

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 11182 of 2011 alongwith CWP No. 11169, 11197, 11273, 11275, 11325, 11450, 11451, 11452, 11531, 11829 of 2011.

Date of Decision: 30.12.2011.

1. CWP No. 11182 of 2011-I

M/s New Jayanti Construction work and supply of Material, Head Office at Village Nandrool, through its partner, Anil Angaria S/o Sh. Sukhdev Singh, R/o VPO Nandroo, Tehsil and District Kangra, H.P.

.... Petitioner.

Vs.

1. State of H.P. through Commissioner-cum-Secretary (Industries), to the Government of Himachal Pradesh, Shimla 171 002.
2. The Director of Industries, Himachal Pradesh, Udyog Bhawan, Shimla 171001.

... Respondents.

2. CWP No. 11169 of 2011-G

Surinder Singh Rana S/o Shri Shakri Singh R/o VPO Dhanag, Tehsil Baijnath, Distt. Kangra. H.P.

.... Petitioner.

Vs.

1. State of H.P. through Commissioner-cum-Secretary (Industries), to the Government of Himachal Pradesh, Shimla 171 002.
2. The Director of Industries, Himachal Pradesh, Udyog Bhawan, Shimla 171001.

.....Respondents

3. CWP No. 11197 of 2011-J.

Suresh Chand S/o late Shri Jhunju Ram R/o village Buhli Kothi, P.O. Paprola, Tehsil Baijnath, Distt. Kangra, H.P.

.... Petitioner.

Vs.

1. State of H.P. through Commissioner-cum-Secretary (Industries), to the Government of Himachal Pradesh, Shimla 171 002.
2. The Director of Industries, Himachal Pradesh, Udyog Bhawan, Shimla 171001.

... Respondents.

4. CWP No. 11273 of 2011-H.

Ramesh Kumar Awasthi S/o late Shri Sukh Ram Awasthi, R/o VPO & Tehsil Baijnath, Distt. Kangra, H.P.

.... Petitioner.

Vs.

1. State of H.P. through Commissioner-cum-Secretary (Industries), to the Government of Himachal Pradesh, Shimla 171 002.
2. The Director of Industries, Himachal Pradesh, Udyog Bhawan, Shimla 171001.

... Respondents.

5. CWP No. 11275 of 2011-H.

Naresh Kumar Sharma S/o Shri Bihari Lala Sharma, R/o VPO Majherna and Tehsil Baijnath, Distt. Kangra, H.P.

.... Petitioner.

Vs.

1. State of H.P. through Commissioner-cum-Secretary (Industries), to the Government of Himachal Pradesh, Shimla 171 002.
2. The Director of Industries, Himachal Pradesh, Udyog Bhawan, Shimla 171001.

... Respondents.

6. CWP No. 11325 of 2011-C.

Surender Kumar S/o late Shri Dhani Ram R/o VPO Padhar, Tehsil Dharamshala, Distt. Kangra, H.P.

.... Petitioner.

Vs.

1. State of H.P. through Commissioner-cum-Secretary (Industries), to the Government of Himachal Pradesh, Shimla 171 002.
2. The Director of Industries, Himachal Pradesh, Udyog Bhawan, Shimla 171001.

... Respondents.

7. CWP No. 11450 of 2011-E

M/s Shiv Shakti Enterprises through its partner Shri Santosh Jamwal S/o Shri Prithi Singh, V.P.O. Sansal, Tehsil Baijnath, Distt. Kangra, H.P.

.... Petitioner.

Vs.

1. State of H.P. through Secretary (Industries), to the Government of Himachal Pradesh, Shimla 171 002.
2. The Director of Industries, Himachal Pradesh, Udyog Bhawan, Shimla 171001.

... Respondents.

8. CWP No. 11451 of 2011-F.

Sh. Surinder Singh S/o Shri Bhagat Ram, VPO Baijnath, Tehsil Baijnath, Distt. Kangra, H.P.

.... Petitioner.

Vs.

1. State of H.P. through Secretary (Industries), to the Government of Himachal Pradesh, Shimla 171 002.
2. The Director of Industries, Himachal Pradesh, Udyog Bhawan, Shimla 171001.

... Respondents.

9. CWP No. 11452 of 2011-F.

Shri Ranjit Kumar S/o Shri Mango Ram, VPO Gankhetar, Tehsil Baijnath,
Distt. Kangra, H.P.

.... Petitioner.

Vs.

1. State of H.P. through Secretary (Industries), to the Government of Himachal Pradesh, Shimla 171 002.
2. The Director of Industries, Himachal Pradesh, Udyog Bhawan, Shimla 171001.

... Respondents.

10. CWP No. 11531 of 2011-D.

Krishan Chand S/o Shri Kiru Ram, R/o VPO Sukkar, Tehsil Dharamsala, Distt. Kangra, H.P.

.... Petitioner.

Vs.

1. State of H.P. through Commissioner-cum-Secretary (Industries), to the Government of Himachal Pradesh, Shimla 171 002.
2. The Director of Industries, Himachal Pradesh, Udyog Bhawan, Shimla 171001.

... Respondents.

11. CWP No. 11829 of 2011-C.

Sugreev Chand S/o Shri Changru Ram R/o Village Lehsar, P.O. Yol Camp,
Tehsil Dharamshala, Distt. Kangra, H.P.

.... Petitioner.

Vs.

1. State of H.P. through Secretary (Industries), to the Government of Himachal Pradesh, Shimla 171 002.
2. The Director of Industries, Himachal Pradesh, Udyog Bhawan, Shimla 171001.

... Respondents.

Civil Writ Petitions under Article 226 of
the Constitution of India.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for Reporting? No.

(In CWP No.11182, 11169, 11197, 11273, 11275, 11325 and 11531 of 2011).

For the petitioner(s): Mr. Adarsh Kumar Vashista, Advocate.

For the respondents-State: Mr. Rajesh Mandhotra, Dy. A.G. & Mr. Ramesh Thakur, Assistant Advocate General.

For the caveator(s): Mr. C.N.Singh, Advocate.

(In CWP No.11450, 11451 & 11452 of 2011).

For the petitioner(s):	Mr. Vikas Rajput, Advocate.
For the respondents-State:	Mr. Rajesh Mandhotra, Dy. A.G. & Mr. Ramesh Thakur, Assistant Advocate General.
For the caveator(s):	Mr. C.N.Singh, Advocate.
(In CWP No.11829 of 2011).	
For the petitioner:	Mr. Bhupinder Pathania, Advocate.
For the respondents-State:	Mr. Rajesh Mandhotra, Dy. A.G. & Mr. Ramesh Thakur, Assistant Advocate General.

Per Deepak Gupta, J(Oral).

1. The petitioners in these cases have been granted leases, permitting them to extract minor minerals from certain areas in the river/stream beds. This Court in CWP No. 188 of 2001 titled Jagjit Singh vs. State of Himachal Pradesh directed the State to formulate a policy to regulate the grant of mining leases in the river/stream beds. Pursuant to the directions issued by this Court the State of Himachal Pradesh notified the River/Stream Bed Mining Policy Guidelines for the State of Himachal Pradesh on 28.02.2004.
2. The State Government thereafter took a policy decision to grant permission/leases for extraction of minor minerals from the river/steam beds by way of public auction. The petitioners, who were already holding short term permits filed various petitions in this Court, which were decided vide detailed judgement dated 26th March, 2010. All the issues raised by the petitioners were decided against them and the action of the respondent-State in

auctioning the river/stream beds was upheld. However, the last prayer of the petitioners that their cases should be considered sympathetically in view of the fact that they are small entrepreneurs who would be deprived of their business was not decided by this Court on the ground that it is not for the Court to take a decision on a matter of policy and the petitioners were given liberty to approach the State Government.

3. The petitioners moved the State Government and one of the grievances is that their representations have not been decided. Other grievance raised is that if auctions are held then very high bids will be given and this will encourage the lease holders to indulge in over exploitation of river/stream beds.

4. As far as the second point is concerned, we are of the considered view that it is in the interest of the State to get the highest amount for the extraction of minor minerals. We must remember that these minerals are not the personal property of any person but belong to the people of the State and therefore public interest requires that if these leases are to be granted they should be granted in such a manner that best possible revenue is earned by the State. As already held in our earlier judgement dated 26th March, 2010 the decision whether

the lease should be granted by way of auction or not is a matter of policy in which this Court cannot interfere.

5. The apprehension of the petitioners that there will be over exploitation is an argument of despair. Here we are concerned with the petitioners who are not environmentalists but themselves are extracting the minerals. How can these people be permitted to argue that this mining is going to harm the ecology of the area?

6. In any event, we in our earlier judgement dated 26th March, 2010 have clearly directed the State to ensure that there is no over exploitation and that the lessee(s) extract the minor minerals strictly in accordance with the River/Stream Bed Mining Policy Guidelines. We again reiterate our directions and the same are extracted hereinbelow:-

"Before parting with this case, we must observe that whether the right to extract minerals in the river/stream beds are granted by way of mining lease or by way of auction, the State must ensure that the policy guidelines are strictly enforced in letter and spirit. Even the slightest over extraction must be dealt with harshly. There are sufficient safeguards in the policy itself to ensure that no person who has been granted concession to extract minor minerals is permitted to over extract minerals or extract minerals from areas not granted to him. The State cannot abdicate its duties in this regard. Larger public interest, not only requires that revenue is earned by the State but also that the fragile ecology of the area is not damaged to such an extent that it can never be recouped. The State should always keep these observations in mind."

7. The earlier judgement was delivered by us on 26th March, 2010. Almost two years have been elapsed and the petitioners continue to extract the minor minerals by paying a pittance to the Government. The State is being deprived of the revenue due to it and we are of the considered view that in view of our earlier judgement the petitioners have no enforceable right which can be enforced through a writ petition. Therefore, we find no merit in these petitions which are accordingly dismissed. All the applications and caveats are also disposed of accordingly. No costs.

(Deepak Gupta)
Judge.

30th December, 2011.

(Sanjay Karol)
Judge.