
(2019) 10 GAU CK 0012

In the Gauhati High Court

Case No : Public Interest Litigation No. 62 Of 2019

Debabrata Saikia

APPELLANT

Vs

Union Of India And 7 Ors

RESPONDENT

Date of Decision : 21-10-2019

Acts Referred:

Citation : (2019) 10 GAU CK 0012

Hon'ble Judges : Ajai Lamba, CJ; Achintya Malla Bujor Barua, J

Bench : Division Bench

Advocate : Syed Burhanur Rahman

Final Decision : Disposed Off

Judgement

Ajai Lamba, CJ

1. Heard Mr. S.B. Rahman, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Assistant Solicitor General of India for Respondent

No.1; Mr. T.C. Chutia, learned Additional Senior Government Advocate, Assam for Respondents No.2 and 8; Ms. T. Khro, learned Senior

Government Advocate, Nagaland for Respondent No.3; Mr. S. Biswas, learned counsel for Respondent No.4; and Mr. H. Baruah, learned counsel

for Respondent No.7.

2. This petition has been filed with the following main prayers :

â??It is therefore prayed that Your Lordships would be pleased to admit this application, call for the records and issue a Rule upon the

respondents to show cause as to why a writ in the nature of Mandamus should not be issued,

(a) directing the Authority to create a â??Mines & Miner Task Force Battalionâ? under the administrative control of Directorate of

Geology & Mining Assam for timely and independent action to prevent illegal mining and encroachment in fragile river beds in the State of

Assam.

(b) directing the Authority to immediately stop all illegal mining in various places of Dikhow River banks and apprehend the culprits who

are indulged in illegal mining in the Dikhow River banks and proceed against them as per law;

(c) directing the Authority to immediately release the proportionate and adequate fund of District Mineral Foundation Trust (DMFT) for the

district of Sivasagar.

(d) directing the Authority to properly utilise the fund of District Mineral Foundation Trust (DMFT) for the benefit of local area affected by

the mining.

(e) directing the Authority to constitute a High powered committee to study and recommend the preservation fragile ecosystem of the Dikhow

River and to take the remedial steps/ actions to prevent any change of the course of flow of Dikhow River.

(f) directing the Authority to constitute a Board/ Committee to monitor and carry out survey and investigation in Dikhow river banks and to

prepare Master Plan for the control of illegal mining, bank erosion and improvement of drainage in the Dikhow river bank and activities

connected therewith.

And/or, upon cause or causes being shown and upon hearing the parties Your Lordships would be pleased to make the aforesaid Rule

absolute, and/or further be pleased to pass such other order/orders as Your Lordships would deem fit and proper.â??

2. Contention of the learned counsel for the petitioner is that although this Court in the same jurisdiction while dealing with PIL No.78/2018 (Debarata

Saikia Vs. Union of India and 3 others), issued direction vide order dated 4.1.2019, however, illegal mining is going on unabated in Dikhow River bed

area. Learned counsel has buttressed his argument by referring to various reports appended with the petition which indicates an alarming situation. It

has been contended that the report dated 29th June, 2019 (placed with the record as Annexure-10) indicates that stone quarries were in operation.

Other illegal activities of illegal mining were going on.

It has been contended that investigation in the alleged illegal mining activities was conducted. The investigation found that it is matter of fact that there

has been soil erosion of the river bank. It has been pleaded that necessary action for defiance of order dated 4th January, 2019 rendered in PIL

No.78/2018 has not been taken.

3. We have considered the contention of the learned counsel in reference to the documents placed on record along with the writ petition.

Before proceeding further, we extract hereunder order dated 4th January, 2019, rendered in PIL No.78/2018 :

â??04.01.2019

(A.S. Bopanna, CJ)

Heard Mr. SB Rahman, learned counsel for the petitioner and Mr. TC Chutia, learned Additional Senior Government Advocate, Assam.

The petitioner is before this Court in this Public Interest Litigation seeking a direction to the authorities to immediately stop illegal mining in

various places of the Dikhow river bed and to apprehend the culprits who are indulging in illegal mining in the said area. Consequential

relief with regard to maintenance of the river bed is also sought for in the petition.

Having heard the learned counsel for the petitioner, we notice that though the petitioner had made certain representations to the Forest

Minister and to the Special Vigilance Cell of the Chief Minister, in a matter of the present nature, it is the concerned authority under the

Department of Mines and Minerals who is required to take action. In such a situation, without making a demand to the competent authority,

a consideration of the prayer for issue of mandamus would be premature at this stage.

In that view, we permit the petitioner to make such representation enclosing all details including the details as indicated in the instant

petition to the Commissioner and Secretary to the Government of Assam, Department of Mines and Minerals. Needless to observe, if such a

representation is made, the Commissioner and Secretary shall collect all materials and find out as to whether the grievance as put forth by

the petitioner is justified and if any action is required, the same be taken in accordance with law. In any event, the nature of consideration

made with regard to the representation of the petitioner shall be made known to the petitioner as expeditiously as possible, but not later

than two months from the date on which such representation is made.

If any further grievance survives to the petitioner, liberty is left open to avail the remedy in accordance with law.

In terms of above, the petition stands disposed of.â??

4. A perusal of the above extract of the order indicates that petitioner was given liberty to make representation enclosing all details including the

details as indicated in the PIL No.78/2018 to the Commissioner and Secretary to the Government of Assam, Department of Mines and Minerals. It

was further observed by this Court that after such representation is made, the Commissioner and Secretary shall collect all materials and find out as to

whether the grievance as put forth by the petitioner is justified and if any action is required, the same be taken in accordance with law. The result

thereof would be made known to the petitioner.

It has further been provided that in case further grievance survives, the petitioner would be at liberty to avail remedy in accordance with law.

5. We have taken note of document dated 29th June, 2019, (Annexure-10) which is a report in relation to illegal mining of Dikhow River, Sibsagar

District. The relevant portion of the report (Annexure-10) authored by the Commissioner and Secretary to the Government of Assam, Mines &

Minerals Department, reads as under :

â??However, in view of honâ??ble High Courtâ??s orders the undersigned had visited the area in question on 4-6 March 2019 and also

collected other relevant materials pertaining to the matter. Prior to that, a team of technical officials headed by Smt Nibha Sharma, Joint

Director; Sri Dhiraj Pratim Sharma, Mining Engineer and Sri Ashok Choudhury Mahato, Assistant Engineer (Mechanical), all of the

Directorate of Geology & Mining had visited the places on 28th January 2019. Their findings are annexed as Annexure I.

In addition to the above, the undersigned had a meeting with the Deputy Commissioner, Superintendent of Police and the Divisional Forest

Officer of Sivasagar district at Sivasagar Circuit House on 4th March 2019.

The area in question is mainly centred around Bihubor, not very far Assam-Nagaland interstate border. There are eight stone quarries in

the area of which only two were in operation at that time (total list with status is annexed as Annexure 2). There were some illegal

operations too but from time to time these are seized and auctioned as per law. The Annexure 3 shows that 10,000 M3 of minor minerals

were seized in the area recently and were put to auction sale.

The Circle Officer of Nazira had also enquired into alleged mining from private as well as government land near the river and her report is

placed at Annexure 4.

The area in question, i.e., Bihubor and surrounding areas is the hub of activities related to sand and silt/gravel mining, distribution, supply

including inter-state transportation. Being a plain area, the occurrence of gravel is relatively less in area falling in Sivasagar district, some

quantity is available up to a distance of about two kilometers downstream. The bulk is transported from Nagaland where due to hilly terrain

gravel and bolder is relatively more. There are 81 crushers plants with legal documents operating in the area and four more applications

have been received by the Environment & Forest department, which were under examination. Many poor villagers also gather gravel and

stone on a small scale in an unorganized way. They survive by doing such activities. However, such gatherings are not apparent threat if

compared to mechanized one.

The District Mineral Foundation Trust in Sivasagar has a collection of only Rs. 11.56 lakhs. In a meeting held at Guwahati on 24th June,

2019, the Deputy Commissioner of Sivasagar has already been asked to prepare an annual action plan and take initiative to expedite

expenditure under District Mineral Foundation. He has also been asked to expedite in view of this PIL.

Vide letter No.PEM 70/2019/16, dtd. 31st May 2019, the matter has been brought to the notice of the Principal Chief Conservator of

Forests & Head of Forest Force, Assam, to address the issues, some of which requires long-term planning, related to them (Annex.5).â??

6. A perusal of the above extracted portion of the report Annexure-10 indicates that the authorities are seized of the fact that eight stone quarries in

the area were running. Two were in operation at that time. There were illegal operations too, but from time to time. They have been stopped and

mining rights have been auctioned as per law. The mining operations involved some areas of Nagaland, because the areas are contiguous. Considering the ground realities, the Deputy Commissioner, Sivasagar has been asked to prepare an annual action plan and take initiative to expedite expenditure under District Mineral Foundation. The direction has been issued in view of the order passed in PIL No.78/2018 (supra).

7. The document dated 29th August, 2019 (Annexure-11) issued by the Secretary to the Government of Assam, Environment & Forest Department, addressed to the petitioner, also indicates that a High Power Committee will be constituted to study and recommend measures for the preservation of fragile eco-system of the Dikhow River and to take mitigation steps/action to prevent any change of the course of Dikhow River. It has been provided that the members of the Committee would comprise of representatives from the Water Resources Department, Mines & Mineral Department, Revenue and Disaster Management Department, Home & Political Department, Soil Conservation Department, Population Control Board of Assam and Environment & Forest Department. The document further provides that the Committee will be entrusted to monitor and carry out survey and investigation in Dikhow River and to prepare a Master Plan for control of possible illegal mining, bank erosion and activities connected therewith.

The document would be relevant for exact reference, and is reproduced herebelow :-

â??Sir,

In inviting a reference to the letter on the subject cited above, I am directed to furnish the information against your request for action to be

taken in respect of Gauhati High Court order dtd. 04.01.2019 passed in PIL 78/2018.

Para(a) No illegal mining in Dikhow River bed is going on as evident from reports received about regular joint inquiry by Revenue and Forest Department.

Para (b) Action on the matter will be initiated by the Mine & Mineral Department as apparent from the letter of the Commissioner &

Secretary, Mines & Mineral Departmentâ??s letter No.PEM.70/2019/16 dtd. 31.05.2019, a copy of which is enclosed for kind perusal

(Annexure-I).

Para (c) A High Power Committee will be constituted to study and recommend measures for the preservation of fragile eco-system of the

Dikhow River and to take mitigation steps/action to prevent any change of the course of Dikhow River. The members of the Committee may

be comprised of representatives from the Water Resources Department, Mines & Mineral Department, Revenue and Disaster Management

Department, Home & Political Department, Soil Conservation Department, Population Control Board of Assam and Environment & Forest

Department.

Para (d) The above-mentioned proposed committee will be entrusted to monitor and carry out survey and investigation of Dikhow River and

to prepare a Master Plan for control of possible illegal mining, bank erosion and activities connected therewith.

The department has not allowed for using of excavator to any permit holder to excavate minor mineral in their allotted permit area including

Dikhow River bed under Sivasagar Division.

The Action Plan of Pollution Control Board Assam for Dikhow River at Dikhow Bridge is enclosed at Annexure-II for your kind perusal.â??

8. Document at Annexure-12 appears to be an investigation report in relation to alleged illegal mining being carried out in various parts of Dikhow

River. The recommendations of the investigating team read as under :

â??a) As the investigating team, guided by the local Forest department officials did not find any mining operation in action during the time

of visit, could not ascertain the illegal mining activity operating in the area; though such activity may not be ruled out and only regular and

continuous vigilance is very much necessary to apprehend wrong doers, if any and prevent such activity in the visited area. Furthermore,

the Directorate of Geology & Mining, Assam does not have any law enforcing Task Force of its own, the District Administration may be

alerted and requested to take action on any alleged mining activity occurring in the Dikhow River Bed areas.

For long term solution to the to the challenge, the Authority of the Directorate of Geology & Mining, Assam may approach the Government

to create a â??Mines & Minerals Task Force Battalionâ? under its administrative control for timely and independent action to prevent

illegal mining of any sort within the state.

b) The Sivsagar District Mineral Foundation Trust has a collection of Rs.0.1156 Crore as per the report till May, 2019. Hence, Sivasagar

District Mineral Foundation Trust may be requested for utilization of the D.M.F. fund, complying the Prime Minister Khanij Kshetra Kalyan

Yojana (PMKKKY) guidelines for developmental activity in the mining affected areas of the district.

d) Mining Permit/Contract holder should be properly briefed about the mining procedure & the conditions. Mining in a proper way as per

approved mining plan will not hamper the ecological system of the area. Anything extracted from the river bed is general replenished in the

same way. Otherwise the river bed will rise causing.

(i) Erosion of the river bank.

(ii) Change of river course.

(iii) Flood.

(iv) Disturbance in free flow of the river water.â??

9. Considering the contents of Annexures-10, 11 and 12, we find no reason to pass another set of orders in relation to the issue raised by the

petitioner. Substantial relief has already been granted. The respondent State agencies are in seisin of the matter. It has been directed that a Task

Force be created for necessary action.

10. Considering the totality of the facts and circumstances of the case, we dispose of the matter, however, with liberty to the petitioner to file an

application along with supporting documents which has evidentiary value before the High Power Committee constituted as per Annexure-11(supra).

The petitioner would also have the right to bring to the notice of the Mines & Minerals Task Force Battalion to be created (or has been created by the

respondents) the incidents of illegal mining. We specifically provide that such representation is required to be made in relation to the fact situation

along with the relevant evidence, and photographs if possible. This Court trusts that appropriate action would be taken thereon.

11. The Court expects that the High Level Committee and the Mines & Minerals Task Force Battalion would be created/set-up within a period of

three months.

12. Let a copy of the order be conveyed not only to the Secretary, Environment and Forest Department, Government of Assam; the Commissioner and Secretary, Mines and Mineral Department, Government of Assam; Director, Geology & Mining, Assam; Pollution Control Board, Assam; the Deputy Commissioner, Sivasagar, but also to the Chief Secretary and Secretary, Ministry of Environment, Forest and Climate Change, Government of India.