the Mining Department of the Government of Chhattisgarh. The Department of Commerce and Industry of the Government of Chhattisgarh had already blacklisted Mr. Anil Lunia. It is clear from the records that the confiscated iron ore has been mined from the adjoining

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T. N. GODAVARMAN THIRUMULPAD v. UNION OF INDIA 663
AND ORS. [S. ABDUL NAZEER, J.]

forest land. The authorities concerned are free to auction the aforesaid A
confiscated iron ore in accordance with law. Therefore, it is not necessary
to direct the CBI enquiry as prayed for in the applications. The
applications are accordingly disposed of insofar as Anil Lunia is
concerned.

8. There shall be no order as to costs. B

Kalpana K. Tripathy

IAs disposed of.