

(2013) 12 JH CK 0047

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 6788 of 2013

Diwan Indra Nil Sinha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2014) 2 AJR 807 : (2014) 4 EFLT 394 : (2014) 1 JLJR 232

Hon'ble Judges : R. Banumathi, C.J.;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Rajiv Kumar, for the Appellant; Ajit Kumar, AAG and Mr. Kumar Sundaram, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. By way of this public interest litigation, the petitioner seeks cancellation of auction of Sand Ghats held in seven districts of Jharkhand under different auction notices issued by the Deputy Commissioner of the respective districts; some of the auction notices are annexed as annexure-1 series. Reasons for challenging the same, as alleged by the writ petitioner, are that it has been done in violation of the M.M.R.D. Act, 1957; Jharkhand Minor Mineral Concession Rules 2004 and without conforming with the requirement of environmental clearance in order to favour certain companies who have also been impleaded herein. The petitioner has further sought Vigilance/CBI inquiry in the grant of lease of such minor Minerals alleging that the private companies drawn from different states, have been favoured by certain people in power.

2. These Sand Ghats have been auctioned on the basis of instruction contained in letter No. 983/M dated 29th April 2013 issued by the Secretary, Mines and Geology Department, Government of Jharkhand (Annexure-8). By the said instruction, earlier departmental letters dated 26th May 2011 and 29th June 2012 have been revoked and the Deputy Commissioner of the respective districts of Jharkhand have been directed to undertake auction of Sand Ghats in terms of

Jharkhand Minor Minerals Concession (Amendment) Rules, 2010.

3. The petitioner has submitted that the respondents should act in conformity with the Circular dated 29th June 2012 issued by the Mines and Geology Department, Government of Jharkhand whereunder, it was directed that the settlement of Sand Ghats in various districts should be done through Gram Sabha under the authority of Mukhiya of the concerned village/panchayat where such Sand Ghats are located. It is contended that as a result of the impugned auction which have been held in the month of October and November 2013, private companies from different states, in connivance with the persons at the helm of affairs in the State, have resorted to exploitation of natural resources of the State causing serious damages to environment of the State. It is submitted that as a result of such acts, the entire sands being mined from various districts of Jharkhand, are likely to be transported to far off places which may be used for other purposes and at the same time, denying the people of the State the benefit of such sands and that too, at a high cost. These companies would therefore indulge in astronomically increasing the rates of sands in the State of Jharkhand which would be detrimental to the interest of the State and people at large. The petitioner contends that the provisions of Jharkhand Panchayats (Extension to Schedule Areas) Act, 1996 (hereinafter to be referred as "PESA Act" in short) stand violated. In terms of the said rules, the Gram Sabha has the power to make recommendation for grant of such mining lease for minor mineral in the schedule area which is being overridden by the impugned auction notice. It is further contended that the private companies are being run by one and the same person. The petitioner claiming himself to be the public spirited person and local resident of the State of Jharkhand, therefore seeks to espouse the cause of people at large through the instant public interest litigation and seeks interference of this Court in the larger public interest.

4. Learned AAG appearing on behalf of the State, has raised objection relating to the credential of the petitioner. According to the learned counsel for the State, the petitioner is in the habit of filing such misconceived petition and with the intention to attack the family member of Hon'ble the Chief Minister of the State. It is submitted that he has failed to disclose the full and complete details as required under Rule 4 of Jharkhand High (Public Interest Litigation) Rules, 2010. The documents furnished by him such as Pan Card, Identity Card, Certificates of Registration, etc. do not reflect the name of the present petitioner; rather they are in the name of Indranil Sinha. One of such motivated public interest litigation being writ application (PIL) No. 4218/2013 was dismissed by this Court with a cost of Rs. 50,000/-. Learned AAG therefore submits that on the preliminary objection, this writ petition in the garb of a public interest litigation, should be dismissed. He submits that such abuse of the public interest litigation should be seriously deprecated by this Court. He relies upon the following judgments rendered by the Hon'ble Supreme Court:

i. Ashok Kumar Pandey Vs. The State of West Bengal and Others,

- ii. Dr. B. Singh Vs. Union of India (UOI) and Others,
- iii. B.P. Singhal vs. State of T.N. And others [(2004) 13 SCC 673]
- iv. State of Uttaranchal Vs. Balwant Singh Chauhal and Others,
- v. P. Seshadri Vs. S. Mangati Gopal Reddy and Others,

5. Learned AAG submits that the Jharkhand Minor Mineral Concession Rules, 2004 were subsequently amended in the year 2010 by Notification dated 25th April 2011 (Annexure-2). As per Rule 12, the Sand Ghats are to be settled by public auction. However, it is submitted that priority in settlement of Sand Ghats is to be given to the Government companies/authorities of the State Government and Registered Cooperative Societies in which 51% or more members belong to the Scheduled Tribes. The said rules have been framed by the State Government in exercise of powers conferred u/s 15 of the Mines and Minerals (Development and Regulation) Act, 1957. As per the amended rule 12 (3), mandatory written consent has to be obtained from the Gram Sabha/Gram Panchayat/Notified Area/Municipality/District Board, etc. As per Rule 12(5), 80% of the revenue earned from bidding of sand ghat will go in favour of concerned Gram Sabha/Gram Panchayat/Notified Area/District Board, etc. and the rest 20% of the amount will go to the State Government. It is submitted that the impugned notices have been issued completely in conformity with the Rules of 2011 and also the relevant provisions of PESA Act, 1996. The requirement of Rule 4 (k) and (l) of the PESA Act relating to obtaining recommendation from the Gram Sabha before grant of any mining lease or exploitation of any such minor mineral, has been incorporated in the auction notice itself, as would appear from the terms and conditions stipulated in Clause-3 of the impugned auction notice. It was submitted that the relevant requirement of obtaining environmental clearance before settlement of such Sand Ghats have also been incorporated in the terms and conditions of auction notice.

6. Learned counsel for the State submits that the reliance of the petitioner upon letter dated 29th June 2012 being in the nature of Circular, is wholly misconceived in the wake of clear statutory mandate prescribed under the amended rules of 2010. The Secretary, Department of Mines and Geology, Government of Jharkhand therefore has directed the Deputy Commissioner of the concerned districts to hold the auction of Sand Ghats fully in consonance with the Rule 12 of the amended rules of 2010. The earlier executive instruction dated 26th May 2011 and 29th June 2012 have been recalled by the State Government which is fully within its power. He relied upon the judgments rendered by the Hon"ble Supreme in the case of Virender Singh Hooda and Others Vs. State of Haryana and Another, and in the case of Ajaya Kumar Das Vs. State of Orissa and Others, to support his contention that the executive instruction cannot override the rule which is statutory in nature. Learned AAG therefore submits that there is no infirmity in the auction notice which has been done fully in conformity with the prevalent rules and requirement of PESA Act, 1996 and

provides for obtaining environmental clearance before any successful bidder can be allotted the lease of sand ghats in question. The present PIL in the disguise of public interest litigation, seeks to target certain people with wholly malafide motives which should be strongly condemned by this Court and the writ petition should be dismissed with exemplary cost.

7. We have heard learned counsel for the parties and gone through the relevant materials on record.

8. The amended rules of 2010 by which such auction can be held for settling the sand ghats in various districts of the State of Jharkhand, has not been challenged by the writ petitioner. The petitioner has sought implementation of the direction issued under the signature of the Deputy Secretary of Mines and Geology Department, Government of Jharkhand contained in Memo No. 1267/M dated 29th June 2012 whereunder such settlement of sand ghats were directed to be undertaken through the Gram Sabha. The instant letter however was recalled by the direction contained in annexure-8 issued by the Secretary, Mines and Geology Department, Government of Jharkhand dated 29th April 2013. By the said letter, the respective Deputy Commissioner of different districts were directed to hold auction of sand ghats in their district in conformity with the provisions of Rule 12 of the amended rules of 2010, as also under the departmental instruction dated 27th June 2011 (Annexure-3). The said instruction also stipulates the same requirement of obtaining sanction from the Gram Sabha/Gram Panchayat. It also provides for apportionment of revenue to the extent of 80% earned from such settlement of sand ghats to the respective Gram Sabha/Gram Panchayats. According to the learned counsel for the State, the auctions were held in conformity with Rule 12 of the amended rules, 2010 and also the departmental instruction dated 27th June 2011. No substantial grounds are made out to refute the same. Directions to settle the sand ghats through public auction were issued by the Secretary, Mines and Geology Department, Government of Jharkhand on 29th April 2013 itself while the present writ petition has been filed in the month of October 2013. On the other hand, the petitioner has failed to substantiate his assertion of malafide against certain persons named in the writ petition while alleging that certain companies who have participated in the auction have been unduly favoured. The writ petition is lacking in any material particulars and facts to support its assertion of malafide in the auction process. The present petitioner appears to be in the habit of filing such public interest litigations one of which being W.P.(PIL) No. 4218/2013 was dismissed with a cost of Rs. 50,000/-. We, therefore, do not find any reason to entertain this public interest litigation, which is accordingly dismissed. However, it is also made clear that no observation made herein-above shall be treated to be comments on the merits of the individual auction made or in favour of any such bidder in the respective auctions held under such auction notices.