

RESPONSIBLE DEVELOPMENT AND ECOLOGICAL BALANCE

THE SUPREME Court's orders in *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.*,¹ popularly known as the *Doon Valley* case or the *Mussoorie Hills* case is a significant landmark in the evolution of the law and judicial practice on environmental issues in India. In the words of the bench consisting of P.N. Bhagwati J. (as he then was), A.N. Sen and Ranganath Misra JJ. :

[T]his is the first case of its kind in the country involving issues relating to environment and ecological balance and the questions arising for consideration are of grave moment and significance not only to the people residing in the Mussoorie Hill range forming part of the Himalayas but also in their implications to the welfare of the generality of people living in the country.²

The beautiful valley in the Himalayan foot-hills was being slowly and steadily mined by the mine and quarry owners to extract more and more of the pure limestone available therein. The progressive mining denuded the Mussoorie Hills of trees and forest cover and accelerated soil erosion resulting in landslides and blockage of underground water channels which fed the many rivers and springs in the river valley. Residents of the valley and other environmentalists knocked in vain the doors of the Government of Uttar Pradesh to stop the wanton destruction of the valley. Eventually the petitioners, the Rural Litigation and Entitlement Kendra, Dehradun and a group of citizens filed writ petitions by way of public interest litigation.

Initially the Supreme Court by its order dated 11 August 1983 appointed an expert committee known as the Bhargav Committee to advise the bench on technical issues. This committee classified the limestone quarries into three categories on the basis of adverse harm to the ecological balance. "A" category comprised those quarries which did relatively less damage, "B" comprised those which were relatively more harmful and "C" covered those which were directed to be closed down by the Bhargav Committee under the court's earlier orders on the basis of serious hazards to the environment.

In disposing of the two connected writ petitions, the court said that the question as to "whether Lime stone deposits act as aquifers or not"³

1. 1985 (1) Scale 408; 1985 (2) Scale 119. See also M K. Ramamurthy, "Environment as a Public Interest Cause: The case of Doon Valley" in J. Bandyopadhyay *et al.* (ed.), *India's Environment : Crises and Responses* 241-244 (1985).

2. 1985 (1) Scale at 409.

3. *Id.* at 411.

required to be examined in detail. "But there can be no gainsaying that lime stone quarrying and excavation of the lime stone deposits do seem to effect the perennial water springs".⁴ This environmental disturbance had, however, to be weighed in the balance against the need for extraction of limestone for industrial purposes.

The court directed that those quarries falling under "C" category and those in the Sahasradhara Block should not be allowed to be operated. Any stay order obtained would stand dissolved and subsisting leases stood terminated without any liability against the State of U.P.

The court divided those quarries classified as category A, into two classes, namely one class consisting of those falling within the city limits of Mussoorie and the other outside the city limits. The court directed that the latter should be allowed to be operated subject to compliance with the provisions of the Mines Act 1952, the Metalliferous Mines Regulations 1961 and other relevant statutes, rules and regulations. The former group of mines situated within the city limits and those falling under "B" category in terms of the Bhargav Committee would not be cleared till the submission of the report of a committee headed by D. Bandyopadhyay, Secretary, Department of Rural Development, Ministry of Agriculture, Government of India, which the court set up.

The court issued detailed directions to the Bandyopadhyay Committee to "insist on a broad plan of exploitation coupled with detailed mining management plans"⁵ to be submitted along with the schemes by the lessees. The committee was directed to ensure that the exploitation of limestone deposits was made in a scientific manner and the limestone thus extracted specifically utilised only in special industries which require it and not frittered away in other industries for which high-grade limestone was not essential. The committee was directed to give a hearing not only to the lessees, but also to "persons or organisations. . .interested in maintenance and preservation of healthy environment and ecological balance".⁶

The court was highly conscious of the hardship caused to the mine owners whose mines were closed for operation and would thus be thrown out of business in which they had invested large sums of money. It was, however, a price that had to be paid for the protection of the right of people to live in a healthy environment with minimum disturbance of ecological balance. In order to mitigate the hardship, the court directed the State of U.P. to give priority to the claims of the displaced lessees of Mussoorie Hills, in other parts of the state thrown open for the quarrying of lime stone dolomite.

The court was also mindful of the plight of workmen who lost their jobs permanently or temporarily till the submission of the Bandyopadhyay

4. *Ibid.*

5. *Id.* at 412.

6. *Id.* at 413.

Committee Report. The workmen were directed to be rehabilitated in programmes of afforestation and soil conservation to be undertaken in the reclamation of this area by the Eco-Task Force of the Department of Environment, Government of India.

It is said that the land environment is disturbed by excessive utilisation, depletion and deterioration. This problem is more serious than mere pollution. Pollution from uncontrolled dumping of solid wastes in open sites in the periphery of urban agglomerations is insignificant compared with the slow and steady and in some instances irreversible depletion and depreciation of this precious resource as brought about by factors like salinisation, deforestation, mining and quarrying and soil erosion.⁷

The court's decision reaffirmed that development is not antithetical to environment. However, reckless or thoughtless development can cause avoidable environmental harm. Consequently, a balance needs to be drawn in terms of the larger public good. This is what the court has attempted to do in this case.

The court's order will strengthen all those who are concerned not merely with present gains but with the future cost of present development. It is a pointer towards responsible development. It has opened the doors for environmentalists to take other important ecological issues such as contract-felling of timber in the forests, mining and quarrying of hill slopes, air and water pollution caused by mines factories in the private and public sectors, to the courts.

Social action litigation or public interest litigation has come of age in India and the higher judiciary is doing a yeoman service in enforcing the rights of the Indian populace in socio-economic and environmental matters in the face of executive apathy and indifference. The process the Supreme Court has established in resolving these matters is commendable. The court seeks the help of experts in the field through the constitution of committees and decides the relevant issues on the basis of technical report and data. In the instant case, the court expressed its appreciation for the "commendable assistance" rendered by the counsel of the lessees and directed the central government as well as the U.P. Government each to pay Rs. 5,000 for his assistance. This is a recognition of the meritorious work done by him and is an incentive to lawyers who take pains to render full assistance to the court in the resolution of complex issues.

The court only passed orders in the case with detailed reasons to follow in a judgment later. This practice of "order first and judgment later" should be avoided because delay in judgment leaves the parties at a loss in understanding the reasons for the order and in the long run affects the efficacy of judicial process.

7. For useful reading see, Centre for Science and Environment, *The State of India's Environment—1984-85: The Second Citizens' Report* (1985).

Subsequently it has come to light that the district administration of Uttar Pradesh in the Doon Valley has defied the orders of the court and issued illegal permits for quarrying in areas vertically below the closed mines. The afforestation programme directed by the court to be undertaken in the area is also stopped and bamboos planted as part of the programme have been removed. This has been reported to the court by D. Bandyopadhyay, chairman of the court-appointed committee.⁸

This has brought into focus the pitfalls in the process of implementation of the court's orders in social action litigation (SAL). Implementation seems to be the weakest link in the process. How is this problem to be overcome? Should the court use its contempt power against the executive authorities more than before? Should the court set up a monitoring cell in the court itself to oversee implementation or involve the social action groups as monitoring agencies to report to it non-implementation and open defiance of its orders? These are important questions that will have to be given serious attention in order to make SAL an effective redressal mechanism for socio-economic evils.

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8. See *Hindustan Times*, November 21, 1985, p. 4.

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