

Reserved Judgment

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Special Appeal No.03 of 2011

Matri Sadan through its trustee Swami Nagmanand
Saraswati and Brahmchari Dayanand, Disciple of Swami
Shri Shivanand Ji Maharaj, Jagjeeptpur, Kankhal,
Haridwar (Added by orders dated 29.12.2010 of the
Hon'ble Court)

..... Appellant
(Respondent No.5 in writ petition)

Versus

1. Himalaya Stone Crusher Pvt. Ltd.
Registered Office at 87, Heera Nagar, Haldwani,
District : Nainital, Through its Director,
Bhumesh Kumar, Works/Stone Crusher at Village
Ajeetpur, Haridwar.
2. Bhumesh Kumar, Son of Shri Hazari Lal Aggarwal,
Resident No.16, Himgiri Vihar, Kankhal, Haridwar
District: Haridwar, Uttarakhand

.... Respondents

3. State of Uttarakhand through Principal Secretary,
Department of Industrial Development,
Government of Uttarakhand, Dehradun
4. Commissioner, Garhwal Division, Pauri, Uttarakhand.
5. District Magistrate, Haridwar, Uttarakhand
6. S.D.M., Haridwar, Uttarakhand
7. Matri Sadan through its trustee Swami Nagmanand
Saraswati and Brahmchari Dayanand Disciple of
Swami Shri Shivanand Ji Maharaj, Jagjeeptur, Kankhal,
Haridwar. (Added by orders dated 29.12.2010 of the
Hon'ble Court).

.....Proforma Respondents

Present :

Mr. Brahmachari Dayanand is present in-person for the appellant.

Mr. L.P. Naithani, Senior Advocate assisted by Mr. R.K. Raizada, Advocate for respondent Nos. 1 & 2.

Mr. Vinay Kumar, Standing Counsel for the State/respondent Nos. 3 to 6.

Dated : May 26, 2011

Coram : Hon'ble Barin Ghosh, C. J.
Hon'ble Servesh Kumar Gupta, J.

Per: Hon'ble Servesh Kumar Gupta, J.

This Special Appeal has been preferred against the Interim order of Learned Single Judge of this Court passed in Writ Petition No.2137 (M/S) of 2010 Himalaya Stone Crusher Pvt. Ltd. and another Vs. State of Uttarakhand and others, wherein Hon'ble Judge stayed the effect and operation of the order dated 10.12.2010 passed by the Additional Secretary and, consequently, the order dated 14.12.2010 passed by the Sub Divisional Magistrate.

2. The brief facts sans unnecessary details are that Himalaya Stone Crusher Pvt. Ltd. (hereinafter called as Crusher) is running its activities of crushing stone boulders and mining from the nearby flowing stream of Ganga in the outskirts of town Haridwar. This Crusher was founded way back in 1997 by its owner after procuring the license from the concerned authority to run the same. At the time of its inception although it was at outskirts of Haridwar city and it was not within the notified Kumbh Mela Area, but at that time too, it was amidst of the scattered population and at a very short distance of surrounding villages as well as the area of the Rajaji National Park besides being close to the flowing current of National river Ganga but any how the owner of this Crusher could remain successful in procuring license from the concerned authority to establish and run the same ignoring the several guidelines given

in this regard by Hon'ble Apex Court over the years as in **M.C. Mehta Vs. Union of India and others (1992) 2 SCC 256**, where the Hon'ble Apex Court while adjudicating a PIL over the issue of **Environmental pollution due to stone crushing** activities had held:

“ We are conscious that environmental changes are the inevitable consequence of industrial development in our country, but at the same time the quality of environment can not be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area.”

Every citizen has right to fresh air and to live in pollution free environment so while these commodities are being polluted Hon'ble Apex Court issued directions for stopping mechanical stone crushing activities in and around Delhi, Faridabad, Ballabgarh complexes. There are several other judgments too of the Hon'ble Apex Court and it will not be out of place rather germane for this Court to recollect and mention those observations in the similar matters. **In Tarun Bharat Sangh, Alwar Vs. Union of India and others 1993 Supp (1) SCC 4**, in a PIL where the environmental pollution caused due to mining operations in Sariska Tiger Park in Alwar District in State of Rajasthan was in question, the Hon'ble Supreme Court directed for stopping mines operations within the protected area and observed that such activities can only be permitted outside the protected area. In another case of **M.C. Mehta Vs. Union of India**

and others (1996) 8 SCC 462, the Hon'ble Apex Court ordered to stop the stone crushing, pulverizing and mining operations in the vicinity of tourist resorts, it was held that such activities can be permitted at least 3 kms. away from the general dwelling of the public because effect of such activities are bound to cause severe impact on the local ecology.

Further a Full Bench of Hon'ble Apex Court including the Chief Justice K.G. Balakrishnan (as he then was) and Justice H.S. Kapadia (present Chief Justice) in a case of **T.N. Godavarman Thirumulpad (104) Vs. Union of India and others (2008) 2 SCC 222** has widely interpreted the principle of sustainable development vis-à-vis the environmental protection and pollution control and constitutional requirements as well, the Court has observed that

“Adherence to the principle of sustainable development is now a constitutional requirement. How much damage to the environment and ecology has got to be decided on the facts of each case. While applying the principle of sustainable development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs is sustainable development. Therefore courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under our Constitution to devise and

implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity."

3. The Crusher owners got the license renewed to run their crushers from time to time by the concerned executive authority. The concerned authority, despite the resistance raised by several social activists, who were none others than the representative of population of surrounding villages. One of prominent resistance was manifested by the Saints of Matri Sadan Asharam whose location, as it appears, is not far from this Crusher, but the voice of them all proved to be a wild-goose chase as against influence of the crusher owners which they had generated in their entity at the strength of their power in terms of high contacts and rich in wherewithal which was perhaps an outcome of this high profiteering calling. Under the garb of running this crusher and lifting the boulders, the crusher owners started to dig the floor and banks of National river Ganga causing the inherent deleterious affect not only upon the entire surrounding society but also upon the humanity at large. These injurious affects have been disclosed in the representation of the several social activists (available on the record) can be summarized as under :-

- (i) Due to consistent digging and mining in the Ganga by this crusher including other crushers (those have already been closed being not so mighty & influential), the Ganga has become deepened, as a result, the million of acre

surrounded land has lost its water level which has been gone deep with the result that irrigation activities through borings, tubewells in the agricultural surrounding fields have been very adversely affected. Even Handpumps in the surrounding rural areas to provide drinking water to the common people have been without water in their borings. The private handpumps as well as public boring handpumps are bound to be made more & more deep time and again at the cost of vast expenses and even after making them more deep they are unable to yield any water.

- (ii) Before the activities of crusher in the area, the agricultural produce was of good quality but being adversely affected by the air pollution (as the dust emanates from the running of the crushers), the agriculture production has been reduced to the nullity and so is the case with surrounding abundant orchards especially of mangoes, making farmers helpless selling their agriculture land. Needless to say the buyers of the land are the persons like the petitioners, crusher owners as well as builders.
- (iii) The crusher owners do not maintain the timings of running of their crushers as prescribed under the rules and run their crushers from the morning 04.00 a.m. to night

11.00 p.m. It causes high noise pollution for the wild animals, who are amply populous in the surrounding jungles as well as Rajaji National Park and by this noise pollution they are forced to make their way in the standing agricultural crops to ruin the same.

- (iv) The culvert constructed by the Government for the welfare of the farmers have been cracked and dismantled due to heavy load vehicles carrying the boulders on account of illegal mining. This adversely affects the farmers for transportation of their own agricultural produce.
- (v) The heavy vehicles transporting the boulders for the crushing pass through the bridge, which has been constructed by Irrigation Department, Haridwar to save the area from the flood in the Ganga river. This bridge has been damaged and is being consistent damaged to make it ruin altogether. If this bridge is ruined then it may cause a great insecurity at the time of flood in Ganga river. This illegal mining which is the result of this closely located crusher has caused soil erosion in a very large area running parallel at the edges of flowing Ganga. This sand erosion has reduced the agricultural land and destroyed the forest to make all nearby villagers landless. From a time immemorial,

there existed a burial ground of nearby village Ajeetpur at the bank of Ganga but due to this illegal and unscientific mining of the crusher owners, the strong current of Ganga can wipe out place of burial ground at any time. In Ajeetpur village, there exists a temple of Bal Kumari, famous peeth for a time immemorial attracting annual fair has reached to the state of danger in its existence due to this illegal and unscientific mining, this temple for its beautification attracted the attention of Chief Minister of State Sri N.D. Tiwari as well as Tourist Minister Sri T.P.S. Rawat (as they then were) and the Government made the funds available to raise its glory. There is every possibility that this temple building may also be wiped out due to this illegal and unscientific mining. The surrounding forests which are enriched with the trees of "KHER" and "SHISHAM" have very seriously and adversely affected due to this irresponsible mining activities which goes to the extent of 25 to 40 feet deep in river Ganga and due to soil erosion innumerable SHISHAM and KHER trees have been ruined. The wood of these trees is illegally taken away by labours of these crusher owners. As a result, the forest, which was adjoining through the periphery of Haridwar before almost 15 years now has been vanished leaving only the trees which can be counted on fingers.

Nearby village Ajeetpur, Misharpur and Katarpur have faced such abundant mining within 15 years as to ruin them from all corners.

- (vi) The continuous running of this crusher and illegal mining have created Air pollution, another problem and it is even against Mining Policy, 2001 as amended by Government on 05.11.2007 that these Crushers should be at least 5 Kms away from any Aabadi, School or college, hospital, temple and Ganga, but this petitioner's crusher only is in very close vicinity of above named institutions.
- (vii) Due to dust which remains in the Air every time due to crushing of the stones is causing so many diseases to the nearby villagers affecting their respiratory system very adversely and making them patient of Asthama and T.V. etc.
- (viii) 11,000 Watt Power line has been drawn for this crusher over the grazing ground of the nearby Gram Panchayat without its permission causing an alarmingly risky situation for grazing animals of local villagers.
- (ix) Even Crusher owners on the strength of their muscle power and high contacts, have occupied the land of nearby farmers as adverse

possessory and the same land is being used for 'crusher'. Even the villagers are unable to get their land demarcated by the Revenue Officials as against these mighty crusher owners.

- (x) The manufactured sand/bajri from this crushers transported through road which is meant to the villagers for their agriculture and routine purpose, this sand being over loaded used to fall from the vehicle making the entire road damaged with a result that even the two wheelers find them in difficulty to use this road, some times causing accident even the death of few as an outcome.

- (xi) Likewise several other cause of concern are the natural outcome of the running of this crusher and illegal mining which have been highlighted not only by the Saints of Matra Sadan Ashram but by several and several surrounding villagers through social activists. The record is available in the Special Appeal.

It is also pertinent to note as averred by letter No.3384/Su.A.A.-2005 dated 15.01.2008, this Himalaya Stone Crusher of the petitioner is located in the agricultural green belt and it was never granted NOC by Haridwar Development Authority. All the more it was never granted any lease for illegal mining in the National river Ganga, as is manifested from the

letter No.7800/ mining-09 dated 20.10.2009 issued from the office of District Magistrate, Haridwar.

4. The controversy of this issue of running the crusher and doing illegal mining activities became graver when the area of location of this Crusher was notified as the Kumbh Mela Area vide notification No.195/IV(1)/2010/269/Sh.V./2002 Dehradun dated 05.02.2010 under the Act XVI of 1938. Taking note of the forthcoming Kumbh fair, District Magistrate, Haridwar measured the proposed presence of the Pilgrims, Saints and increasing numbers of Akhada of Saints, Different institutions including Government departments, nay sundry arrangements to be made by Government and wrote a letter to the Government for closing these crushing and mining activities in the area. Incidentally, he mentioned the observation of fast by the Saints, Matra Sadan Asharam, Swami Shiwanand Saraswati and Brahamchari Yajnanand for closing these illegal activities. Here, it is to be made clear that the mentioning of observation of fast in the letters of the District Magistrate written to Government was not the only basis to close these activities, but due to all these ill-effects which have been as aforementioned by this Court. However, the letter written by District Magistrate could not elaborate to all of them and even in the opinion of the Court, it was not necessary for the District Magistrate to discuss the pros and cons elaborately making his letter encyclopedia vis-à-vis to the running of these illegal mining and stone crushing activities. It will not be out of place to mention that before writing the letters by District Magistrate on several occasions, there had been repeated enquiries, investigations in the past by District Magistrate, Commissioner, Garhwal Division and Chief Revenue

Commissioner Sri Nrap Singh Napchayal and Secretary, Urban Development, Sri Shatrughan Singh and other bodies and all had recommended to close these mining and illegal stone crushing activities in the area which is also a Ecological frazil Zone in the close vicinity of Rajaji National Park. Pursuant to all recommendations an executive order dated 10.12.2010 was issued by the Government to stop these mining and crushing activities in Kumbh Mela Area and pursuant to this order of the Government the Sub Divisional Magistrate vide his letter dated 14.12.2010 directed the petitioners (Crusher owners) to close their activities accordingly.

5. Feeling aggrieved by the order of Sub Divisional Magistrate, the Crusher owners rushed the Hon'ble High Court of Uttarakhand and learned Single Judge in Writ Petition No.2137 of 2010 passed an impugned order as measure of interim relief and stopped the operation of the Government order dated 10.12.2010 and order of Sub Divisional Magistrate dated 14.12.2010 being violative of Article 19 (1) (g) of the Constitution of India.

6. Matra Sadan Asharam/ Saints Nigmanand Saraswati, Brahamchari Dayanand have challenged the order dated 29.12.2010 passed by learned Single Judge through this appeal before this Divisional Bench.

7. It is pertinent to mention that at the time of disposal of Urgency application No.840 of 2011 in Special Appeal, this Court taking note of the observations in the order of learned Single Judge dated 29.12.2010 that this Matri Sadan Ashram

(respondent No.5 of the writ) and non-government organizations are pressing the State Government for re-location of the stone crushing agencies from the Kumbh Mela Area of Haridwar for last 10 years, issued directions to the State Government to inform that it has been taken decision to re-locate stone crusher. In compliance of the said order of this Court, Government agreed to shift the questioned stone crusher provided they identify an alternate location outside the concerned area which is owned by them, besides fulfilling all the conditions necessary to put up stone crusher as per policy of the State Government. The crusher owner in their affidavit on 07.03.2011 have proposed a piece of land in the village Katarpur admeasuring approximate 12 acres which is owned by them for re-location and have deposed that no other land has been available to them inspite of their best efforts for re-location of stone crusher. The crusher owner has also stated in para No.11 of his affidavit dated 07.03.2011 that presently the stone crusher is situated at the boundary of the outer line of area which was declared to be part of extension of the Kumbh Mela Area vide Notification dated 05.02.2010 and near the present boundary of the stone crusher at the village Ajeetpur, in revenue village Katarpur, the alternate piece of land stated above exists. The nearest population from the present stone crusher is around 700meters and nearest orchard are just 100 meters from this stone crusher. This distance has been measured on the joint inspection of the revenue officials including Nayab Tehsildar which is annexure No.1 of the affidavit dated 07.03.2011 filed by Sri Bhumesh Kumar, Proprietor of the Crusher. In perspective of the joint inspection report of the revenue officials regarding the suitability of this proposed land by crusher owner, is not the

subject matter to be decided by this Court in this writ appeal. But the fact remains that from all the corners, the requests have been made and the voice have been raised to close down the stone crusher at the present site due to hazardous effect as discussed above. Needless to say, when Sri Bhumesk Kumar, owner of stone crusher asked by the Government to disclose the alternate place owned by him for shifting this crusher then he identified the plots Nos. 374, 502,504,505,507,508 and 510 having the area of approximate 12 acres in the revenue village Katarpur. It reflects the affirmative gesture on the part of the crusher owners themselves for closing down this crusher at the present location.

8. We have heard Saint of Matra Sadan Asharam representing his brother Saint (in fast) in-person and learned counsel of the Stone Crushers and have gone through the record of Writ Petition No.2137 of 2010 and that of this Special Appeal No.03/2011.

It would be relevant to analysis and examine the scope of the fundamental rights to every citizen to carry on the trade, profession and business of his choice as envisaged by Article 19 of the Indian Constitution. In this regard, the precedents of the Hon'ble Apex Court can be recalled as beckon light. In the case of **Krishnan Kakkanth Vs. Government of Kerala and others AIR 1997 SC 128** it has held that Fundamental rights guaranteed under Article 19 are not absolute but the same are subject to the reasonable restrictions to be imposed against enjoyment of such rights. Further held that ;

“The reasonableness of restriction is to be determined in an objective manner and from the stand point of the interests of general public and not from the stand point of the interests of the persons upon whom the restrictions are imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly and even if the persons affected be petty traders. In determining the infringement of the right guaranteed under Art.19 (1), the nature of right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, enter into judicial verdict.

The Constitution does not recognize franchise of rights to business which are dependent on grants by the State or business affected by public interest.

In a galaxy of the cases, Hon'ble Supreme Court has held that these restrictions can be stretched upto prohibition of trade or industry, if its affects are deleterious and dangerous to the society at large. It has almost now been settled that no inflexible answer can be offered as to what industry should be brought to the total prohibition and what not. There is no

abstract or fixed principles which laid the universal application in all cases where the closure of the trade and industry deserve to be enjoined. Each case is to be judged to its on merits. The Court must determine the reasonableness of restriction to be imposed for the closure of the trade or industry by objective standards and not by subjective ones.

9. We have discussed a number of deleterious affects which this stone crusher is causing to the entire of its surrounding to the extent of being fatal for the poor villagers besides creating an incorrigible hazard affects to the ecology of the region so we opine that in these circumstances, as adumbrated in the body of the judgment, the preservation of the interest of the society at large should take priority as against the profit hunting motives of any individual. Thus, this way, this Court will pave the true spirit of Article 19(1)(g) of the Indian Constitution as has been done by judgment of the Hon'ble Apex Court time and again.

There is yet another aspect of the matter of the controversy which has been enshrined under Article 48(A) and 51(A) of the Indian Constitution. The Article 48(A) deals with "Environment, Forests and Wildlife".

Hon'ble Apex Court in State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Janat (2005) 8 SCC 534,567 has held that ;

"These three subjects have been dealt with in one article for the simple reason that the three are interrelated. Protection and improvement

of environment is necessary for safeguarding forests and wildlife, which in turn protect and improve the environment, Forests and wildlife are clearly interrelated and interdependent. They protect each other”.

Further in case of *Tripathi Vs. State of A.P.* (2006) 3 SCC 549,576, Hon’ble Apex Court has observed that ;

“Art. 48A of the Constitution mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wildlife of the country. Art.51A of the Constitution enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. These two articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Arts. 14, 19 and 21 and also the various laws enacted by Parliament and the State Legislatures”.

10. In view of the above observation of the Hon’ble Apex Court, if the Government of Uttarakhand, in exercise of the

powers vested under Mela Act, has made the order to extend the Kumbh Mela Area and for closure of activity of mining and running by this crusher including hording of the boulders in large quantity then there is nothing wrong in order of the Government taking note of the changed circumstances and heavy protest from all the corners of the society against the creation of hazard by the crusher. This Matra Sadan's Saint has resisted for running of this crusher in order to advance the duty cast upon the State by Article 51(a)(g) of the Constitution which envisages that it is the duty of every citizen of the India to protect and improve the National Environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. This fundamental duty have been inserted in the Constitution by way of its popular 42nd amendment of 1976. The Hon'ble Apex Court has reiterated these duties of the citizen, in a number of judgments as State of Bihar Vs. Kedar Sao AIR 2003 SC 3650 as well as in judgment of **Sri M.C. Mehta Vs. Union of India (1997) 3 SCC 715**. This way if any citizen, may he be a Saint even, takes the lead in the society in order to furtherance of the objective as envisaged by Article 51(A)(g) referred as above then it should be appreciable and complementary by the society at large.

11. Lastly, it is pertinent to mention that while closing the arguments of the respective counsel of the parties, this Court directed to file affidavits stating what is the nearest place from where stone may be collected by the writ petitioner for crushing the same in questioned unit. Complying the said order, District Magistrate, Haridwar Sri R. Meenakshi Sundaram has filed the affidavit. This affidavit is based on the joint inspection report of

the Mine Inspector, Co-ordinator, Garhwal Mandal Vikas Nigam, Haridwar and Sri Pooran Singh Rana, Tehsildar, Haridwar. On behalf of the Crusher owners Sri Ravindra Kumar Raizada, Advocate has also filed an affidavit as asked by the Court.

12. On perusal of these affidavits, it is adverted that in area in question, there are four mining lots namely Missarpur, Ajeetpur, Bisanpur and Bisanpur Kundi. Out of these four mining lots, Misarpur and Ajeetpur have already been ordered to be closed by the Government being in the Kumbh Mela Area. Needless to say, these mining lots were respectively 1.5km and 0.7km. away from crusher. Remaining two other mining lots namely Vishanpur and Vishanpur Kundi are at the distance of 2.25km. and 3.00km. respectively from the crusher. District Magistrate, Haridwar R. Meenakshi Sundarma in his affidavit has made this Court aware that mining in the Bisanpur area stand sanctioned in favour of Garhwal Mandal Vikas Nigam and this area is at the distance of 2 Km. from the Himalaya Stone Crusher. The fact remains that this crusher exists and is being run in the close vicinity of nearby villages & orchards besides its location in the Kumbh Mela Area nay it's distance of only 2km. from the nearest possible mining area of Bisanpur (as deposed by District Magistrate, Haridwar). Needless to say that mining activities at this Bisanpur area itself may also be in jeopardy in the light of several norms which have been laid down by Hon'ble Apex Court in the cases referred herein above, notwithstanding it is being done by the Garhwal Mandal Vikas Nigam an agency of the State Government itself. Thus, it can safely be held that this crusher is causing inherent damage not

only to the Eco-frazil zone which is environmentally very sensitive but also is being run to the utter violation of the condition of the license accorded to the Crusher owner as discussed above.

13. At the cost of repetition, this stone crusher can not be allowed to run as such because it's very existence in the area is against what has been held by the Hon'ble Apex Court in M.C. Mehta case (Supra).

14. Thus in the total pros and cons of the two cases, this Court is of the view that there is great force in this Special Appeal No.03. of 2011 and it deserves to be allowed. Since all the merits of the case has been discussed hence in view of the above, we are also disposing the Writ Petition No.2137 (M/S) of 2010 in consonance of the findings rendered in this judgment.

15. Special Appeal No.03 of 2011 is allowed with cost throughout and impugned order dated 29.12.2010 is vacated and Writ Petition No.2137 (M/S) of 2010 is dismissed. With the result, the order of the Government to close down this crusher at the present location, is sustained. District Magistrate, Haridwar will take appropriate steps in the light of the observations as have been made by us in the judgment.

(Servesh Kumar Gupta, J.)

(Barin Ghosh, C.J.)

26.05.2011

JKJ