2025:AHC:182479-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 18378 of 2019

Ram Pratap And 2 Others

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s) : Arvind Srivastava, Raj Narayan Singh
Counsel for Respondent(s) : C.S.C.

Court No. - 40

AFR

HON'BLE SARAL SRIVASTAVA, J.
HON'BLE SUDHANSHU CHAUHAN, J.

(Per: Hon'ble Sudhanshu Chauhan,J.)

1. Heard Sri Arvind Srivastava, learned counsel for the petitioners and learned Standing Counsel for the State-respondents.

2. At the very outset, counsel for the petitioner informs that the petitioner no.1, Sri Ram Pratap has passed away during the pendency of the present writ petition and no effort whatsoever has been made by the legal heirs of the deceased petitioner no.1 to get themselves substituted as party in the present writ petitioner. Hence, the present writ petition stands abated in respect of petitioner no.1 under Chapter VIII Rule 38A of the Allahabad High Court Rules, 1952.

3. The contention of the petitioners is essentially that the petitioner no.1 was granted a mining lease over Gata No.2434 for an area of 2 Acres on 18.07.2001 for the tenure of 10 years. Similarly, the petitioner no.2 was granted a mining lease over the Gata No.2434 for an area of 2 Acres for a tenure of 10 years and the petitioner no.3 was granted a mining lease over Gata No.2434 for an area of 5 Acres on 17.04.2003 for a tenure of 10 years. It is pertinent to mention here that all the three mining leases were situate over Gata No.2434 Village-Rauli Kalyanpur, Tehsil- Kurvi, District-Chitrakoot.

4. It is further submitted that on complaint of one Sri Brijesh Kumar, a joint

inspection of the area was carried out in pursuance to the letter dated 01.12.2014 of the Directorate. It is also stated that the joint inspection so conducted on 03.12.2014 was an ex-parte inspection and the petitioners had no prior information about this inspection. During the joint inspection illegal mining was found to have taken place at Gata No.2434 allegedly at the behest of the petitioners. In the joint inspection report only two ropes were recovered which were used for making holes in the rocks. One Sri Bhairam, a petty contractor of petitioner no.2 was found at site who had informed that the work of mining was taking place at the behest of petitioner no.1 and petitioner no.2. However, Sri Bhairam refused to give any statement in writing to the joint inspection team.

5. Consequently, a show cause notice dated 25.02.2015 was issued to the petitioners solely on the basis of the joint inspection report, wherein it was held that the petitioners were carrying out illegal mining under the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as, “the Act, 1957”) and the U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as, “the Rules, 1963”) and and the petitioners were called upon to submit their reply within seven days.

6. The petitioners thereafter had filed an application dated 14.02.2015 thereby seeking various documents from the respondents including the copy of the joint inspection report, the height of the hill at the time of the inspection, the survey report etc. However, in response to the said application vide letter dated 06.07.2015 certain documents were provided to the petitioners but the same were not in respect of joint inspection carried out on 03.12.2014 but that of a joint inspection report dated 02.11.2014 in respect of one Sri Dharmendra Kumar who had been granted a mining lease in respect of the very same Gata No.2434 for an area of 5 Acres.

7. Thereafter, the petitioners once again vide letter dated 16.07.2015 had requested the District Mining Officer, Chitrakoot/respondent No.3 for providing copies of the relevant documents and had further informed that the documents sought earlier vide the letter dated 14.02.2015 had not been provided to the petitioners by means of the letter dated 06.07.2015. The petitioners have also relied upon a letter dated 08.01.2016 issued by the Mining Inspector, Chitrakoot addressed to the Public Information Officer Directorate of Geology and Mining, Uttar Pradesh, Lucknow, thereby requesting to provide the various documents sought by the petitioners by

means of letter dated 14.02.2015 including the joint inspection dated 03.12.2014, to demonstrate that the information sought by the petitioners had not been provided to them till that point of time.

8. The petitioners in response to the show cause notice dated 25.02.2015 had ultimately submitted their reply dated 28.11.2015, vehementaly denying the role of petitioners in illegal mining.

9. It was stated that the entire proceedings had been initiated on the basis of a joint inspection report dated 03.12.2014 and the report was manipulated and no map of the site was prepared at the time of the inspection. The inspection team had also not prepared the survey diary/bearing report at the time of inspection. Besides in the inspection report dated 02.11.2014, in respect of lease of Gata No.2434 in favour of Sri Dharmendra Kumar no illegal mining was found to have taken place at the site. No mining equipment was recovered from the site, where the illegal mining had allegedly taken place. Sri Bhairam, in his affidavit had controverted the allegations made in the joint inspection report.

10. It is in the above background that the petitioners had filed Writ C- No.- 14022 of 2016 before this Hon’ble Court and the Hon’ble Court vide judgment and order dated 31.03.2016 had directed the respondent no.2 to take appropriate decision in accordance with law in respect of the notice issued to the petitioners after considering the reply submitted by the petitioners within a period of six weeks from the date of production of certified copy of the order.

11. Subsequently, the respondent no.2 vide the order dated 04.06.2016 had rejected the reply of the petitioners and directed that the petitioners deposit the demand made by means of the notice dated 25.02.2015 within 30 days.

12. The petitioners being aggrieved by the order dated 04.06.2016 had filed revision under Rule 78 of the Rules, 1963 before the State Government stating that the petitioners had not indulged in any illegal mining activity and the order dated 04.06.2016 had been passed without affording any opportunity of hearing to the petitioners. However, the revision so filed by the petitioners was also rejected vide the order dated 24.04.2019. Subsequently the petitioners had filed the present writ petition.

13. The respondents in the present proceedings have filed their counter affidavit essentially stating that on receiving the information that illegal mining was being carried out by the petitioners, a spot inspection was

carried out and during the inspection it was found that the petitioners were doing illegal mining in the mining area allotted to Sri Dharmendra. The persons present at site had also stated that the petitioners were doing illegal mining and the inquiry report was not prepared solely on the basis of statement made by Sri Bhairam. It was stated that the information sought by the petitioners had duly been provided to the petitioners and the order passed by the respondent no.2 is in due accordance with law and penalty for illegal mining has rightly been imposed upon the petitioners. It was also admitted that the mining lease of petitioner no.1 had expired and the petitioner no.1 had deposited the renewal fee but the proceedings for execution of lease could not be completed. Further the revision, filed by the petitioners was rejected on the basis of all the facts and materials available on record and the inspection report dated 03.12.2014.

14. The petitioners have challenged the order dated 04.06.2014 and the revisional order dated 24.04.2019 essentially on the ground that the same has been passed solely on the basis of ex-parte joint inspection report dated 03.12.2014 and the said report was prepared without even preparing the bearing report, surveyor's diary and the map of the location, where the inspection had taken place. The impugned orders were cryptic and non-speaking and fails to deal with the contentions raised by the petitioners in the reply dated 28.11.2015 and in the revision filed before the State Government. Besides the fact that no mining equipment/instruments were found at the site except for two ropes and Sri Bhairam had also filed his affidavit clarifying his stand but the same too has been overlooked by the respondent no.2 as well as the revisional authority.

15. On the perusal of the records it is revealed that entire proceedings have been initiated against the petitioner solely on the basis of a joint inspection report dated 3.12.2014.The joint inspection report is the sole basis on which the show cause notice dated 25.2.2015 has been issued to the petitioners as well as the basis on which the impugned order dated 4.6.2016 has been passed by respondent no.2. In fact, the respondents themselves in para 25 have alleged as under:-

"*25. That in reply to the contents of paragraph no.27 of the writ petitioner it is stated that considering the inspection report, the District Magistrate has passed the order."*

16. It is also evident from the record that no notice was issued to the

petitioners prior to carrying out the inspection on 3.12.2014. Further no representative of the petitioners was present at site at the time when joint inspection was carried out. The only person present at site at the time of inspection was Sri Bhairam who was alleged to be petty contractor of the petitioner no.2 and it is also alleged that it was Sri Bhairam who had informed that the illegal mining was being carried out by the petitioner no.1 and petitioner no.2 . However, it is also not disputed that Sri Bhairam had given an affidavit stating that he was coerced to take the names of the petitioners on being pressurized by Sri Dharmendra Kumar, who was also the leaseholder of the same gata number and Sri Bhairam was a petty contractor of Sri Dharmendra Kumar. The aforesaid fact has not been disputed by the respondents in their counter affidavit. In fact, the respondent in paragraph no. 30 of their counter affidavit have alleged as under:-

"*30. That in reply to the contents of paragraph no.32 of the writ petition is is stated that the action has not been taken according to the statement of Bhairam whereas the action has been taken after finding illegal mining got done by the petitioners."*

17. However, the perusal of the joint inspection report dated 03.12.2014 reveals that none was available on site other than Sri Bhairam to point out that the illegal mining was being carried out by the petitioners. Further the perusal of the records as well as the counter affidavit of the respondents reveals that there is no other material available to show that the illegal mining was being carried out by the petitioners, other than the statement made by Sri Bhairam before the joint inspection team.

18. The joint inspection report was prepared without preparing the bearing report, surveyor's diary and even the map of the location where inspection had been conducted was not prepared. The aforesaid fact has also not been disputed by the respondents in their counter affidavit. It is also admitted position that the mining lease granted in favor of the petitioner no.1 had expired and lease was yet to be renewed on the date of inspection. Further the mining lease in favor of the petitioner no. 3 had also expired on 16.4.2013. It was only the mining lease of the petitioner no.2 that was subsisting on the date of inspection. Thus even otherwise not only the inspection was carried out ex-parte but certain essential ingredients which ought to have been incorporated in the joint inspection report were also missing.

19. The petitioners had filed a detailed reply dated 28.11.2015 to the show cause notice categorically denying the role of the petitioners in the matter and questioning the veracity of the joint inspection report dated 3.12.2014. However the respondent no.2 while passing the impugned order dated 4.6.2016 had failed to deal with any of the contentions so raised in the reply of the petitioners dated 28.11.2015. The perusal of the impugned order dated 4.6.2016 reveals that the contentions raised by the petitioners in their reply dated 28.11.2015 had not been dealt by the respondent no.2. The only finding given by the respondent no.2 in the impugned order is that all the documents sought by the petitioners under the Right to Information Act, 2005 had been supplied to the petitioners by means of the letters dated 6.7.2015 and 7.9.2015, even the aforesaid finding is perverse in view of the fact that the documents sought by the petitioners were not supplied by means of the later dated 6.7.2015 as would be evident from the letter dated 16.7.2015 on the petitioners wherein it has been stated that the inspection report dated 02.11.2014 had been provided to the petitioners and not the joint inspection report dated 3.12.2014. The aforesaid fact is further fortified by the letter dated 8.1.2016 issued by the Mining Inspector to the Public Information Officer, Directorate of Geology and Mining, Uttar Pradesh, Lucknow. Hence, it is beyond doubt that the impugned order dated 4.6.2016 is non-speaking and unreasoned as none of the contentions of the petitioner raised in the reply dated 28.11.2015 have been dealt with and shows complete non-application of mind on the part of the respondent no.2. Even the revisional order dated 24.4.2019 fails to deal with various contentions raised by the petitioners in the revision filed under Rule 78 of the Rules, 1963.

20. In the present case the inquiry into allegations of illegal mining conducted by the respondent no.2 would possess the character of quasi judicial proceedings. Recording of findings as to illegal mining being carried out by the petitioners for the purpose of fixing a financial responsibility would certainly entail a full-fledged inquiry, comprising allegation/evidence in support of the charges coming forward followed by the case in defense and then findings arrived at based on the evidence adduced. Recovery would follow, if the findings returned is adverse to the petitioners, who were charged with allegations of illegal mining. Having regard to the character

and complexion of proceedings in conjunction with the structure of power conferred by the Act/Rules, the inevitable conclusion is that, such proceedings are quasi judicial proceedings wherein full play is required to be given to the rules of natural justice by the competent authority, the respondent no.2 in the present case. More so, it is beyond doubt that the impugned orders, which have civil consequences can only be passed after affording opportunity of hearing to the person concerned in consonance with the principles of natural justice.

21. On the failure to comply with the principles of natural justice the order passed, cannot be sustained. It is also incumbent upon the quasi judicial authority to pass a reasoned and speaking order and the absence to give reasons cannot be approved of.

22. This Hon'ble Court in the case of ***Ranveer Singh vs. State of U.P. and Others 2017 (8) ADJ 240,*** a case which pertains to illegal mining and recovery, had held as under:-

"*33. Once the liability was to be fastened on the shoulder of petitioner, then it was the obligation of the State to prove by way of credible evidence available that it was the petitioner, who has indulged in illegal mining and in the said direction, apart from issuing show-cause notice, all the evidence that was sought to be relied upon i.e. the incumbents who have carried out the search and survey and the incumbents who have come forward to depose against petitioner, their names ought to have been disclosed and they ought to have been produced to support the case of State that petitioner in-fact has indulged in illegal mining. Not only this as a part of process, petitioner was entitled to have reasonable opportunity of defending himself by questioning the veracity of evidence produced against him and by adducing his own defence evidence, if any. Decision maker is bound to act fairly, as under the scheme of things provided for, the determination made by him will entail civil consequences, as qua the person charged with illegal mining on charges being proved financial liability would be shouldered and in contra situation, the State would be at loss.*

34. Apex Court in the case of Goa Foundation v. Union of India, 2014 (6) SCC 590, while dealing with the report of Shah Commission, constituted for inquiring illegal mining, in reference of report so submitted held that prosecution of mining lease cannot be directed on the basis of finding in report of Shah Commission, as before submitting said report, incumbents have not been provided with the opportunity of being heard and to produce evidence in their defence and not allowed the right to cross-examine. In the said case, Central Government/State Government gave undertaking that no action would be undertaken on the basis of said finding with-out undertaking exercise of giving opportunity of hearing."

23. It would not be out of place to mention here that as already demonstrated above both the impugned orders are unreasoned, non-speaking and have

been passed in a mechanical manner and show complete non-application of mind on the part of the authorities concerned. It is settled law that every administrative or quasi-judicial order must contain the reasons. Such reasons go a long way in not only ensuring that the authority has applied his mind to the facts and the law, but also provide the grounds for the aggrieved party to assail the order in the manner known to law. In the absence of any reasons, it also possesses a difficulty for the judicial authorities to test the correctnessof the order or in other words, exercise its power of judicial review. In this context we rely upon the law laid down by the Hon'ble Supreme Court in the case of **Kranti Associates (P) Ltd. Vs. Masood Ahmed Khan, (2010) 9 SCC 496.**

24. It is also noted that the entire proceedings were initiated against the petitioners solely on the basis of a joint inspection report dated 3.12.2014. Considering that more than eleven years have elapsed since the said date, no useful purpose would be served in remitting the matter back to the respondents for reconsideration, as the factual situation at site would no longer be the same as it existed more than a decade ago. It is well settled that an order of remand is not to be passed routinely, as an unwarranted order of remand only prolongs litigation without advancing the cause of justice.

25. Hence, in the above facts and circumstances the present writ petition is ***allowed*** accordingly, the orders dated 24.4.2019 passed by the Special Secretary, Geology and Mining, Uttar Pradesh, Lucknow, and 4.6.2016 passed by the District Magistrate, are hereby set aside.

26. It is further directed that the amounts deposited by the petitioner no.2 and petitioner no.3 in the present writ petition in pursuance to the interim orders passed by this Hon'ble Court, shall be refunded back to the petitioner no.2 and petitioner no.3 along with 7% simple interest per annum from the date said amount has been deposited till it is paid within two months from the date of production of certified copy of this order.

27. No order as to costs.

(Sudhanshu Chauhan,J.) (Saral Srivastava,J.)

October 7, 2025
Virendra

Digitally signed by :-
VIRENDRA KUMAR BHARTEEY
High Court of Judicature at Allahabad