

(2016) 07 OHC CK 0031

In the Orissa High Court

Case No : Writ Petition (Civil) No. 20674 of 2015

Chitta Ranjan Behera

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2016) 2 ILRCuttack 254

Hon'ble Judges : Vineet Saran, CJ. and Dr. B.R. Sarangi, J.

Bench : Division Bench

Advocate : M/s. R.K. Mohanty, Senior Advocate, M/s. S. Mishra, B. Mohanty, S.K. Samantray, D. Priyanka and E. Agarwal, Advocates, for the Petitioners; M/s. Ashok Mohanty and S.K. Padhi, Senior Advocates, M/s. A. Dey and B. Panigrahi, Advocates, Mr. P.K. Muduli, Addl

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.—Petitioners, who are residents of village Sanamunda, have filed this writ petition in the nature of public interest litigation to quash the inquiry report dated 03.07.2013 vide Annexure-1 and further seeks for a direction to the opposite parties not to raise any embankment in Satrusagar Tank/ Multi Irrigation Project (MIP).

2. The factual matrix of the case in hand is that the Satrusagara tank covering an area of about Ac.12.00 is existing in the village Sanamunda under the Kantamili Gram Panchayat in the district of Dhenkanal from time immemorial. It is a hilly area having no other water source. The only source of income of almost all the villagers being agriculture, about 200 years ago the ex-ruler, for the benefit of his subjects (villagers), dug out the said tank with a view to making the water available for all purposes. The villagers are using the tank for the purpose of irrigation, drinking and washing. Besides the villagers of Sanamunda, other three to four villagers also depend upon the said tank water. Originally, the tank was under the control of the ex-ruler, whose name was recorded in 1910 settlement,

and the same was pertaining to one plot bearing Sabik Plot No. 1989 under Mouza Sanamunda. After the estate was abolished in or about 1958, the State Government became the owner of the said Satrusagar Tank. The dispute started, when in 1965 settlement the said tank was recorded, as Plot No. 1562, Khata No. 166 measuring Ac.7.23 dec., in the name of village Sanamunda, and Plot No. 512, Khata No. 100 measuring Ac. 4.45 dec., in the name of village Jharabeda, which are two adjoining villages in Hindol block in the district of Dhenkanal. Though such recording was erroneous one, as alleged, but major chunk of area stands in the name of village Sanamunda, whereas smaller chunk of area was recorded in the name of village Jharabeda. In any case, residents of both the villages share the water of Satrusagar Tank. The said tank/MIP caters to the need of two villages. Pursuant to such settlement recording of 1965, Satrusagar MIP has been allocated to Sanamunda village, whereas Satrusagar tank has been allocated to Jharabeda village. The tank which has been allocated to Jharabeda village is perennially without water as the level of part of the tank, is at much higher level vis-a-vis the level of the tank at the site of Sanamunda village. Thus, all the water flows down to the side of Sanamunda village, as there is no embankment to provide minimum water level for the Jharabeda village. The villagers of Sanamunda had approached this Court by filing OJC No. 6151 of 1997 in the nature of public interest litigation, challenging the proposed action of raising embankment over Sanamunda Satrusagar MIP, which was disposed of on 31.07.1997 with direction that the authority shall not raise any embankment by dividing the above project into two parts so as to interfere with the irrigation rights. The Gram Panchyat was also directed not to put the project to auction for the purpose of pisciculture. Pursuant to such direction of this Court, the dispute was resolved permanently and the villagers of both the villages were using the said tank water for all necessary purposes. But, the villagers of Jharabeda created dispute by raising an embankment in the tank at the boundary line of village Jharabeda and Sanamunda. Aggrieved by such action of the villagers of Jharabeda, the villagers of Sanamunda raised a complaint before the Sub-Collector, Hindol and Inspector-in-charge, Balimi for necessary action. Pursuant to such complaint of the villagers of village Sanamunda, a meeting was convened to resolve the dispute amicably. Accordingly, with an agreement of both the villagers, it was decided on 27.04.2012 not to raise any embankment in the pond and not to create any disturbance over use of pond water by restricting/prohibiting the others. The Satrusagar tank allocated to Jharabeda village is under the control of Panchayati Raj Department and Satrusagar MIP allocated to village Sanamunda is under the control of Irrigation Department. There are poles demarcating the two portions allocated to each of the villages.

3. In spite of the amicably settlement made on 27.04.2012, the villagers of Jharabeda again took steps to raise an embankment and put soil at the dividing line between both the villages. Consequentially, the villagers of Sanamunda will be debarred from getting benefit of the tank water. Against such action, the villagers of Sanamunda filed representation on 02.05.2012 before the B.D.O.,

Hindol, Sub-Collector, Hindol and Tahasildar, Hindol for necessary action, with a request to prevent the villagers of Jharabeda from raising any embankment in the middle of the tank.

At this juncture, the villagers of Jharabeda approached this Court by filing W.P. (C) No. 13305 of 2008 seeking direction to the opposite parties to provide an embankment in Satrusagar tank, which will facilitate the provision of adequate water for use of irrigation and other purposes. This Court disposed of the said writ petition on 07.09.2012 directing the opposite parties therein to take appropriate decision in the matter to construct an embankment between Satrusagar Tank and Satrusagar MIP or make such other provisions for availability of adequate water for the villagers of Jharabeda. Accordingly, it was further directed to constitute a team of experts to study the situation and take into consideration all the relevant aspects of the case and decide whether an embankment is necessary for the purpose of providing water to the villagers of Jharabeda within a period of three months from the date of receipt of certified copy of the judgment. It was also directed that the decision to be taken should be implemented as expeditiously as possible. In the said writ petition, the Sanamunda village committee was impleaded as opposite party no.8 and it was represented through its counsel. The order in question was passed in presence of the Sanamunda village committee. The same was to be implemented in letter and spirit. But, the villagers of village Sanamunda filed a writ petition in the nature of public interest litigation bearing W.P.(C) (PIL) No. 11554 of 2012 seeking for a direction to the opposite parties to take necessary action to prevent the villagers of Jharabeda under Dhenkanal district from raising any embankment in the Satrusagar tank and further to direct them to excavate/lift the soil already dumped in the tank for the purpose of raising the embankment dividing the pond.

4. This Court, entertaining the said application on 18.02.2013, issued notice and passed interim orders in misc. case no. 3297 of 2013 to maintain status quo. The said interim order of status quo was extended from time to time till it was clarified/modified by order dated 27.07.2015 to the extent that instead of maintaining status quo in general, the villagers of village Jharabeda are directed not to raise any embankment in Satrusagar Tank till 07.08.2015. The said modified interim order was also extended from time to time till 02.02.2016, when it was directed that the said interim order dated 27.07.2015 shall continue to operate till further orders. When W.P.(C) (PIL) No. 11554 of 2012 was pending for consideration, in compliance of the order passed by this Court in W.P.(C) No. 13305 of 2008 disposed of on 07.09.2012, the inquiry was conducted by the authority in presence of both the villagers, namely, Jharabeda and Sanamunda and inquiry report dated 03.07.2013 (Annexure-1) was submitted, which has been sought to be quashed by this Court in the present writ petition.

5. Mr. R.K. Mohanty, learned Senior Counsel appearing for the petitioners strenuously urged that, while preparing the impugned inquiry report in Annexure-1, no opportunity of hearing has been given to the villagers of

Sanamunda and, as such, the same is liable to be quashed.

6. Mr. P.K. Muduli, learned Additional Standing Counsel appearing for the State vehemently urged that the authorities having caused enquiry in compliance of the judgment dated 07.09.2012 passed in WP(C) No. 13305 of 2008 by affording opportunity of hearing to all the parties including the villagers of Sanamunda, interference of this Court is not warranted for and, hence, the writ petition is liable to be dismissed.

7. Mr. Ashok Mohanty, learned Senior Counsel appearing for the intervenor opposite party strenuously urged that the petitioners have not approached this Court with clean hands, rather they have placed the facts which are contrary to the records, inasmuch as the inquiry has been conducted in presence of villagers of Sanamunda including the petitioner no. 1 who was present on behalf of Sanamunda village while conduct of the inquiry. Therefore, the inquiry having been conducted in compliance of the judgment dated 07.09.2012 passed by this Court in WP(C) No. 13305 of 2008, the same may not be interfered with by this Court in the present proceeding.

8. Considering the contentions raised by learned counsel appearing for the respective parties and having glanced through the records, it appears that the facts recapitulated herein above are not in dispute. Only question, which was raised by Mr. R.K. Mohanty, learned Senior Counsel appearing for the petitioners, is that there was non-compliance of the principles of natural justice, while conducting the inquiry in consonance with the judgment dated 07.09.2012 passed by this Court in WP(C) No. 13305 of 2008, which is to be examined on the basis of the materials available on record. The present writ application having been filed by the villagers of Sanamunda, was heard analogously with W.P.(C) No. 11554 of 2012, which was also filed by the said villagers. In the meantime, the pleadings of W.P.(C) No. 11554 of 2012 having been exchanged and on submission of the inquiry report by the authority, the said application having become infructuous, Mr. R.K. Mohanty, learned Senior Counsel appearing along with Mr. B. Mohanty, learned counsel on behalf of the petitioners stated that the relief sought having been mitigated, the petitioners therein do not wish to press the said application, and accordingly the same was disposed of vide order dated 30.06.2016, as not pressed by the petitioners and the interim orders passed in the said case were also directed to be vacated.

9. In the present writ application, the consequences of submission of the inquiry report pursuant to the judgment dated 07.09.2012 passed in WP(C) No. 13305 of 2008 having been challenged on the ground of non-compliance of principles of natural justice, it is specifically pleaded in Para 18 of the writ application stating that due to such ex parte report in Annexure-1 the villagers of Sanamunda are going to suffer and, therefore, those villagers pray for constitution of an expert committee afresh and to visit the spot and submit report to this Court to resolve the dispute for all time to come. There is no factual dispute involved in the case, save and except to see, while conducting inquiry principles of natural justice has

been complied with or not. Therefore, with the consent of the learned counsel for the parties, without calling for counter affidavit, the matter has been heard and disposed of at the stage of admission.

10. As it appears from the records, in compliance of judgment 07.09.2012 passed by this Court in WP(C) No. 13305 of 2008 (Brajabandhu Nath & Ors. v. State of Orissa & Ors.) an expert team was constituted comprising members from different departments under the chairmanship of Project Director, DRDA, Dhenkanal to study the situation of villages, namely, Jharabeda and Sanmunda of Hindol Block and to take into consideration all the relevant aspects of the case and to decide whether an embankment is necessary for the purpose of providing water to the villagers of Jharabeda. Such constitution of committee has been made by the Collector-cum-District Magistrate, Dhenkanal on 01.02.2013. Accordingly, due notice was issued and all the committee members were present on 16.05.2013 for causing an inquiry including the representatives of Jharabeda and Sanamunda villages. They were all present at the time of conducting inquiry. It appears that ten number of villagers represent Jharabeda and ten number of villagers represent Sanamunda along with the Sarapanch of Kantimili were present before the expert team and they had given personal hearing and consequentially the impugned inquiry report has been submitted, wherein following suggestions have been made:

"1. For smooth necessity of water of two villagers of village Jharabeda and Sanamunda one earthen embankment is to be constructed in the demarcated area before two water bodies with a cement concrete structure head wall of 1 mtr height of 10 mtr length.

2. The embankment will be done after renovation of Jharabeda tank till maintaining the equal earthen bed level of two projects i.e. minimum 2 mtr below the sluice level.

3. The height of the earthen embankment should be equal level with the Satrusagar MIP."

11. It appears that petitioner no. 1 Chitta Ranjan Behera, petitioner no. 2 Bibhudendu Nath and petitioner no. 4 Tarani Sen Nath along with other villagers, are signatories to have represented the village Sanamunda before the expert committee on 16.05.2013. The petitioners having participated in the process of inquiry before the expert committee, the allegations that they were not given opportunity of hearing is absolutely misconceived one, inasmuch as they have not approached this Court with clean hands. Therefore, the question of any ex parte hearing by the expert committee is bereft of records.

12. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the

percept for Courts. Wide jurisdiction of the Court should not become a source of abuse of the process of law by the disgruntled litigant. No litigant can play "hide and seek" with the Courts or adopt "pick and choose". True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the Court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy.

13. In *Ramjas Foundation v. Union of India*, AIR 1993 SC 852 the Apex Court held that when a person approaches a Court of equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective.

14. In *Noorduddin v. K.L. Anand*, (1995) 1 SCC 242, the apex Court observed as follows:

"???Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice."

15. In *Dalip Singh v. State of Uttar Pradesh*, (2010) 2 SCC 114 : AIR 2010 SC (Supp) 116, the Apex Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that, the truth constitutes an integral part of the justice delivery system. The quest for personal gain has become so intense that those involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of court proceedings. A litigant who attempts to pollute the stream of justice, or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

16. In view of the foregoing discussions, this Court is of the considered opinion that on the basis of the materials available on record, the contention raised that there was non-compliance of principles of natural justice cannot be sustained and as such, in our opinion, the petitioners having not come to the Court with clean hands, the writ application merits no consideration and is accordingly dismissed. No order as to cost.