

(2003) 08 OHC CK 0033

In the Orissa High Court

Case No : OJC No. 13587 of 2001 and W.P. (C) No. 6043 of 2003

Avipraya and Another

APPELLANT

Vs

State of Orissa and Another
 Biswa Keshari Mohanty
and Another Vs Chief Secretary to Government of Orissa and
Others

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 96 CLT 537

Hon'ble Judges : Sujit Barman Roy, C.J.; L. Mohapatra, J

Bench : Division Bench

Advocate : M.S. Panda, in OJC No. 13587/2001 and Jatindra Kumar Mohapatra, in W.P. C No. 6043/2003, for the Appellant; P. Mohanty, Additional Government Advocate, for the Respondent

Judgement

L. Mohapatra, J.—The petitioners in O.J.C. No. 13587 of 2001 are the President and Secretary respectively of a registered Non-Government Organisation known as "Avipraya". The aim and objectives of the said NGO is to undertake active environmental and ecological activities like afforestation, road side plantation, prevention of deforestation, etc. In this writ application the petitioners have prayed for the following reliefs.

(i) A direction from this Court to a competent and independent authority to enquire into the mis-management and misappropriation of Government funds in the Forest Department.

(ii) To set aside the proposals/reports/schemes for reorganization of forest department in Annexures 2, 3 and 4.

(iii) To hold that abolition and shifting of different circle and division offices especially Berhampur Regional/ Circle offices to Bhawanipatna is illegal, irregular, mala fide and discriminatory.

2. The petitioners have filed this writ application in public interest on the allegation that in order to effectively take up the forest activities and for its protection, conservation and afforestation, the state Government had created different wings under the department to look into the following aspects of forest activities independent of each other.

(i) Protection of Forest/Territorial;

(ii) Afforestation;

(iii) Wildlife;

(iv) Kendu leaf;

(v) Working Plan;

(vi) Research and Development;

(vii) Social Forestry.

3. According to the petitioners for smooth functioning of the forest department, 14 Circles offices were functioning in the State and under the said circle offices, 87 number of Division offices were functioning in the State. Further allegations in the writ petition is that in the year 1983, Swedish International Development Agency, (hereinafter called as "SIDA") realizing the deforestation problem in the State of Orissa came forward to officially assist the State Government for development of forestry and plantation with cooperation of the Forest Department. Though SIDA paid huge amount of money for implementation of the scheme for social forestry the Department failed to execute the scheme in the State in its spirit and money received from the SIDA for the aforesaid purpose was mis-managed, misappropriated and mis-spent at different levels, as a result of which SIDA stopped financing for social forestry in the year 1996. On these allegations, a prayer is made for a direction to a competent and independent authority to conduct an enquiry into the mis-management of the funds so also alleged misappropriation of funds. Second part of the allegations in the writ application is that steps are being taken to frame a scheme to reorganize the forest department by abolishing the existing forest wings and consolidating the entire forest activities under one roof. These proposal for reorganization of the forest department as well Wild-Life have been annexed to the writ application. One of such reports is submitted by Sri M. R. Rath, IFS, the then Conservator of Forests wherein he has suggested that Wild-life, Territorial and Working Plan wings should continue independently with its existing circles and division offices. He has also proposed to amalgamate the Social Forestry Wing with the Territorial "Wing permitting such wings to continue in their existing Circles and Division Offices, Second proposal is submitted by Sri A. S. Sarangi, IAS the then Principal Secretary to Forest Department, wherein it is suggested that the entire forest wing should be brought under control of one wing excepting Kendu Leaf Wing and he has also suggested for continuation of all other circles and divisions in the State. It is also alleged that Sri A. S. Sarangi submitted another proposal

drawing a Scheme for Re-organisation of the Units of Forest Administration and in this scheme he has proposed to amalgamate all the forest activities of different wings except Kendu Leaf under One and Joint Wing and also proposed to abolish/shift some circle and division offices. The draft scheme which is challenged in the writ application vide Annexure-4 suggests that steps should be taken to re-organize the forest field formations by creating a larger number of smaller sized Divisions and integrating all forestry functions such as forest protection and management, conservation of wildlife, afforestation and social forestry extension (information, education and communication) functions under each Division. It also suggested that there will be no creation or up-gradation of posts and the existing staff under the social forestry and afforestation wings will be re-deployed for creation of the new Division/Circles and for strengthening existing Divisions/Circles. According to the petitioners the proposal in Annexure-4 shall never accelerate the forest activities but it shall create a havoc and shall bring all activities of Forest Department to a stand still. The reasons given by the petitioners for the above conclusion is that officials entrusted with specific activities for a specific wing could not achieve the object and under the scheme, after amalgamation of the wings as alleged, such officials can never be able to discharge various types of activities and the entire forest activities in the State shall come to a stand still. The proposal is also challenged on the ground that abolition of Regional/Circle offices at Berhampur, Sambalpur and Cuttack and proposal to shift the same to Bhawanipatna, Bhubaneswar, Angul and Baripada where such circles are to be newly created, shifting of division offices at Keonjhar, Rayagada, Koraput to newly created Sundargarh, Koraput and Malkangiri Division offices shall create discontentment among local people and it will be impossible to have administrative control over these offices which are sought to be located at very distant places.

4. Counter-affidavit has been filed by the opposite party No. 1. It is stated in the counter-affidavit that at present the field organization of the Forest Department has been present structured in four parallel formations, i.e. Territorial, Wildlife, Social Forestry and Afforestation Wings which among themselves perform all the basic forestry functions. Due to the presence of parallel structures with overlapping jurisdiction, there is often duplication of functions/interventions, sub-optimal utilization of staff and problems of coordination. It is also stated that due to segregation of the regulatory from the extension functions there is a lack of community orientation which severely limits the organisation's capacity for managing the forest resources of the State in an efficient, equitable and sustainable manner. Therefore, organizing all forestry functions through one type of field divisions with a view to reducing duplication of efforts, facilitating optimal utilization of staff, reducing avoidable problems of coordination among various wings and creating a more conducive arrangement for development and management of forests with the participation of the village communities was under active consideration of Government for some time past. Further stand of the opposite party No. 1 is that reorganization seeks to create a larger number of

smaller sized Divisions and integration of all forestry functions, i.e. forest protection and management, conservation of wildlife, afforestation and social forestry extension functions under each division. The scheme also envisages more effective supervision and greater accountability. It is also stated that one of the main objectives of the restructuring is capacity building in the Forest Department for promotion of community participation in consideration and management of forests and Joint Forest Management activities. Under the scheme, according to the opposite party No. 1, the existing staff under the Social Forestry and Afforestation Wings will be redeployed for creation of the new Divisions and Circles and strengthen existing Divisions without any creation or abolition of posts. The new Divisions shall be located in such a manner that the existing infrastructure will be utilized without any new creation. The objectives behind the reorganization is to eliminate the organizational deficiencies and improve efficiency and build capacity for meeting the challenges of conservation, sustainable management and development of the Forests. In course of hearing of the case the learned Additional Government Advocate appearing for the opposite party No. 1 also submitted that the proposal for reorganization of the Forest Department has obtained approval of the Cabinet.

5. Shri M. S. Panda, learned counsel appearing for the petitioners referring to the averments made in the writ application submitted that in the year 1983 SIDA extended financial help to the State Government for afforestation under a scheme called "Social Forestry". Though huge amount of money had been paid by SIDA for the aforesaid purpose, funds were misspent due to mis-management of the department and huge amount of funds were also misappropriated at different levels, as a result of which in the year 1996 SIDA thought it proper to stop any financial assistance to the State for social forestry. Though these allegations of mis-management and misappropriation of funds are made, no specific instances have been given as to who are the officers responsible for mis-management of the funds and who misappropriated the funds given by the SIDA for social forestry. In absence of any specific instance of mismanagement or misappropriation this Court cannot direct any authority to make an enquiry. Without any material particulars before this Court with regard to mis-management and misappropriation of funds, it shall be practically impossible on the part of this Court to direct enquiry to be conducted on vague and general allegations. We, therefore, do not find any reason to entertain the prayer of the petitioners so far as it relates to direction for enquiry by an independent authority in relation to the alleged mis-management and misappropriation of funds. In this regard, Sri Panda also referred to Annexures 1 (a) and 1 (b) and submitted that the reports prepared by the Department itself would indicate mis-management and misappropriation. Referring to Table No. 2.2.11 of Annexure-1 (a) Shri Panda submitted that in the year 1980-81 the total forest area by local status was 59963.30 sq. Kms., whereas in 1989-90 it had come down to 57183.57 sq. kms. On the basis of above figures the learned counsel submitted that very fact that the forest area even after funding by SIDA got reduced as

indicative of the fact that there was mis-management and misappropriation of funds. We are unable to accept such contention of the learned counsel for the petitioners since reduction of forest area can be for several reasons and not necessarily because of mis-management of funds. Annexure-1(b) relied upon by the petitioners speaks of expenditure in between 1980-81 and 1989-90. The total expenditure in the year 1980-81 was Rs. 9,56,41,000/-whereas in 1989-90 it was Rs. 39,34,06,000/-. The chart in this Annexure to the writ application, in our view, indicates that the amount received from the SIDA had been spent and reduction of forest area which has become a global phenomenon cannot be a ground to hold that there was mis-management or misappropriation of funds.

6. So far as the second prayer of the petitioners is concerned, it relates to the scheme of reorganisation of Units of Forest Administration. Referring to the proposal for reorganization prepared by Sri A. S. Sarangi, IAS, Shri Panda learned counsel for the petitioners submitted that the entire purpose of reorganizing the department is to obtain aid again from the SIDA which has been advocating integration of all forestry functions within smaller Territorial Divisions. We are not referring to the proposals submitted by Sri Sarangi or by Sri Rath since they do not form part of the final proposal which is the subject-matter of Annexure-4. The backgrounds for reorganization of the Units of the Forest Administration are as follows - The filed organization of the Forest Department is presently structured into four parallel formations, i.e. Territorial, Wildlife, Social Forestry and Afforestation wings which among themselves perform all the basic forestry functions. But due to the presence of parallel structures, the following difficulties were found out.

- (1) Overlapping of jurisdiction;
- (2) Duplication of functions and interventions;
- (3) Sub-optimal utilization of staff;
- (4) Problems of coordination.

It was also felt that due to present parallel structure of the organization, capacity for managing the forest resources of the State in an efficient, equitable and sustainable manner has been severely limited. The aforesaid difficulties support the figures arrived at by the Department in Annexures 1(a) and 1(b), where it is indicated that even though there is much more expenditure in 1990 in comparison to 1980, the forest area has been reduced and therefore there was necessity to reorganise the forest administration for improving the capacity for management of forest resources in an efficient, equitable and sustainable manner. Under the scheme as it appears it is proposed to organize all forestry functions through only one type of field Divisions with a view to reducing duplication of efforts, facilitating optimal utilization of staff, reducing avoidable problems of coordination among various wings, and creating a more conducive arrangement for development and management of forests with the participation of the village communities. The scheme also proposes the forest field formations

by creating a large number of smaller-sized Divisions and integrating all forestry functions, such as forest protection and management, conservation of wildlife, afforestation and social forestry extension (information, education and communication) functions under each Division. Learned counsel Sri Panda appearing for the petitioners submitted that the scheme has been prepared by persons who have no expertise in the subject and therefore it suffers from lack of field study. He has also submitted that the proposal prepared by Sri A. S. Sarangi has been practically accepted by the State Government under the scheme. Opposite party No. 1 in its counter has stated that the Government after careful consideration of all aspects of the matter has finally dealt with the scheme of reorganization. The matter has been under active consideration for many times and all aspects of the scheme have been considered at various levels. In view of such averments made in the counter-affidavit, it cannot be said that the scheme has been prepared without any application of mind or without help of persons who have expertise in the field.

7. The other question that comes for consideration is whether it is open for this Court in exercise of jurisdiction under Article 226 of the Constitution of India to interfere a policy decision of the State Government. Undoubtedly, the scheme for reorganization of Units of Forest Administration is a policy decision of the Government which has obtained approval of the Cabinet in the meantime. In this connection, reference may be made to the decision of this Court in the case of Anukul Chandra Pradhan and etc. Vs. State of Orissa and Another, This Court in the aforesaid decision held that it is an accepted position that the correctness of a policy decision or wisdom of the State Government in formulating the same cannot be the subject matter of judicial scrutiny. It is to be presumed that before a policy is formulated by the State Government, all relevant aspects and the prevailing fact situation, attending circumstances and the public interest are taken into account. Unless a policy decision ex-facie conflicts with a constitutional or statutory provision, or is apparently against public interest it cannot be struck down merely on the ground that the decision is not a prudent and wise one. We are not referring to the several other decisions on the point because this position of law is settled, So far as the present case is concerned, there is no averment made in the writ application that the policy decision taken by the State Government with regard to reorganisation of Units of Forest Administration conflicts with any constitutional provision or statutory provision. All that the petitioners have stated in the writ application is that the policy decision taken by the State Government is against public interest. There is no material or data given in the case to indicate that such policy decision is against public interest except making bald statement in the writ application to that effect. We are, therefore, unable to accept contention of Sri Panda, learned counsel for the petitioners that the scheme for reorganisation of the Units of Forest Administration prepared and approved by the State Government is against public interest.

In view of the discussions made above, we do not find any merit in the writ

application and accordingly the same stands dismissed.

8. So far as O.J.C. No. 6043 of 2003 is concerned, the same has been filed by two petitioners, out of whom petitioner No. 1 is the Secretary of Kalinga Yuba Sakti and petitioner No. 2 is the Secretary of an organisation called "SAMBHABANA". Prayer in the writ application is for a direction to the opposite parties to reopen a forest division at Chandbali for better administration and protection of Wildlife and Mangrove forest, According to the petitioners under the scheme prepared by the State Government for reorganisation of the Units of Forest Administration, a Special Division should have been opened at Chandbali to take care of BHITARKANIKA National Park, Wildlife Sanctuary and the Mangrove forest covering 200 miles under Chandbali and Soro Tahasil in the district of Bhadrak.

Without expressing any opinion in the matter, we dispose of this writ application directing that in the event the petitioners make a representation to the appropriate authority for the aforesaid purpose, the same may be considered by the appropriate authority in accordance with law.

Sujit Barman Roy, C.J.

9. I agree.