

(2022) 05 OHC CK 0070
In the Orissa High Court
Case No : Writ Petition (C) No. 172 Of 2022

Chaitanya Sahu

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2022) 05 OHC CK 0070

Hon'ble Judges : Arindam Sinha, J

Bench : Division Bench

Advocate : Suryakanta Dash, P.C. Panda

Judgement

Arindam Sinha, J

1. Mr. Dash, learned advocate appears on behalf of petitioner and had on 6th January, 2022 moved the petition. He submitted his client wanted to set up a stone crusher unit on his private land. Permission had been denied by the administration relying upon information had from the Divisional Forest Officer on letter dated 19th May, 2021. Text of the letter is reproduced below.

"With reference to the above cited subject and correspondence, it is to inform you that as per joint field enquiry by Forest & Revenue staff, the Plot No.312,313 of Khata no.108 is found to be adjoining Biripura DPF which is a habitat of wild animals like Wild boar, Pangolin, Jackal, Wild rabbit etc. Establishing stone crusher may affect the wildlife and forest growth around.

Further, it is requested that a copy of approval order against the said Crusher Units, if issued, may be sent to this office for reference & record."

2. Today he submits, the process his client followed in trying to obtain No Objection Certificate (NOC) required his client to seek consent of the Revenue Inspector, thereafter the Tahasildar and finally Sub-Collector. All the three stages his client was able to cross but issuance of NOC has been rejected by the

Collector. He draws attention to paragraph 3 in order dated 6th January, 2022 to submit, in the counter filed by the Forest Department (Opposite Party no.6), answer to the query put by the Court has not been given. This is because the department does not have an answer. They did not really object but put up a note saying also that in event approval order is issued, copy may be forwarded to the office for reference and record. Paragraph 3 from said order dated 6th January, 2022 is reproduced below.

"3. The Forest Department is required to give instruction regarding distance of the reserve forest from petitioner's land as well as any criteria of requirement of buffer zone between civilian and other activities, abutting the forest. The material must be produced before Court by way of affidavit, advance copy of which is to be given to petitioner. The affidavit will be accepted on adjourned date."

3. Mr. Panda, learned advocate, Additional Government Advocate appears on behalf of State. He submits, he represents the Collector (O.P.2) as well as the Forest Department (O.P.6). He first refers to counter filed by the Collector. In that context he draws attention to annexure-8 in the writ petition, being memo dated 9th November, 2015 issued by Forest and Environment Department to the Collector. Relevant text from said memo is reproduced below.

"However, at the time of grant of Siting Compliance Certificate by the District Administration for establishment of stone crusher unit, the following points may be taken into consideration.

1. Establishment of new stone crusher unit may be decided by District Administration on the basis of proper justification where life, public health and ecology has priority over unemployment and loss of revenue.

2. Collector being the head of civil executive of the District has the constitutional obligation to protect natural resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. Hence, it is clarified that Establishment of large number of crusher unit need not be encouraged.

- ii) Crusher units having linkage to public infrastructure development projects like construction of roads, railway lines etc. may be considered as it relates to public welfare.

- iii) Collector has the discretion not to allow establishment of crusher units, as the most vital necessities viz, air, water & soil having regard to right to life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others."

Next, he refers to paragraphs 11, 16 and 17 in the counter filed by the Collector.

4. Regarding position taken by the Forest Department (O.P.6) Mr. Panda refers to memo dated 6th May, 2021 issued by the Forest Department (annexure-A/6 in its counter) and minutes of proceeding held by Tahasildar-cum-Forest Settlement

Officer on 27th May, 2021 regarding complaint filed by petitioner (annexure C/6 in the counter).

He submits, by said memo dated 6th May, 2021 Forest Department said that petitioner's land is adjoining Biripura Demarcated Protected Forest (DPF). In disposing of petitioner's objection, the Tahasildar had found that the draft survey map of Biripura DPF was required to be and was approved.

5. Mr. Dash in reply reiterates, opposite party no.6 has not answered the query put by Court. He draws attention to order dated 6th August, 2010 published by authority in Orissa Gazette Extraordinary to submit, it cannot be said that setting up of stone crushers is barred by law. The criteria for setting up stone crusher unit by his client, as notified by said order, has been met. He reiterates the Forest Department did not really object but expressed apprehension that inhabitants of the forest may be affected. He submits, there be direction upon the administration to issue NOC.

6. Perused above mentioned memo dated 9th November, 2015 issued by Forest and Environment Department to the Collector. Thereby was granted discretionary power to the Collector regarding establishment of new stone crusher unit. The basis for exercise of discretion was also mentioned in the memo, reproduced above. Clause-1 in the memo stands satisfied by petitioner. Clause-2 in the memo/cast obligation upon the Collector to protect natural resources for the enjoyment of the general public rather than to permit private ownership for commercial purposes. There is clarification that establishment of stone crushers should not be encouraged. There is no material to show that petitioner's enterprise to set up stone crusher unit is consequence of encouragement by the administration. Sub-clause (ii) under clause-2 in the memo is not applicable in the facts and circumstances. Sub-clause (3) gives discretion in not allowing establishment of stone crusher units causing misuse of resources and pollution. This criterion as basis to refuse grant of NOC has not been established by either counter filed on behalf of opposite party nos.2 or 6.

7. Court has to adjudicate the controversy between private enterprise to set up commercial unit and thereby pay revenue to the administration and the administration's obligation regarding protection of the life and environment. The requirements or parameters notified by said order dated 6th August, 2010 stands fulfilled by petitioner. The administration, through opposite party nos.2 and 6, have not been able to disclose any material regarding dimensions of buffer zone, mandated as cannot be encroached upon by private enterprise. Said memo dated 6th May, 2021 issued by Forest Range Officer and relied upon in the counter of opposite party no.6 does say petitioner's land is adjoining Biripura DPF. It also says, inter alia, there is no forest growth in petitioner's plot. Reserved forest is to provide natural habitat for wild life. The forest is reserved to prevent deforestation. Material on record shows there is no forest in the plot of petitioner. As such, the plot cannot be said to be habitat of wild life. There being conflict between human occupation of land and natural habitat of wild life, rules and

orders are in place to resolve it.

8. So far as the minutes and order dated 27th May, 2021 passed by the Tahasildar are concerned, it appears therefrom that petitioner's objection was to the Biripura forest area, as indicated in survey map for approval, was being opposed. Paragraph 4 in the order rejecting petitioner's complaint is reproduced below.

" As Court documents produced by the Complainant Sri Chaitanya Sahu during hearing was related to establishment of Stone Crusher by the Complainant nearby Biripura DPF which is unrelated to this cause. No other civil litigation documents provided by the complainant."

9. Court appreciates that the Collector diligently, conscientiously and in good faith sought to discharge obligations of the office, in letter and spirit of the instructions in said memo dated 9th November, 2015. However, petitioner cannot be deprived of his right to business and livelihood, over and above the restrictions placed by the administrative order and memo regarding establishment of stone crusher units. Court, on analysis of the facts finds, petitioner, on compliance of the orders and memo in place, is entitled to set up stone crusher unit on his land. Court, therefore, allows the writ petition and directs the Collector (O.P.2), to issue NOC to petitioner within three weeks from date of communication.

10. The writ petition is disposed of.

.....