

India

M.C. Mehta v. Union of India & Others

Supreme Court of India, 18 March 2004¹

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The main question to be examined in these matters is whether the mining activity in area up to 5 kilometers from the Delhi-Haryana border on the Haryana side of the ridge and also in the Aravalli hills causes environment degradation and what directions are required to be issued. The background in which the question has come up for consideration may first be noticed.

The Haryana Pollution Control Board (HPCB) was directed by orders of this Court dated 20th November, 1995 to inspect and ascertain the impact of mining operation on the Badkal Lake and Surajkund - ecologically sensitive area falling within the State of Haryana. In the report that was submitted, it was stated that explosives are being used for rock blasting for the purpose of mining; unscientific mining operation was resulting in lying of overburden materials (topsoil and murum remain) haphazardly; and deep mining for extracting silica sand lumps is causing ecological disaster as these mines lie unreclaimed and abandoned. It was, inter alia, recommended that the Environmental Management Plan (EMP) should be prepared by mine lease holders for their mines and actual mining operation made operative after obtaining approval from the State Departments of Environment or HPCB; the EMP should be implemented following a time bound action plan; land reclamation and afforestation programmes shall also be included in the EMP and must be implemented strictly by the implementing authorities. The report recommended stoppage of mining activities within a radius of 5 kms. from Badkal Lake and Surajkund (tourist place). The Haryana Government, on the basis of the recommendations made in the report, stopped mining operations within the radius of 5 kms of Badkal Lake and Surajkund. The mine operators raised objections to the recommendations of stoppage of mining operations. According to them, pollution, if any, that was generated by the mining activities cannot go beyond a distance of 1 km. and the stoppage was wholly unjustified.

NEERI Report and earlier directions

By order dated April 12, 1996, the Court sought the expert opinion of National Environmental Engineering Research Institute (NEERI) on the point whether the mining operations in the said area are to be stopped in the interest of environmental protection, pollution control and tourism development and, if so, whether the limit should be 5 kms. or less. . . .

On consideration of the reports, this Court came to the conclusion that the mining activities in the vicinity of tourist resorts are bound to cast serious impact on the local ecology. The mining brings extensive alteration in the natural land profile of the area. Mined pits and unattended dumps of overburdened left behind during the mining operations are the irreversible consequences of the mining operations and rock blasting, movement of heavy vehicles,

¹ Available at <http://indiankanoon.org/doc/69408974/>

movements and operations of mining equipment and machinery cause considerable pollution in the shape of noise and vibration. The ambient air in the mining area gets highly polluted by the dust generated by the blasting operations, vehicular movement, loading/unloading/transportation and the exhaust gases from equipment and machinery used in the mining operations. It was directed that in order to preserve environment and control pollution within the vicinity of two tourist resorts, it is necessary to stop mining activity within 2 kms. radius of the tourist resorts of Badkal Lake and Surajkund. . . . Further, it was directed that failing to comply with the recommendations may result in the closure of the mining operations and that the mining leases within the area from 2 kms. to 5 kms. radius shall not be renewed without obtaining prior no objection certificate from the HPCB as also from the Central Pollution Control Board (CPCB). Unless both the Boards grant no objection certificate, the mining leases in the said area shall not be renewed. (M.C. Mehta v. Union of India & Ors. [(1996) 8 SCC 462]).

Present Issues

The aspects to be examined include the compliance of the conditions imposed by the Pollution Boards while granting no objection certificate for mining and also compliance of various statutory provisions and notifications as also obtaining of the requisite clearances and permissions from the concerned authorities before starting the mining operations.

In matters under consideration, the areas of mining fall within the districts of Faridabad and Gurgaon in the Haryana State. I.A. No.1785/01 has been filed by the Delhi Ridge Management Board praying that the Government of Haryana be directed to stop all mining activities and pumping of ground water in and from area up to 5 kms from Delhi-Haryana border in the Haryana side of the Ridge, inter alia, stating that in the larger interest of maintaining the ecological balance of the environment and protecting the Asola Bhatti Wildlife Sanctuary and the ridge located in Delhi and adjoining Haryana, it is necessary to stop mining. In the application, it has been averred that the Asola Bhatti Wildlife Sanctuary is located on the southern ridge which is one of the oldest mountain ranges of the world and represents the biogeographical outer layer of the Aravalli mountain range which is one of the most protected areas in the country. The sanctuary is significant as it is instrumental in protecting the green lung of National Capital of Delhi and acts as a carbon sink for the industrial and vehicular emissions of the country's capital which is witnessing rapid growth in its pollution level each year. The ridge, it is averred, is a potential shelter belt against advancing desertification and has been notified a wildlife sanctuary and reserve forest by the Government of National Capital Territory of Delhi. Regarding the mining activities, it is averred that for extraction of Badarpur (Silica sand), there is large scale mining activity on the Haryana side just adjacent to the wildlife sanctuary of the ridge which activities threaten the sanctuaries habitat and also pumping of large quantity of ground water from mining pits. It was also stated that the ground water level was being depleted as a result of the mining activity. Further, the query dust that comes out of mining pits is a serious health hazard for human population living nearby and also the wild animals inhabiting the sanctuary pointing out that the mining and extraction of ground water had been banned in National Capital Territory of Delhi and the ridge being protected as per the order of this Court, it is necessary, that the ridge on the Haryana side is also protected - that being the extension of the range and, therefore, mining, withdrawal of ground water and destruction of flora, etc. should also be restricted outside Delhi or at least upto 5 kms. from Delhi-Haryana

border towards Haryana. On 6th May, 2002, this Court directed the Chief Secretary, Government of Haryana to stop, within 48 hours, all mining activities and pumping of ground water in and from an area up to 5kms. from Delhi- Haryana border in the Haryana side of the ridge and also in the Aravalli Hills. The question to be considered is whether the order shall be made absolute or vacated or modified.

Our examination of the issues is confined to the effect on ecology of the mining activity carried on within an area of 5 Kms. of Delhi-Haryana Border on Haryana side in areas falling within the district of Faridabad and Gurgaon and in Aravalli Hills within Gurgaon District. The question is whether the mining activity deserves to be absolutely banned or permitted on compliance of stringent conditions and by monitoring it to prevent the environmental pollution.

EPCA Visits

In terms of the order passed by this Court on 22nd July, 2002, Environmental Pollution Central Authority (EPCA) was directed to give a report with regard to environment in the area preferably after a personal visit to the area in question without any advance notice. . . .

During the visit, prima facie, EPCA found evidence of clear violation of some of the key conditions of order of this court dated May 10, 1996. . . .

The most serious violation noticed by the EPCA was the continuation of mining even after reaching the ground water level which has been disallowed by the regulatory agencies. . . . [The Court describes evidence of many other violations.]

From the above, it is clear that little or nothing has been done to seriously comply with the directives of the Hon'ble Supreme Court as well as to enforce the regulations and conditions laid down by the authorities for environmental management of the mining areas. . . .

The NOC given by the Central Pollution Control Board, includes an explicit condition regarding ground water :

That the mine owner will ensure that there is no discharge of effluent of ground water outside lease premises. They must take measures for rain water harvesting and reuse of water so as not to affect the groundwater table in the areas. Most importantly, it stipulates that no mining operations shall be carried out in the water table area.

This condition has been grossly violated. Even the Haryana government's affidavit in court accepts that pumping of ground water is taking place, though it attempts to soften the issue by arguing that it is only being done in a few cases. Under this condition, mining is not allowed in the water table area. EPCA saw deep and extensive pits of mines with vast water bodies. EPCA also saw evidence of pumps and pipes being used to drain out the ground water so that mining could continue. Therefore, the miners are mining for silica, but also in the process, mining and destroying the ground water reserves of the areas. In times of such water stress and desperation, this water mining is nothing less than a gross act of wastage of a key resource. This time the stress has been further aggravated by the failure of monsoon. Notices have been issued in the

nearby housing colonies stating that fall in groundwater table due to lack of rains is responsible for water shortage in the area this season. This only indicates how important it is to conserve ground water in the region for long term sustainability of drinking water sources. Ground water is the only source of drinking water here.

On the basis of study and visit as well as the report of the Central Ground Water Board, EPCA made the following recommendations :

"1. The ban on the mining activities and pumping of ground water in and from an area up to 5 kms. from the Delhi-Haryana border in the Haryana side of the ridge and also in the Aravalli Hill must be maintained.

2. Not only must further degradation be halted but, all efforts must be made to ensure that the local economy is rejuvenated, with the use of plantations and local water harvesting based opportunities. It is indeed sad to note the plight of people living in these hills who are caught between losing their water dependent livelihood and between losing their only desperate livelihood to break stones in the quarries. It is essential that the Government of Haryana seriously implements programmes to enhance the land based livelihood of people . . . Local people must not be thrown into making false choices, which may secure their present but will destroy their future. Already, all the villages visited by EPCA complained of dire and desperate shortages of drinking water. Women talked about long queues before taps to collect water. . . .

7. EPCA would also recommend that the mining area outside the 5 kms. area must be demarcated and regulated. In this context, EPCA would like to draw the attention of the court to the violations and gross disregard for regulations found in the present mines. It is not out of place to mention that these mines are owned by very powerful and highly placed individuals in the establishment. . . .

The EPCA, while reaffirming the recommendations that had been made in its earlier report dated 9th August, 2002, made the following recommendations :

"The overall assessment of the environmental impact of the mining activities in the area especially its implication for ground water level in the region reaffirms EPCA's assessment presented in its earlier report. EPCA upholds its earlier recommendations made vide the report submitted to the Hon'ble Supreme Court on August 9, 2002.

EPCA is concerned that if mining is allowed to continue in this area, it will have serious implications for the groundwater reserve which is the only source of drinking water in the area. . . . Unless immediate measures are taken to conserve and augment water resources in the area acute survival crisis is expected. Interviews with local villagers in the vicinity of mines confirm that water shortage is already a serious problem in the region. The extent of degradation in and around mines is the evidence of failure to enforce basic rules for ecological safeguards. . . ."

Submissions for Confirming or Varying Order dated 6th May, 2002

Having regard to the ground realities as reflected in the aforesaid reports, should the order passed on 6th May, 2002 be varied is the question? The continuance of the order has been strenuously objected to by the mining lease holders and also by the Government of Haryana. . . . We have also heard Mr. Raju Ramachandran and Mr. Altaf Ahmad, learned Additional Solicitor Generals for the Ministry of Environment and Forest, Government of India, Mr. C.S. Vaidyanathan and Mr. Kaushik (in support of IA No.1825/2002 filed by the villagers). Mr. Ranjit Kumar, learned Amicus and Mr. M.C. Mehta, Advocate/petitioner-in- person and Mr. Kailash Vasudeva for Government of Delhi have made submissions in support of closure of mining activity and for making the order dated 6th May, 2002 absolute by prohibiting all mining activities and pumping of ground water in and from an area upto 5 kms. from Delhi- Haryana Border in the Haryana side of the Ridge and also in the Aravalli Hills.

Notifications Regarding Mining on Aravalli Hills

The notification dated 7th May, 1992 issued by the Ministry of Environment and Forest, Government of India under Section 3(2)(v) of the EP Act read with Rule 5 of the Rules made under the said Act has considerable bearing on the aspect of mining in Aravalli Hills. The notification, inter alia, bans all new mining operations including renewals of mining leases and sets out the procedure for taking prior permission before undertaking such an activity. . . .

The powers vested in the Central Government in terms of the aforesaid notification dated 7th May, 1992 were delegated to the State Governments concerned, namely, Rajasthan and Haryana by issue of notification dated November 29, 1999 by the Central Government, Ministry of Environment and Forest. . . . The Central Government, in terms of notification dated 28th February, 2003, has withdrawn the delegation in favour of State Governments. . . . [Statutory requirements for environmental impact assessments were not met.]

Legal Parameters

The natural sources of air, water and soil cannot be utilized if the utilization results in irreversible damage to environments. There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms. This Court has repeatedly said that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to of enjoyment of pollution-free water and air for full enjoyment of life. (See Subhash Kumar v. State of Bihar [AIR 1991 SC 420]. Further, by 42nd Constitutional Amendment, Article 48-A was inserted in the Constitution in Part IV stipulating that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51A, inter alia, provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Article 47 which provides that it shall be the duty of the State to raise the level of nutrition and the standard of living and to improve public health is also relevant in this connection. The most vital necessities, namely, air, water and soil, having regard to right of life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others. Having regard to the right of the community at large it is permissible to encourage the participation of Amicus Curiae, the appointment of experts and the appointments of monitory committees. The approach of the Court

has to be liberal towards ensuring social justice and protection of human rights. In *M.C. Mehta v. Union of India* [(1987) 4 SCC 463], this Court held that life, public health and ecology has priority over unemployment and loss of revenue. The definition of 'sustainable development' which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In *Narmada Bachao Andolan v. Union of India & Ors.* [(2000) 10 SCC 664], this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's " test.

The mining operation is hazardous in nature. It impairs ecology and people's right of natural resources. The entire process of setting up and functioning of mining operation require utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and are 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 fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and peoples' life, health and property, the principles of accountability for restoration and compensation have to be applied. The development and the protection of environments are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, the development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. We may note that to stall fast the depletion of forest, series of orders have been passed by this Court in *T.N. Godavarman's case* regulating the felling of trees in all the forests in the country. Principle 15 of Rio Conference of 1992 relating to the applicability of precautionary principle which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing effective measures to prevent environmental degradation is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straight jacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment. Bearing in mind the aforesaid principles, we have to consider the main question: should the mining activity in areas in question be banned altogether or permitted and, if so, conditions to be provided

therefor? The reports and suggestions of NEERI, EPCA and CEC have already been extensively noted. The effect of mining activity in area up to 5 km. from Delhi-Haryana border on Haryana side of the ridge and also in the Aravalli Hills is to be seen in light of these reports and another report dealt later. One of the aspect stated in these reports is about carrying on of mining activity in close proximity to the residential area and/or main roads carrying traffic. . . .

Modification of Order dated 6th May, 2002 Regarding Mining in Aravalli

Now, the question is should mining activities in the Aravalli range in Gurgaon district be permitted to restart and, to that extent, the order dated 6th May, 2002 be modified, meanwhile directing implementation of recommendations in the report of CMPDI and earlier referred reports. The other option is to first constitute a monitoring committee directing it to individually examine and inspect mines from environmental angle in the light of the said recommendations and file a report in this Court in respect of individual mines with its recommendations for restart or otherwise as also recommendation, if any, for the payment by the mine operators and/or by State Government towards environmental fund having regard to the precautionary principles and polluter pays principle and on consideration of that report, to decide the aspect of modification of the order dated 6th May, 2002, partially or entirely. We are of the view that the second option is more appropriate. We are conscious of observations in CMPDI that measures for protecting the environment can be undertaken without stopping mine operations and also the suggestions of MOEF to permit mining subject to the mine lease holders undertaking to comply with such conditions which remain to be complied, but, having regard to the enormous degradation of the environment, in our view, the safer and the proper course is to first constitute a Monitoring Committee, get a report from it and only thereafter consider, on individual mine to mine basis, lifting of ban imposed in terms of order dated 6th May, 2002. Before concluding this aspect, we may note that assuming there was any ambiguity about the applicability of order dated 6th May, 2002 to mining in Aravalli Range, it is clarified that the said order would be applicable to all the mines in Aravalli hill range in Gurgaon district. . . .

We have already extracted the recommendations of NEERI, as also violations noticed in the reports submitted by EPCA and the suggestions of EPCA, CEC and CMPDI. The Monitoring Committee shall inspect the leases in question in Faridabad District as well in the light of these recommendations and file its report containing suggestions on recommencement or otherwise of the mining activity therein. It may be reiterated that if, despite stringent conditions, the degradation of environment continues and reaches a stage of no return, this Court may have to consider, at a later date, the closure of mining activity in areas where there is such a risk. As earlier noticed as well, it would not be expedient to lift the ban on mining imposed in terms of the order of this Court dated 6th May, 2002 before ensuring implementation of suggestions of CMPDI and other recommendations of experts (NEERI, EPCA and CEC). The safer course is to consider this question, on individual basis after receipt of report of the Monitoring Committee.

Conclusions

1. The order dated 6th May, 2002 as clarified hereinbefore cannot be vacated or varied before consideration of the report of the Monitoring Committee constituted by this judgment.

2. The notification of environment assessment clearance dated 27th January, 1994 is applicable also when renewal of mining lease is considered after issue of the notification.
3. On the facts of the case, the mining activity on areas covered under Section 4 and/or 5 of Punjab Land Preservation Act, 1900 cannot be undertaken without approval under the Forest (Conservation) Act, 1980.
4. No mining activity can be carried out on area over which plantation has been undertaken under Aravalli project by utilization of foreign funds.
5. The mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions.
6. 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.
7. MOEF is directed to prepare a short term and long term action plan for the restoration of environmental quality of Aravalli hills in Gurgaon district having regard to what is stated in final report of CMPDI within four months.
8. Violation of any of the conditions would entail the risk of cancellation of mining lease. The mining activity shall continue only on strict compliance of the stipulated conditions. The matters are directed to be listed after reopening of courts after summer vacation on receipt of the report from the Monitoring Committee.