

(1998) 07 PAT CK 0099
In the Patna High Court
Case No : C.W.J.C. No. 1092 of 1998-R

Citizens Council, Jamshedpur

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Environment (Protection) Act, 1986 — Section 3

Citation : AIR 1999 Patna 1 : (1998) 3 BLJR 2156 : (1998) 3 PLJR 392 : (1999) 1 RCR(Civil) 540

Hon'ble Judges : R.A. Sharma, J;B.P. Sharma, J

Bench : Division Bench

Advocate : P.K. Bhowmick, Md. Hatim and T.K. Mishra, for the Appellant; P.D. Agrawal, Govt. Adv, R.L. Srivastava, M.K. Habib and B.P. Verma, for the Respondent

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—The petitioner has filed this writ petition by way of Public Interest Litigation seeking appropriate writ/order to quash the order dated 10-9-1997 passed by the Sub-Divisional Officer, Dhalbhum, Jamshedpur, (Annexure 12 to the writ petition) and to direct the respondents not to hold any mela/fair for sale of textile etc. on Aam Began Maidan (hereinafter referred to as the Maidan) and not to use it for commercial purposes. As the exhibition has already started, the petitioner has also applied for amendment of the writ petition seeking further prayer restraining the respondents from holding exhibition.

2. By the order dated 10-9-1997, the Sub-Divisional Officer, Dhalbhum, Jamshedpur, has granted permission to the respondent No. 6 to hold exhibition of handloom, handicrafts, Khadinetwear etc. on the Maidan for the period from 14-4-1998 to 30-6-98, subject to its allotment by Tata Iron & Steel Company, Jamshedpur, (hereinafter referred to as TISCO). The petitioner wants the said

order to be quashed by this Court on the ground that the Maidan is used as play ground by the children and as a park by others for strolling sitting and enjoying free air. Its grievance is that if the exhibition is held over the Maidan, it could not be used by the children as play ground and by elders for strolling and sitting. It is further stated that it will cause health hazards, create traffic and law and order problems and will also cause noise pollution.

3. The averments, reasons and the grounds taken in support of this writ petition have been denied emphatically both by respondent Nos. 1 to 4 and the respondent No. 6 by filing their respective counter-affidavits. In the counter-affidavit filed on behalf of respondent Nos. 1 to 4, it has been stated that the TISCO, which is the lessee of the Maidan, has left it open for social, cultural and various other activities and it is accordingly used for holding Mela, Puja, social and cultural functions. It has further been stated that the said land is an open Maidan and it is neither a park, nor is it a health resort and there is only one Mango tree on it. It has also been stated that Sri Nirmal Bhattacharjee, who has filed this writ petition, is habituated to make recommendations for grant of permission for holding exhibition on the Maidan to various applicants such as North Calcutta Garment Dealers" and Manufacturers" Welfare Society, Calcutta, and this writ petition has been filed on account of trade rivalry. It is further stated that timings for exhibition is 5-30 p.m. to 9-00 p.m. and permission to hold it has been granted after consulting the heads of the Educational Institutions, Secretary, Iftaj and various, other institutions/societies, names of which have been given in para No. 3(vi) of the counter-affidavit.

4. We have heard the learned counsel for the parties.

5. It is well settled that it is the duty of the Government to prevent hazardous and inherently dangerous activities causing health hazards and creating pollution. There is, no doubt, that noise is also one of the pollutant. It is, therefore obligatory for the Government to protect that people from such activities. The people have to be protected not only from water and air pollution but also from the pollution of atmosphere by noise. Reference, in this connection, may be made to Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others, and M.C. Mehta Vs. Kamal Nath and Others, .

6. There is no dispute so far as the principles of law are concerned whether the present case calls for interference by this Court, is a question regarding which there is a serious dispute between the parties. Although the petitioner has made allegations in its writ petition to the effect that holding of exhibition will cause health hazards, create traffic and law and order problems and will also cause noise pollution, but these allegations are vague lacking particulars. Apart, as regards traffic and law and order problems, the impugned order itself contains specific conditions and directions in connection therewith. The exhibition has already started. There is nothing on the record to indicate that there is any traffic and law and order problem.

7. Sometime, exhibition do cause some noise but it is not every noise, exception to which can be taken. Noise becomes objectionable if it exceeds the tolerable limit. Whether the noise in the exhibition exceeded the tolerable limit and if so; "to what extent and in what manner have not been specifically pleaded by the petitioner. No specific direction on the basis of the averments made in the writ petition can, therefore, be issued.

8. In view of the serious dispute about the facts and nature of pleadings, interference by this Court under Article 226 of the Constitution is not warranted. Moreover, at the time, when the writ petition was heard, the exhibition has already commenced and it is expected that it might have been over by now. By passage of time, no effective relief can be granted to the petitioner.

However, before parting with this case, we must observe that if and when, in future, permission to hold exhibition/mela is granted it is the duty of the concerned Authority and officials to see that such exhibition/mela do not create water, air and environmental pollution.

The, Government has enacted anti-pollution laws so as to prevent various kinds of pollution. It is the duty of the State to see that its Acts, Rules and notifications issued thereunder are enforced strictly. In this connection, it is appropriate to quote the following extracts from the Supreme (V Court decision in India Council for Enviro-Legal Action (supra):--

....A law is usually enacted because the legislature feels that it is necessary, It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations."

11. With the above observations, this petition is dismissed. No costs.

B.P. Sharma, J.

12. I agree.