

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP-6993-2018 (O&M)
Date of Decision: 09.01.2020**

Harish Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJAN GUPTA.
HON'BLE MR. JUSTICE KARAMJIT SINGH.**

RESENT: Mr. Karanvir Singh Khehar, Advocate for the petitioners.

Mr. B.R. Mahajan, Advocate General, Haryana with
Mr. Ankur Mittal, Additional Advocate General, Haryana.
Mr. Pradeep Prakash Chahar, DAG, Haryana.

Mr. Vikas Bahl, Senior Advocate with
Ms. Harbani Shinh, Advocate for respondent No.3.

Mr. S.P. Jain, Senior Advocate with
Mr. Jagdeep Singh Rana, Advocate for respondent No.5.

Mr. Sandeep Saini, Advocate for
Mr. Rajesh K. Sheoran, Advocate for respondent No.6-
Haryana Pollution Control Board.

RAJAN GUPTA, J. (Oral)

The petitioners herein, seek issuance of a writ in the nature of prohibition restraining the Haryana State Industrial & Infrastructure Development Corporation Limited (for short “the Corporation”)-respondent No.3 herein from carrying out mining/stones in village Khanak, Tehsil Tosham, District Bhiwani. According to them, mining being carried out is a health hazard for the inhabitants of the village. They have also prayed for a writ in the nature of certiorari for quashing the tender process for allotment of mining work allotted to respondent No.5 pursuant to tender notice (Annexure P-10). With a further prayer that adequate compensation be

by them.

It has been vehemently contended by learned counsel for the petitioners that the mining activity was undertaken without seeking necessary permissions from Pollution Control Board (for brevity “the Board”) and other authorities. It was causing serious damage to their houses which had developed cracks. Besides, the mining activity was proving to be a threat to environment. According to learned counsel, heavy blasting was being done at the site after digging long bores at the bottom of hills. This was causing vibration and noise in the area. There were shops at the distance of about 50 metre of the leased site which were being damaged. Adequate safety measures have not been put in place before undertaking the exercise. This apart, the Corporation had sublet the work to a private agency, i.e. respondent No.5 herein in violation of the norms. Mining was being carried out beyond the permissible limits. The overloading heavy vehicles plying in the area are also a traffic hazard.

Plea of the petitioners has been opposed by the learned Advocate General appearing for the State of Haryana and learned counsel appearing for rest of the respondents. It has been stated before the court that the Corporation obtained prior environment clearance on 6.5.2015. It had also got necessary consent from the Board under the Air (Prevention & Control of Pollution) Act, 1981 and the Water (Prevention & Control of Pollution) Act, 1971 on 19.10.2016. Consent to operate the mining was granted on 29.11.2016 and renewed on 14.12.2017. According to them, pollution control devices have been installed at the site to control emissions. Water sprinkling system is also in place. Analysis Report dated 12.2.2018 from the laboratory of Haryana Pollution Control Board clearly shows that

all parameters were within the prescribed limit. The Corporation has also placed on record report dated 25.11.2017 (Annexure R-6/6) to show that the noise pollution is within the prescribed limit as per the Environment Protection Rules. Learned Advocate General submitted that there was no violation of any norm. Petitioner No.1, namely, Harish Kumar attended the open financial bid and was a competitor. Entire allotment has been initiated at the behest of several interested parties and is, thus, a proxy litigation. He further submitted that in view of stay granted by this court on 9.5.2019, the Corporation had been prohibited from carrying out the mining work. This had resulted in increase of prices of stone and sand and had impacted the entire State. This apart, mining had never exceeded the permissible limits as would be clear from the letter dated 27.5.2019 (Annexure AZ/1). Details of annual and actual mining production are as under:-

Sr. No.	Lease period year (Year of Production)	Approved Production (in MT)	Actual Production (in MT)
1.	Jan, 2015 to Dec, 2015 (First Year)	12,92,774	0
2.	Jan, 2016 to Dec, 2016 (Second Year)	30,06,752	300.085
3.	Jan, 2017 to Dec, 2017 (Third Year)	50,00,020	2188022.34
4.	Jan, 2018 to Dec, 2018 (Fourth Year)	80,00,020	7419103.90
5.	Jan, 2019 to Dec, 2019 (Fifth Year)	99,99,999	770876
6.	Total Production till 31.03.2019	27299565	10378303

With regard to tender notice inviting bids for hiring machinery approximately 750000 MT (Annexure P-10), same has been cancelled vide notice dated 29.8.2018 (Annexure R-3/3).

Heard learned counsel for the parties and have given thoughtful

consideration to the facts of the case.

The first and foremost, it has to be ascertained whether mining operations are being carried out as per mining plan and prescribed norms and rules; whether adequate measures are in place to prevent damage to health and property of the residents of village Khanak. A perusal of various affidavits and status reports filed during the pendency of this case shows that the Corporation had prior approval from the Board before starting the mining operations. It had also sought clearance from various other authorities. Total lease granted is for an area measuring 258.30 hectares for a period of 20 years. Mining is being carried out by erection of ramp from the lower side for reaching the top and start mining operations by preparing 8 metre high benches by top slicing method and progressively downwards. 10 metre wide barrier prior to lease boundary has been left all along in which no mining or allied activities can be carried out. Besides, 300 metre barriers have been left from the boundary of abadi of the village. Mining is to be carried out in two shifts of eight hours duration each. As per stand taken in the affidavits that though there is some vibration during blasting, yet same does not effect the habitation as it is beyond 300 meter boundary. Besides, blasting is carried out occasionally. The dust generated thereby is controlled as water sprinkles are installed.

Though, all the issues raised in the petition are factual in nature but this court has no reason to doubt the stand taken by various authorities in their affidavits. The petitioners have not been able to point out any defect with the process for allotment of mining work by the Corporation. Admittedly, tender was duly floated and bids invited. Only thereafter the work was allotted to respondent No.5. This is normal procedure followed

by the government agencies while allotting work. No infirmity therein has been pointed out. There is nothing on record to show that the residents of the village have faced any health hazard due to mining activity in Khanak village. It appears that petitioner No.1 was himself an aspirant for the allotment of mining contract. The possibility that the allotment has been initiated at the behest of certain interested parties cannot be ruled out. The right of the State or the State agencies to undertake projects, such as, mining cannot be said to be against any law or rule. State Agencies are equally entitled to participate/compete in allotment in carrying out such projects. If the norms are not violated and there is healthy participation by the State agencies, it can lead to competitive pricing which may bring down the rates of stone, sand etc. required by general public. Unless some serious infirmity is pointed out, State agencies cannot be restrained from participating in the allotment of such work contracts and from inviting bids to ensure that quality work is carried out at the lowest/reasonable expense to the State agencies. Such measures can also be beneficial for the State exchequer. The petition is, thus, without any merit and is hereby dismissed.

Applications have been moved for handing over and/or to implead Central Bureau of Investigation as party and to mark an enquiry into illegal activities being carried out at Khanak by State agency. Same are dismissed being misconceived in view of the findings contained in foregoing paragraphs.

(RAJAN GUPTA)
JUDGE

January 9, 2020
gbs

Whether Speaking/Reasoned
Whether Reportable

(KARAMJIT SINGH)
JUDGE

Yes/No
Yes/No