

*Before Jawahar Lal Gupta & N.K. Sud, JJ*

SUBHASH SHARMA @ SUBHASH CHANDER—*Petitioner*

*versus*

STATE OF HARYANA AND OTHERS—*Respondents*

*C.W.P. NO. 14343 OF 2000*

20th April, 2001

*Constitution of India, 1950—Art. 226—Public Interest Litigation—Allegation of illegal mining against a Cabinet Minister in connivance with the officials of the Mining Department—Report of the Local Commissioner appointed by High Court reveals illegal and unauthorised Mining is being carried out—Report of the Financial Commissioner appointed by the State shows that the area in question had not even been demarcated—The State Vigilance Bureau giving report only in respect of part of the area and making no effort to ascertain the factual position in regard thereto—A thorough probe is required to be made—Writ allowed while directing the CBI to register a case and conduct an investigation with regard to the mining of minerals—Officers of the Mining Department also directed to demarcate the area allotted to each lessee in the State.*

*Held* that, ordinarily, it is the prerogative of the State to investigate all offences committed within its jurisdiction. However, allegations have been made against a person who holds the high position of a Cabinet Minister in the State. Two opportunities were given to the State to look into the matter. On the first occasion, an officer of the rank of a Financial Commissioner found that the area in question had not even been demarcated. Thus, clear and categorical findings were not possible. On the second occasion, the report was given only in respect of a part of the area. Despite the fact that specific Khasra Nos. had been mentioned in the report of the Local Commissioner, no effort was made to ascertain the factual position in regard thereto. More than all this, we are of the view that the investigation should inspire confidence in the public mind. The report should be above suspicion. Thus, we consider it appropriate to direct that the case shall be investigated by the Central Bureau of Investigation.

(Para 23)

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I.K. Mehta, Sr. Advocate with Ms. Ranjeet Mehta, Sandeep Vermani, M.S. Kohli & S.C. Mahna, *Advocates for the petitioner*

Surya Kant, Advocate General, Haryana (Ms. Palika Monga, AAG, Haryana with him).

Ms. Deepali Puri, Advocate, *for respondent Nos. 6 & 7.*

P.S. Patwalia, Advocate *for respondent No. 8*

Arun Jain, Advocate *for respondent No. 9*

### JUDGMENT

*Jawahar Lal Gupta, J. (O)*

(1) The petitioner a journalist has approached this Court with the allegation that “the protectors of the national wealth have joined hands with the predators and the loot of minerals is going on unabated”. According to him, the eighth respondent is a Cabinet Minister in the State of Haryana. He belongs to District Faridabad and is known as “the mining king and controls the mining mafia.....” In connivance with “the officials of the Mining Department, Local Administration etc, he is continuously indulging in illegal mining in the entire District Faridabad and more particularly in the area which is popularly known as ‘Ishq Mandi’ comprising of Khasra No. 46 of Village Anangpur and Khasra No. 15 of Village Ankhir”. He further alleges that the area is rich in Silica sand. Respondent No. 8 has set up more than 20 mini crushers. He possesses excavators, dumpers, motor tractors and drilling machines besides a fleet of trucks under the name of K.T.C. The said machines are being operated day and night. The minerals in crushed form are loaded in dumpers and taken away. Part of these are also transported to his crushers namely Mohan Mines (P) Limited and Meera Stones. To support this submission, the petitioner has produced certain photographs which had allegedly been taken on 13th October, 2000. He has also referred to certain newspaper reports which had appeared in the Press in support of his allegations. It is alleged that “the officers of the Mining Department and the Local Administration have taken no steps whatsoever to stop the illegal mining”. He further alleges that respondent No. 9 is a close associate of respondent No. 8. The 9th respondent is holding the adjoining quarry of Badkhal. The two respondents are “in connivance with each other illegally mining, storing and stacking the minerals which are illegally extracted.... and are sharing the booty without payment of royalty and tax to the State”.

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On these premises, the petitioner prays that a writ in the nature of mandamus be issued directing the respondent—authorities to take immediate steps to stop the illegal extraction. He also prays that such other action as may be deemed proper in the circumstances of the case be taken.

(2) This petition was posted for preliminary hearing before a Bench of this Court of which one of us (Jawahar Lal Gupta, J,) was a member on 19th October, 2000. At the request of the counsel for the petitioner, Mr. R.S. Bains, an Advocate of this Court was appointed as the Local Commissioner to visit the site and submit a report. The case was adjourned to 2nd November, 2000. After the receipt of the report, it was directed that notice of motion shall issue for 16th November, 2000.

(3) In response to the notice, separate written statements have been filed on behalf of some of the respondents. On behalf of respondent Nos. 1, 3, 4 and 5, a written statement was filed by Mr. S.N. Roy, Director, Mines and Geology, Haryana. Respondents No. 6 the Director of Mines Safety, Ghaziabad Region also filed a reply. Written statements have also been filed by respondent Nos. 7, 8 and 9. The claim made by the petitioner has been controverted.

(4) The report of the Local Commissioner was initially kept in a sealed cover. On 8th December, 2000, the Advocate General, Haryana had made a request to the Bench to adjourn the hearing so as to enable the State and its authorities to depute a senior officer to visit the site, hold an enquiry and submit a report regarding the factual position. This request was granted. The case was adjourned to 12th January, 2001. Thereafter, it was again adjourned at the request of the counsel. On 31st January, 2001, the Advocate General had produced before us the report submitted by Mr. B.D. Dhaliya, Financial Commissioner, Haryana. The report was taken on record. Simultaneously, it was directed that the report submitted by the Local Commissioner Mr. R.S. Bains which was in a sealed cover be opened and copies thereof be supplied to the counsel for the parties.

(5) On 15th March, 2001, the Advocate General, Haryana stated before us that the State Government had *prima facie* accepted the report submitted by Mr. Bains. It had asked the State Vigilance Bureau to register an enquiry and to investigate. The case was adjourned to 16th March, 2001 to enable the Advocate General to produce the Government file. On that day, the file was produced. It was pointed out that the Chief Minister had approved the proposal of the Department

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to have the vigilance enquiry conducted through a senior IPS officer. Mr. Prashanta Kumar Agrawal, IPS had been appointed to enquire into the matter. The case was adjourned to 4th April, 2001 so as to enable Mr. Agrawal to complete the enquiry within 10 days and to submit the report. This report was produced before the Court on 4th April, 2001. It was taken on record. Copies were given to the counsel for the parties. The case was adjourned for today for arguments.

(6) Counsel for the parties have been heard.

(7) Mr. I.K. Mehta, learned counsel for the petitioner contends that on the basis of the evidence on record, it is clear that illegal mining is going on in the area. Thus, theft of public property has been committed. Since respondent No. 8 is a minister in the State of Haryana, it would be only fair that an impartial agency conduct an enquiry and further action is taken in accordance with law. He further submits that the State and its instrumentalities should be directed to take effective steps to check illegal mining and to take punitive action against the defaulters.

(8) Mr. Surya Kant, learned Advocate General, Haryana very fairly states that on the basis of the evidence on record, good ground for registration of a criminal case is made out. The State should be permitted to register the case and investigate it. He further states that effective steps to check illegal mining shall be taken.

(9) Mr. P.S. Patwalia submits that respondent No. 8 has done no illegal mining. He has no objection if the matter is investigated by any impartial agency including the Central Bureau of Investigation. He further submits that the enquiry should not be directed merely against respondent Nos. 8 or 9 but it should be broad-based so that any one who is committing an illegality in the mining operations is subjected to the process of law. He also submits that so far as the present petitioner is concerned, he has actually approached this court on account of extraneous considerations. Litigation is already pending between the parties. The 8th respondent has initiated defamation proceedings against the petitioner. The present petition is a counter-blast to the proceedings initiated against him by the 8th respondent.

(10) Mr. Arun Jain has submitted that the allegation of the petitioner that respondent No. 9 is acting in connivance with respondent No. 8 is wrong. In fact, litigation is pending between the parties. Thus, the two are not acting in unison. He further submits that the 9th respondent has a mining lease in Badhkal only. Mining operations are

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confined to the area for which a valid lease was granted in the year 1994.

(11) The short question that arises for consideration is — Are there grounds for the registration of a case and its investigation ?

(12) Leaving aside the averments made by the parties, a reference to the report submitted by the Local Commissioner Mr. R.S. Bains would be useful. The report appears to be fairly comprehensive. It was prepared after visiting the area. The Local Commissioner prepared a site plan which has been produced as Annexure—I. He also took photographs. As many as 86 photographs have been produced alongwith the report. It also appears that he made enquiries at the spot. According to the report, he had spent the first day in moving around the mining area and collecting evidence. The second day “was spent in collecting documents in establishing the location on the site plan.....” Another visit was made for verification. He also notices that “on the first day obstructions were created as the team was moving around. On the second day huge road blocks were created through which it was not possible to pass except on foot”. In a nut-shell, he found that “illegal mining is going on”. In particular, he found that “the area is composed of Khasra No. 35, 36, 37, 43, 44, 45, 46, 47, 48, 49, 50 and 55 within the revenue limits of village Anangpur....” He states that this area is known as Ishaq Mandi. In the plan attached with the report, it has been marked in the red colour. He further records that “three Khasra nos. 14, 15 and 16 of village Ankhir are also part of the area where illegal and unauthorised mining is going on. This is shown in maroon colour on the site plan”. He further found that “this is the place where unauthorised and illegal mining is being carried out by respondent No. 8 and no. 9 and at a scale which is difficult to estimate accurately except that out of every five trucks which we saw four of them have KTC written on them prominently. As per the local people of village Anangpur, KTC is the license for operating in that area and no authority checks the truck with this magic sign”. Mr. Bains has observed that KTC stands for Kartar Transport Company. Mr. Patwalia disputes this. Be that as it may, the Local Commissioner categorically found as under :—

“The following machines are used in the process of mining and were seen by us in the area under illegal mining of respondent No. 8

Excavator : Used for cutting, digging and loading the minerals from the mines with or without blasting. Ph-38 & 39

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Loader : The machines which load the silica sand from the silica sand storage point on to the trucks/dumpers. Ph-40 & Ph-77.

Tyrox 30 ton capacity : The machine which transports the extracted minerals from the mining pitch to the storage point on the surface level. From here the minerals are loaded by the loaders into the trucks and dumpers and transported to major stock and sale sites. Ph-79.

Drilling machine : The machine which drills holes in the harder rocks in which the explosive material is then filled and blasted to loosen the rock material.

Vacuum Machine : The machine which is an inseparable part of the drilling machine and helps the drilling machine to perform its function. Ph-36

Volvo 12 tyres 40 ton capacity : The big machine which can carry upto 30 to 40 tonnes of mine material for transportation and is mainly used at night for quick transportation of mine material. Ph-80.

Dumper 5/6 ton capacity : The machine which can carry upto 5 to 6 tonnes of mine material for transportation. Ph-81.

Tipper 5/6 ton capacity : The machine which transports the extracted minerals from the mining pitch to the storage point on the surface level. From here the minerals are loaded by the loaders into the trucks and dumpers and transported to major stock and sale sites. Ph-30 & Ph-31".

(13) He recorded his conclusions in paragraphs 20 and 21 in the following words :—

"I also went to Anangpur village in order to confirm whether the information given by laboures and working men was accurate since none of them gave their names except a few. They were visibly afraid. Some of the local villagers agreed to get themselves named and confirm the facts observed during inspection. They also identified the sites of illegal mining on the site plan. Their names are Tula Ram s/o Ved Singh, Sri Chand s/o Chaudhary Mavasi Ram, Amrit Singh s/o Chaudhary Lakhpat Singh, former Sarpanch, Karan Singh s/o Chaudhary Balleram and Ajaypal s/o Amrit Singh all residents of village Anangpur. As per these above named

persons each truck of silica sand is sold at the rate between Rs. 4,000 to Rs 5,000 in the Delhi market. They also informed that not less than 300 trucks fills of KTC are taken out of Ishaq Mandi mining area by respondent No. 8 every day without paying any royalty or tax to the State. His daily turnover from this illegal activity alone is something like 4000 x 300 i.e. 12 lakh rupees.

The loss suffered by the gov<sup>t</sup> is royalty and taxes. The loss suffered by the people is to ecology, environment & water table of the area. The most strange part of the story is that though most of the area of the Anangpur village has been given on lease to different groups/companies for mining, yet for the best mining area of the village no lease has been granted. It is kept reserved for men like respondent No. 8, Kartar Singh and others like him, for free exploitation of the natural resources of the village without any benefit to the village community, the State govt. or even without any protection for the work force as no law enforcement is visible nor it is enforced. No law is applicable for workers of these unauthorized mining area since whatever little law enforcement is for the authorised mining work force and not for others. The name of the area is symbolic. It is truly Ishaq mandi for those who are strong, bold and lawless”.

(14) We may only mention that the report is thorough and comprehensive. The photographs are indicative of massive operations with the help of heavy machinery and explosives etc.

(15) This report, though revealing, is not the solitary piece of evidence on the record. The State of Haryana had deputed Mr. B.D. Dhalia to hold an enquiry. This report is on record as Mark 'A' (Pages 149 to 152). He records that “Shri Bir Singh Tehsildar, Faridabad informed that they spent three days in locating Khasra No. 15 of the (sic) Ankhir and Khasra No. 46 of Anangpur measuring from trijunction (Sehda) of Bhati and Link (Dehza) of Badhkal (Corner of wall between Delhi and Haryana States) but the area does not coincide. According to him the demarcation can be satisfactorily done only after making measurement from Mustatil stone of Ankhir and Badhkal, which shall atleast take 25 days (report of Tehsildar, Faridabad in original along with its English translation is marked 'C')”.

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(16) Having said the above, he recorded the following conclusion :—

“The above detail show that the issue narrows down to demarcation of Khasra No. 15 of Ankhir and Khasra No. 46 of Anangpur on land as petitioner alleges that land where Sh. Ram Kishan is at present working is Khasra No. 15 of Ankhir and 46 of Anangpur whereas Ram Kishan says that his pit falls in Khasra No. 1, 2 and 3 of revenue estate of Badhkal. Whole position shall crystallize when exact demarcation is made by the revenue authorities. As I am required to give reports before the next date (of) hearing i.e. before 12th January, 2001, I recommend that directions be issued to the Deputy Commissioner, Faridabad to immediately get the Khasra No. 15 of Ankhir and 46 of Anangpur demarcated on the land to find out whether respondent No. 9 is working in his leased land or has expanded into vacant area of Khasra 15 and 46 of Ankhir and Anangpur respectively. In case demarcation shows that M/s Ram Kishan Purni Devi are working in their leased land then no action is called for, otherwise they can be proceeded against in terms of the notice dated 23rd October, 2000 issued to them by Director, Mines & Geology under Rule 27(5) of Mineral Concessions Rules, 1960 read with clause 2 part IX of the lease deed on the report of Assistant Mining Engineer, Faridabad dated 19th September, 2000 wherein he complained of non erection of boundary pillar by respondent No. 9. Regarding statement of production figures marked ‘D’ submitted by petitioner it does not lead to any coherent conclusion, as firstly there was a change in the Government in the end of July, 1999 and not in November, 1999 as stated by him, secondly production of mineral keep on fluctuating depending upon demand and supply in the market. As far as respondent No. 8 is concerned, I could not find any evidence to link him with mining operations being carried out by respondent No. 9. Allegations made against him are based only on conjectures and surmises”.

(17) In a nut-shell, the officer was of the view that respondent No. 9 had expanded his working area and that he could not find any evidence to link respondent No. 8 with the operations being carried out by respondent No. 9.



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(18) Then we have the report of Mr. Prashanta Kumar Agrawal, Superintendent of Police, State Vigilance Bureau, Gurgaon Range, Gurgaon. This report does not bear any date but it was produced in court on 4th April, 2001. Mr. Agrawal recorded the following conclusions :—

“From a careful analysis of the statements and record obtained and site inspection dated 23rd March, 2001, it is amply clear that as per the demarcation report dated 8th March, 2001 submitted by the mining and revenue officials, the above said mine of M/s Ram Kishan Purni Devi is located not in the area of Badkhal but in part of mustatil no. 15 of Ankhir and khasra no. 46 of Anangpur. Thus, according to this demarcation report the mining activities carried out by Ram Kishan Purni Devi at this site is beyond the authorised area for which they have been granted lease and cannot be accepted as authorised. However, Sh. Ram Kishan through his statement and records has put forth the argument that there have been irregularities in the demarcation of this land and the objections raised in this regard from time to time by him have not been given due consideration. Moreover, in his defence he has also put forth the argument that he has paid royalty and sales tax to the government as per rules for the minerals that he has extracted from this mine. However, due to constraints of time it has not been possible to determine as to whether the royalty and sales tax paid by Ram Kishan Purni Devi relate to the produce of minerals from the above mentioned mine alone or from his other mines as well.

As regards the question of mining operations in khasra No. 15 of Ankhir and Khasra no. 46 of Anangpur at the instigation or with the connivance of Sh. Kartar Singh Bhadana Minister Haryana Govt., no concrete evidence has emerged till now. While the officials of the mining deptt. deny any pressure from Sh. Kartar Singh Bhadana Minister, what is more important is that Ram Kishan himself in his statement has accepted that he had conducted mining operations in this mine and Kartar Singh Bhadana has got nothing to do with the same. It is true that Kartar Singh and Ram Kishan are close relatives but Ram Kishan in his statement has clearly mentioned about bitterness in family relations and commercial interests between himself and Kartar Singh Bhadana. Under the circumstances, it becomes very difficult to prove any hidden nexus, if any, between the two of them.

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Probably, a deeper probe into the bank accounts, details of telephones etc. could throw valuable light on this aspect but the same has not been possible due to the extremely short period granted for completion of the enquiry.

It may be pertinent to mention here that the enquiry entrusted to Director Vigilance,—*vide* Chief Secretary, Haryana Vigilance Deptt. memo no. 32/10/2001-5 Vig (1), dated 12th March, 2001 relates only to illegal mining in khasra no. 15 of Ankhir and khasra no. 46 of Anangpur and as such the scope of enquiry conducted by the undersigned is limited only to that area though the PIL contains allegations of illegal mining in the Ishk Mandi area of Anangpur as well. If any enquiry is to be conducted regarding this aspect also, it would require much more time”.

(19) The enclosures mentioned in the report were not produced before the court.

(20) On an examination of the reports, it is clear that illegal mining operations are going on in the area. Who is responsible ? Who is committing the default ? What is the extent of loss caused to the State Exchequer ? How many persons are involved ? Are the illegal operations being carried out in connivance with the officers of the Department ? An answer to these questions can be given only after a thorough probe is made. Thus, the plea raised on behalf of the petitioner by Mr. Mehta and even the view expressed by the Advocate General that a case should be registered, is unexceptionable.

(21) The next question that arises is—Who should conduct the investigation ? Mr. Mehta submits that the 8th respondent being a Minister in the State, the case should be entrusted to an outside agency. The counsel has further pointed out that the two reports submitted by the State show a bias in favour of the 8th respondent. Mr. Arun Jain, counsel for respondent No. 9 has pointed out that despite the categorical observations of the Local Commissioner that illegal mining was going on in Khasra Nos. 35 to 37, 43 to 50 and 55 within the revenue limits of Village Anangpur, the State Vigilance Bureau had not even cared to look into the matter. In view of this factual position, learned counsel have submitted that the matter should be entrusted to the Central Bureau of Investigation.

(22) On the other hand, Mr. Surya Kant, learned Advocate General, Haryana has submitted that the Vigilance Bureau has already registered an enquiry. The State shall get a formal case registered. It

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shall be properly investigated. Thereafter, if considered necessary, prosecution shall be launched.

(23) Ordinarily, it is the prerogative of the State to investigate all offences committed within its jurisdiction. However, in the present case, allegations have been made against a person who holds the high position of a Cabinet Minister in the State. Two opportunities were given to the State to look into the matter. On the first occasion, an officer of the rank of a Financial Commissioner found that the area in question had not even been demarcated. Thus, clear and categorical findings were not possible. On the second occasion, the report was given only in respect of a part of the area. Despite the fact that specific Khasra Nos. had been mentioned in the report of the Local Commissioner, no effort was made to ascertain the factual position in regard thereto. More than all this, we are of the view that the investigation should inspire confidence in the public mind. The report should be above suspicion. Thus, we consider it appropriate to direct that the case shall be investigated by the Central Bureau of Investigation.

(24) Resultantly, we direct that the Central Bureau of Investigation shall register a case and conduct an investigation with regard to the mining of minerals in the District of Faridabad. While doing so, it would also look into the conduct of the officers and find out as to whether or not they were guilty of any offence.

(25) Mr. Mehta also contended that while the matter is under investigation, the State and its instrumentalities should ensure that no further theft of public property occurs.

(26) A perusal of the report given by Mr. B.D. Dhalia shows that the State authorities including the Department of mining have not even demarcated the area in respect of which the lease has been given to different persons. As noticed above, Mr. Dhalia in his report dated 9th January, 2001 has found that it was not possible to locate Khasra No. 15 of village Ankhir and Khasra No. 56 of Village Anangpur. How was the State leasing out land without even proper demarcation? How was the Director of Mines and Geology permitting the mining operations without proper demarcation of the area? There is no answer on the record. We feel constrained to observe that the officers of the Department have failed to perform their duty. Their carelessness and negligence could have easily proved expensive for the State Exchequer. In this situation, we feel compelled to direct that the area allotted to each lessee in the State shall be properly demarcated immediately. In any case, the needful shall be done within three months

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from today. Furthermore, strict vigilance shall be maintained. If any illegal mining is detected, a report shall be submitted to the Chief Secretary. In any case, monthly report shall be submitted to the Chief Secretary by the Department about the position regarding different mines. We may clarify that the investigation shall not be confined to the conduct of respondent No. 8 or 9 only. It shall be into the conduct of all the lessess and the concerned officers/officials of the department. The investigation shall be completed by the Central Bureau of Investigation at the earliest possible, preferably within six months.

(27) The writ petition is disposed of in the above terms. No. Costs.

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**R.N.R.**

*Before G.S. Singhvi and Nirmal Singh, JJ.*

R.S. DOON,—*Petitioner*

*versus*

CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH  
BENCH, CHANDIGARH AND OTHERS,—*Respondents*

C.W.P. No. 4692/C of 2001

4th April, 2001

*Administrative Tribunals Act, 1985—S. 24—Constitution of India, 1950—Art. 226—Promotion to the Indian Administrative Service—UPSC approving the recommendations of the Selection Committee—Challenge thereto—Tribunal staying the appointments of the selected candidates by passing an ex parte interim order without assigning any reason—Whether violative of the mandate of Section 24—Held, yes—Before passing an ex parte interim order, Tribunal is duty bound to consider all ingredients, like irreparable loss, balance of convenience and above all, public interest.*

*Held, that a bare reading of the order dated 1st January, 2001 passed by the Tribunal staying the appointments of the selected*