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Shri tangkham M sangma vs state of Meghalaya and ORS, WP(C) No. 140 of 2014- Case comment & critical analysis

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Abstract
This case commentary analyses the Shri Tangkham M Sangma vs State of Meghalaya And Ors, WP(C) No. 140 of 2014 case decided by the Meghalaya High Court concerning various environmental law aspects highlighting the need for protection and conservation of our forests and establishing stringent rules & laws for mining activities ensuring the ecology is protected and conserved. The paper further analyses important judgements cited in the current case along with a focus on the pertinent environmental literature surrounding the case through a analytical discourse.

Keywords: environmental law, mines and minerals (development and regulation) act, 1957, environment (protection) act, 1986, forest (conservation) act 1980, environmental PIL

Introduction

Factual Background of the case-

The facts of the case involve the petitioner, Tangkham M Sangma setting up forest check gates [1] for collecting a fee from trucks carrying & transporting minerals such as coal & limestone & the fee was 'compensatory' in nature for the development & reclamation of the 'un-classed' forests which comes under the local jurisdiction of the Garo Hills Autonomous District Council (GHADC) & this council falls under the ambit of Sixth Schedule of the constitution and it was given powers to manage unreserved forests. The petitioner applied for the lease of the check gates and the same was done through an agreement between the GHADC & the private individuals by adhering to certain guidelines rendered by GHADC including a fixed monthly sum of Rs 1,00,000 to be deposited, on abidance of the rules stipulated by GHADC the private leases were to charge a fee to all the trucks carrying minerals from the exploitation of the forest as the GHADC intended to use this compensatory fee for reclamation [2] of the forest or rather sustainable development as the exploitation cannot be immediately undone & this was done considering the 'Meghalaya' regions rich presence of mineral resources & effectively the petitioner was granted permission to set up three checkpoints at Tura in Dainadubi, Chokpot and Baghmara region. The petitioner set up the checkpoint gates at Nagulpara and Dainadubi in East Garo Hills District in a private complex belonging to Smti Nikse Areng who was a local resident, the building was done after obtaining necessary clearances from various government departements & for laying an approach road adjoining the highway road (the road & the complex is established on the private property of the local resident). However, a few months post the operation of the check gates the Deputy Commissioner, North Garo Hills District authorized the closure of unauthorized check gates [3] due to illegal collection without legal authority of law & on several complaints received from the Lorry unions of the discriminatory practice. The district authorities to this effect closed down unauthorized check gates but however the check gates of the petitioner were shut down without any show cause notice [4].

There was apparent difference with regard to who was the authority to impose a compensatory fee whether the state or the autonomous district council. Several apex court judgements were relied on before deciding the matter. The court also engaged in the environmental law & hazard posed by such practice & asked the state to perform such operation under the guidance of the CEC [5] formulated by the SC.

Finally, the three-bench court held the all-mining operations without proper authority of law were to be stopped with immediate effect and future lease/ licence were to be granted in compliance with the apex court guidelines along with other directions to the state for creating a comprehensive scheme & a fund for sustainable development for reclamation of forests.

Application of Laws

Constitutional law

- Sixth Schedule, Art 244(2) & 275(1)
- Fundamental Duties & Directive Principles (DPSP)- Art 38,39,48,48-A,51-A(g)

Environmental Law

- Garo Hills District (Forest) Act, 1958
- Assam Forest Regulation, 1981
- Environment (Protection) Act, 1986
- Mines and Minerals (Development and Regulation) Act, 1957
- Forest (Conservation) Act

Miscellaneous

- Taxation laws & regulation- 'compensatory fee' concept.
- International customary law w/t regard to environmental protection & conservation [6].

Court Holding

The petitioner in this case had filed a writ petition under Art 226 seeking immediate relief for the arbitrary & illegal closure of the forest check-points established via lease secured from GHADC.

The court with regard to the petitioner and the closure of forest check-gates held that the petitioner has not been granted permission from any competent authority of law & further held that he has not raised any construction for the establishment of the check-gates as he had done the same using the private property of a local native and stated he used the regulatory forest check gate in the form of a toll gate merely for the purpose of collecting money. The court justified the closure as he did not respond to the repeated notices drawn from the state government and instead chose to ignore the notice. Hence the authority's closure was legal & rejected his claim of arbitrariness & illegality as he claimed infringement of Art 14 & 16 of the constitution.

The court showed a great degree of indulgence in the matter and further ruled on the competence of authority over the un-classed forests between the state government & local council. The court in reference to apex court judgement [7] & on analysing the various constitutional proviso regarding 'grant-in-aid' [8] received from the GOI allotted to the state governments, held that it is only the state government of Meghalaya which has lawful jurisdiction to collect compensatory fee & only the state government can draw a comprehensive scheme for the same.

The court also held the compensatory fee levied by the local council would not be valid due to the absence of elements of quid pro quo as there is no service rendered by the district council justifying the collection through the petitioner.

Finally, in its judgement the court stated that it is mandatory for the State to take clearance from the CEC under the forest (conservation) Act, holding the state is the de-facto guardian of all the natural resource of the state and rested the ownership to the 'people' of the country. Therefore, the mining lease & other mineral exploitation cannot be affected without the adherence to these guidelines & stated that the autonomous district council would not have jurisdiction to collect fee as this might lead to excessive illegal mining & exploitation of natural resource. The court also stated that all mining leases for exploitation of minerals needs to be terminated except those granted before with the due consideration of law & guidelines of the apex court [9]

& mandated the granting of mining lease only on fulfilling three conditions:

1. Prior Consultation & adherence to the Central Empowered Committee.
2. Creation of a fund where not less that 10% of the sale proceeds of exploitation of minerals extracted be deposited in terms with the principle of 'Polluter shall pay" [10] & for sustainable development with intergenerational equity for rectification & reclamation of forest due to the hazardous impact caused to the flora & fauna.
3. Drawing a comprehensive Scheme by the Government of Meghalaya.

Writ petition was dismissed by the court.

Analytical Case Commentary & Allied Environmental Jurisprudence

Pertinent Judgements

There were many cases cited in the judgement of the Meghalaya HC, however I would take a critical discourse into certain very important judgments of the Supreme Court which laid foundation & stood as a guide for the course traversed through this judgement as heavy reliance was placed on certain landmark environmental law judgements which in essence has played a pertinent role in the development of the environmental jurisprudence & environmental PIL's.

TN Godavarman Thirumulpad v. Union of India is arguably one of the most deliberated & detailed judgements in relevance to forest jurisprudence. The case was monumental in its application as the term 'Forest' is not defined under any statutory provisions and it was the apex court which stated that the term 'forest' is to be seen to its literal dictionary i.e., this paved way for a 'forest' irrespective of its classification & ownership titles to come under the ambit of Section 2, Forest Conservation Act, 1980. This case was initially instituted to prevent illegal timber procuring from the Nilgiris Hills, however the apex court realising the need for intervention to prevent exploitation ensured that the rule of this case would cover the entire country wounding & superseding all jurisdictions of the nation. The court had postulated several guidelines for forest conservation in the country through an array of interlocutory orders for over two decades until the case was finally disposed.

The appointment of expert committee (CEC) was instituted by the supreme court considering the vacuum left as the union government failed in founding a statutory body under Section 3, of Environment Protection Act,1986 which was to be the authority with respect to any use of 'forest 'for 'non-forest 'purpose, it laid special emphasize on overlooking the mining situation & its allied exploitation of the forest in the North Eastern states which is pertinent to our case as the guidelines of the apex court was relied on its holding of closure of all existing mines & check gates except for those appointed by authority of law and all future mining lease/license including regulation were subject to the clearance of the CEC. There have been recent cases [11] which looked to overthrow the jurisdiction of the expert committee but the apex court again reiterated it legitimacy & credibility and held that it would continue as controller & regulatory body with respect to forest conservation. In the same case the court was aware of the mining of forests for mineral resources & its exploitation as a result in order to curtail the same the apex court stated that all mining operation within the ambit of Section 3(d) Mines & minerals (Development & regulation) Act would be mandated to seek clearance under the forest (conservation) Act, 1980.

In the landmark judgement of the apex court in one of the judgements pertinent to the case in hand in parlance to mining & exploitation of iron ore in Goa, the court entered a critical discourse into the methodology & conceptuality of reclamation of forest in cases where the mining cannot effectively be prohibited due to the states & its industries reliance on the particular mineral i.e. iron ore mining in the case of Goa. The judgement in the Goa Foundation case is appropriate to one of the main holding of the courts in this case i.e. setting up of a permanent fund for reclamation of forest, as it was held in the case of goa the supreme court directed for setting up of a comprehensive scheme for the

lessees to deposit 10% of the sale proceeds for the establishment of a permanent fund [12] (Goan Iron Ore Permanent Fund) for reclamation of forests including sustainable development. The action partaken by the apex court which also included the setting of an independent expert committee to overlook the environmental impact & illegal mining has paved for the courts indulgence into environmental matters i.e., it resonates with the principle of "moulding of relief" where it enhanced its judgement in the interest of justice providing more than what was actually prayed for. The court in this case further advocated the theory 'the polluter shall pay'.

Further, the court paved way for bringing the policy decision of state's with regard to granting of licence/lease for mining operations under the ambit of judicial review of the court in determination of the legality or constitutionality of such schemes/policies [13] which has by way of being a supreme court judgement aided in judicial interference in the states where there are complaints of illegal mining & extreme exploitation of natural resources, specially the pertinence of this holding is reflected in the North Eastern states including Meghalaya which is rich in mineral resources & mining of the same are a common occurrence. The environment & its protection by a plethora of judgments of the court has said to come under the ambit of Article 21 [14] t& this further enhances the violation of the same as infringement of a fundamental right and the court [15] while citing the same held that it can shut down any mining operation which is operating in close radius to wildlife sanctuary for protection of flora & fauna, the particular holding might be peculiar to Goa & its ecology but the 'obiter dicta' of the courts in these matters often set a strong precedent & serve as a guiding tool when the matters are taken up the respective high courts & NGT's in simpler terms it is the approach of the courts which is important rather than the particular holdings of the court as it has time & again been reiterated by judicial precedent each case specially with regard to environmental aspect has to be seen according to the peculiar circumstances of each case [16]. The court in the judgement [17] followed in 2018 shut-down all the mining operations in the area citing the reasons mentioned in the previous Goa foundation case and held that there was no specific necessity for carrying mining operation either for the interest of industries & nation requirement & rather observed the motive as profit maximization thus shut down the entire coal mining operation due its constant environmental hazard however, this case as shown us certain decisions for protection of ecology can have a dire impact on the employment as the closure has led to widespread loss in economy & increase in unemployment rates [18].

In the case of Centre for Public Interest Litigation and Ors. v. Union of India [19] popularly for its 2G spectrum judgement the court held that only the parliament & state legislature were competent for enactment of any legislation pertaining to forests, this effectively further provided in the argument that autonomous district council had no jurisdiction with regard to forest irrespective of it being an 'un-classed' forest. The court in the case above had gone into the international customary law discourse which holds the state as the permanent sovereign over the natural resources which was asserted in UNGA & further brough under international norm through the ICJ judgement in Democratic Republic of Congo v. Uganda. The court also reiterated that the common law principle establishes the state as an authority for the protection of natural resources in the interest of the general public while stating that "where constitutions specifically address ownership of natural resources, the sovereign State, or, as it is more commonly expressed, "the people", is designated as the owner of the natural resources" [20].

In special reference [21] case followed by the above case which was referred to the SC by the president for answering certain pertinent question of law regarding allocation of natural resources in its final holding regarding 'auction' of natural resources held that this method cannot be the only method that passes the test of legality & constitutionality but it is for the state to decide which is the most optimum method , however while doing so it is pertinent such allocation of natural resources is in public interest & not for mere private exploitation which was eloquently opined by justice J S Kekhar in his statement held "There cannot be a dissipation of material resources free of cost or at a consideration lower than their actual worth. One set of citizens cannot prosper at the cost of another set of citizens, for that would not be fair or reasonable." [22]

Environmental Literature

Meghalaya is a beautiful state locate in the north eastern region of the country it is known for its fantabulous structure in terms of its landscape & rich natural resources, the state is also home to many rivers & lakes by virtue of receiving one of the highest rainfalls[23] annually across the world and is one of the hotspot destinations for tourist which is attributable to its natural serenity. However, this is what the state is on the face of it but removing the façade there are several monumental environmental concerns which continues to plague & destroy the state.

Meghalaya is particularly rich in coal [24] especially the Garo hills region which the case in hand covers has around 390 million tons of coal deposits [25] followed by the Janita hills which makes it a coal mining hotspot of the country. A particular type of coal mining famous in Meghalaya is the 'rat mining' whose mining methodology is synonyms to its name; this method is archaic & create a extremely hazardous environment for the miners. Likewise once taken dug out the coal is rested at the dumping ground which is often next to freshwater rivers & lakes until it is ready for transportation through the highways after passing the forest check-gate which is often like a toll only difference being a bribe or a 'compensatory fee' for such exploitation is charged & for instance Lukha River which is one of the freshwater sources for the local population has reported cases of dead fish found on the surface of the river [26] & this has not been the only case other rivers like Myntdu & Kupli adjoining the district are facing a similar challenge. The area is being noted as the 'Land of Dead Rivers'& many local environmentalist of the area have raised concerns regarding the issue, yet, receive minimal respite [27]. The water sample from the rivers served as proof that the 'unscientific coalmining' & discharge of the coal wastes into the rivers [28] has led to the current situation which needs urgent amendments & which the government did take steps in the form of Meghalaya Mines and Minerals Policy 2010 [29] which was to in reality help achieve sustainable development & mining through scientific methods but in practice its just another 'on paper, not in practice 'policy due to the widespread corruption & lobbying of mining

owners through their money & muscle power in the region. There has been several implication including unreported death in the mines [30], young children working in the mines [31] & cross-border migration in search of jobs such as illegal immigrants from Bangladesh etc.

The Vision Document for the State of Meghalaya 2030 [32] has further in line with the judicial precedent has stated that environment clearance is mandatory for mining activities to be carried in the state given its impact as highlighted above and another method the report suggests is through awareness campaign warning of the adverse impact if 'unscientific methods 'such as 'rat hole' mining was to be carried in the future would result in dire consequences in terms of existing ecological imbalance.

Conclusion

The environmental laws have developed to astonishing heights increasing the ambit of different environment statues & the apex court has in effect taken it on its shoulder to handle the environmental issue which is evident from the formulation of an expert committee(CEC) & extending the jurisdiction of EPA, Act across the country specially in the north eastern regions, which has a large number of autonomous district council which have traditionally operated outside the ambit of the state government directives has now been curtailed with the state government given the power to legislate & regulate commercial activities with regard to forest including un-classed forests, yet, the implication on paper has definitely had an impact on the natural resource exploitation practices, however there is much difference that exist between theoretical discourse & legislations to that of actual reality & practice due to the void left by bureaucratic corruption & poor implementation coupled with high level of illiteracy in these regions which are mostly remote & rural. The three bench judgement of the court in this case has definitely had a positive impact with regard to mining activities & environment regulation in Meghalaya as the government while filing a reference [33] to the same bench had by then formulated State Level Environment Impact Assessment Authority (SLEIAA) in Meghalaya and the court rejecting the reference petition made a minimal indulgence by removing the direction of seeking mandatory clearance from CEC as the state level authority would suffice for the similar purpose.

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