

(2002) 08 OHC CK 0055
In the Orissa High Court
Case No : Civil Review No. 61 of 2002

Ambika Prasad Bhatta

APPELLANT

Vs

Nehru Paribesh Surakshya Committee and Others

RESPONDENT

Date of Decision : 21-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Constitution of India, 1950 — Article 226

Citation : AIR 2003 Ori 26 : (2002) 94 CLT 337 : (2002) 2 OLR 543

Hon'ble Judges : P.K. Balasubramanyan, C.J;A.S. Naidu, J

Bench : Division Bench

Advocate : G. Mukherjee, for the Appellant; S.K. Swain, (For O. Ps. 1 and 2) and Additional Government Advocate (For O. Ps. 3, 5 and 6), for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—This Civil Review petition has been filed with a prayer to review the judgment passed on May 16, 2002 in O.J.C. No. 8254 of 2002 since reported in Nehru Paribesh Surakshya Committee and Another Vs. State of Orissa and Others,

2. The petitioner is the proprietor of M/s. Durga Stone Crusher, a stone crushing unit, situated on Plot Nos. 1024 and 1569 appertaining to Khata No. 97 of village Chandrabahel under Angul Tahsil. The Writ Petition (OJC No. 8254 of 2000) in the shape of a Public Interest Litigation, was filed in this Court inter alia praying for issuance of direction to opposite parties 1 to 4 therein to close down the said Crusher Unit mainly on the ground that the siting criteria formulated for establishment of stone crushers formulated by the State Prevention and Control of Pollution Board, were grossly violated and that the "No Objection Certificates" were issued by the concerned authorities for establishment of the said stone crusher without keeping in view the provisions of the Environment (Protection) Act, 1986, the Rules framed thereunder, as well as the order issued by the Government of Orissa, Forest and Environment Department, in exercise of

powers conferred u/s 5 of the said Act read with the Notification of the Government of India in the Ministry of Environment and Forests (Department of Environment, Forests and Wildlife) No. SO-151 (E) dated February 10, 1988: The review petitioner was opposite party No. 6 and M/s. Durga Stone Crusher was opposite party No. 5 in that Writ Petition.

3. After hearing the learned counsel in extenso, this Court came to the conclusion that the Order dated May 13, 1998 (Annexure-1) issued by the Government of Orissa in the Forest and Environment Department published in Orissa Gazette of June 5, 1998 stipulating the siting criteria for stone crusher was not an empty formality and that the same was issued in order to achieve the objectives of the Act and that the same should be sacrosanctly adhered to while dealing with applications for establishment of stone crusher units. On facts also, this Court came to the conclusion that as the Crusher Unit in question was established not only within 100 metres from the village boundary, but also within 500 metres from a school where young children are prosecuting their studies, it would not be conducive permit running of the same at the said site.

4. It is submitted by Mr. Mukherjee, learned counsel for the review petitioner, that the Notification / Order (Annexure-4) fixing the siting criteria by the State Government is contrary to law and is not mandatory, but is regulatory in nature. He also submitted that the Crusher Unit in question would not cause pollution as apprehended and that the petitioner, i.e. the proprietor of the Unit, had already sunk a huge amount for establishment of the Unit and he would be put to loss if the Unit is directed to be shifted elsewhere and that this Court should review the judgment and permit the petitioner to run the Unit at the place where it is situated.

5. It is further submitted by Mr. Mukherjee that in the meanwhile another Writ Petition has been filed challenging the validity of the Order/Notification issued by the State Government fixing the siting criteria of stone crushers and the said Writ Petition has been admitted. It is submitted that till the disposal of the said Writ Petition, the petitioner should be permitted to run his unit in the interest of justice.

6. The Supreme Court in the case of S. Nagaraj v. State of Karnataka, 1993 Sup (4) SCC 595 observed as follows :

"Justice is a virtue which transcends, all barriers. Neither the rules of procedures not technicalities of law can stand in its way..... Even the law bends before justice, If the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right....."

In the said decision, the following principles to review an order were formulated :

"(1) If the judgment is vitiated by an error apparent on the face of the record in the sense that it is evident on a mere looking at the record without any long-drawn process of reasoning, a review application is maintainable,

(2) If there is a serious irregularity in the proceeding, such as violation of the principles of natural justice, a review application can be entertained.

(3) If a mistake is committed by an erroneous assumption of a fact which if allowed to stand would, cause miscarriage of justice, then also an application for review can be entertained.

It is not necessary to point out that the above principles are applicable de hors the provisions of Order XLVII, Rule 1 of the Code of Civil Procedure."

7. In this case, while deciding the Writ Petition, all pros and cons of the case were lucidly considered by this Court and keeping the aims and objectives of the Environment (Protection) Act visa-vis the safety and well-being of a common citizen, mostly tender aged pupil, this Court directed to cancel the permission accorded to establish the Stone Crusher Unit contravening the criteria formulated by the State. Since all the questions thus raised, by the learned counsel for the review petitioner have been dealt with in detail in our judgment on the touch-stone of the ratio of the decision of the Supreme Court in S. Nagaraj Case (supra), we feel that the Review petition has absolutely no merit and deserves no consideration.

8. In the circumstances, there is no need to review our judgment and the Review Petition is accordingly dismissed.

P.K. Balasubramanyan, C.J.

9. I agree.