

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (PIL) NO. 70 OF 2023

21ST JUNE, 2023

BETWEEN:

Neema WaldiaPetitioner.

And

State of Uttarakhand & othersRespondents.

Counsel for the Petitioner : Mr. Jayvardhan Kandpal, learned counsel.

Counsel for the Respondent Nos.1 to 5: Mr. C.S. Rawat, learned Chief Standing Counsel assisted by Mr. B.S. Parihar, learned Standing Counsel.

Counsel for the Respondent No.6 : Mr. Prabhat Bohra, learned counsel.

Counsel for the Respondent No.7 : Mr. Vikas Bahuguna, learned counsel.

The Court made the following:

ORDER: (per Hon'ble The Chief Justice Sri Vipin Sanghi)

The District Magistrate, Pithoragarh and the Division Forest Officer, Pithoragarh, are present *virtually*. We have interacted with them. Counter-affidavits have also been filed by respondent no.2-District Magistrate, respondent no.3-DFO, as well as respondent nos.6 and 7.

2. Respondent no.7 is present in Court. However, respondent no.6 is not present, despite our directions. Learned counsel for respondent no.6 states that the said respondent is present *virtually*, and he has not appeared on account of his medical condition. In support of the said plea, medical certificates have been placed on record, which show

that he underwent *coronary artery bypass* way-back in 2017. There is no medical record to show that he has undergone any procedure since then, though the medical certificate has been obtained on 17.06.2023.

3. We find it difficult to accept that a person, who is running a mining license, would not be in a condition to travel from Pithoragarh to Nainital to appear before us. We, therefore, reject the application for exemption from personal appearance. We direct respondent no.6 to positively remain present in Court on the next date, failing which we shall be compelled to have him produced before us with issuance of non-bailable warrant for his production.

4. The District Magistrate has stated before us, that whenever a complaint about the illegal mining or illegally felling of trees, and road cutting in the forest area is received, action is taken. Consequently, action has been taken against respondent nos.6 and 7.

5. We find the attitude of the District Magistrate and the Divisional Forest Officer to be complacent, to say the least. It appears that there is no proactive measure taken by the authorities concerned.

6. In the present case, a complaint was received by the authorities on 10.05.2023, whereafter, the inspection was carried out on 11.05.2023. Despite the aforesaid incident

being brought to the notice of the authorities, illegal mining and road cutting appears to have been undertaken yet again. There is no explanation, as to what steps were taken to prevent the report of the said illegalities. The explanation furnished by the District Magistrate is that once again the area was inspected, and penalty was imposed on respondent nos.6 and 7. This is not an acceptable explanation. The authorities cannot wait for an illegality to take place and act after the incident involving illegal tree cutting and road laying in forest areas has taken place, since the damage caused to the environment with such illegal action, is long lasting, if not irreversible.

7. It is surprising that the pokland machine, which has been used for the purpose of illegal felling of trees and laying of road in the forest area, has not been traced out, even though transportation of such a machine can take place only with the use of troller. It has not been disclosed by the authorities as to what steps they have taken to trace the pokland machine which was deployed for the purpose of laying of road illegally in the forest, and illegal trees cutting in the forest area. We direct the respondents to locate the said equipment and to seize the same in accordance with law. A status report in this regard shall be filed before the next date.

8. It is also surprising that even though the authorities have found that respondent no.6 has breached the

terms of the license, the same has not been terminated. Mere imposition of penalty, in our view, is not the solution. There has to be an effective deterrence against any misadventure by the licensee, who carries on illegal mining, or commits any other serious breach of the terms of the license. Else, the licensee would continue to breach the terms of the license by carrying on illegal mining, and would willingly pay the penalty when the illegality is discovered, as the penalty is not likely to fully account for the illegally mined mineral. We direct respondent no.4 to place before this Court the mining license granted to respondent no.6 along with all the relevant Rules and Regulations, with their English translations, on record within the next two weeks.

9. Mr. Rawat shall produce before this Court all the relevant enactments, rules and regulations, including the Uttarakhand Mineral (Prevention of Illegal Mining, Transport and Storage) Rules, 2021 relating to the procedure for carrying out on the spot inspection, applicable to the license granted to respondent no.6.

10. Learned counsel for respondent no.6 states that respondent no.6 too has made a complaint against the petitioner about the illegal mining, which has not been actioned.

11. We direct the authorities to deal with the same, and in case, it is found that the petitioner is also guilty of illegal mining, the respondent-authorities are directed to take action against the petitioner in accordance with law.

12. The petitioner is directed to file rejoinder-affidavit(s) to the counter-affidavits brought on record.

13. The State should disclose in its affidavit to be filed within two weeks the instances of illegal mining by the licensees, which have come to light, and the nature of action taken in respect of each of such breaches, in the entire State.

14. On the next date, the Secretary, Mining, the Director, Mining, Government of Uttarakhand, and the District Mining Officer, Pithoragarh shall remain present in Court during the hearing.

15. On the next date, the District Magistrate and the Divisional Forest Officer, Pithoragarh shall remain present *virtually*.

16. List on 18.07.2023.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 21st June, 2023

NISHANT