(2023) 12 JH CK 0029

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 4629 Of 2021

Dr. Nishikant Dubey APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 12-12-2023

Acts Referred:
Companies Act, 2013 — Section 135, 166(2)

Citation : (2023) 12 JH CK 0029

Hon'ble Judges : Sanjaya Kumar Mishra, CJ;Ananda Sen, J

Bench : Division Bench

Advocate : Shivani Jaluka, Prashant Kumar Singh, Rajiv Ranjan

Final Decision : Allowed

Judgement

Sanjaya Kumar Mishra, CJ

1) By filing this writ petition in the nature of Public Interest Litigation, the petitioner, being the Member of Parliament representing Godda Constituency, has prayed for a direction upon the respondents, particularly, respondent No.2, to take appropriate steps for construction of Mega Destination, Deoghar (Construction of Q-complex), which is allegedly not being constructed even after lapse of 10 years from the date of sanction of the project, for which foundation stone was laid down by His Excellency the then Hon’ble President of India in the year 2013.

2) The petitioner claims that the temple of deity Baba Baidyanatha is situated in Deoghar and is one of the 12 Jyotirlinga temples having great significance for the followers of Sanatan Dharma. It is a place of major pilgrimage and in the month of Shrawan, an estimated 50-60 lakhs devotees first visit Sultanganj, collect “Gangajal” in their Kanwars and thereafter carry the same by undertaking a rigorous 109 kms pilgrimage on foot and offer the holy water to the deity Baba Baidyanath. During this Shrawani Mela, the devotees have to stand in queue for 15-20 kms after reaching the city of Deoghar to offer holy water to the Shivlinga

after walking for about 109 kms from Sultanganj to Deoghar, which consumes about 8-10 hours and devotees have to face insurmountable problems.

3) The proposal for selection Deoghar within the State of Jharkhand a destination of Mega Tourism was first proposed in the 11th Five Year Plan. The Ministry of tourism vide letter dated 22nd of October,2010 informed that Respondent No.1 in consultation with Respondent No.2 has included the project 'Mega Destination at Deoghar' in the prioritized project list of Jharkhand 2010-11 and was directed to provide a revised detailed project report and, therefore, the petitioner prayed that appropriate direction may be passed in this connection.

4) A supplementary affidavit has been filed by the petitioner wherein he has stated that he has been informed by Navayuga Engineering Company Limited that under their Corporate Social Responsibility Scheme (CSR Scheme), they are willing to make a payment of Rs.120,00,00,000/- (Rupees One Hundred and Twenty Crores only) for the construction of Phase-II of Q-Complex at Deoghar. Thereafter, the said Company has written letter dated 12th of January, 2023 to the Director, Tourism Department, Government of Jharkhand, showing its intention to take up Phase-II of the Q-Complex. However, the Director, Tourism Department, Government of Jharkhand has failed to give any reply the letter dated 12th of January, 2023.

5) Another supplementary affidavit 02.05.2023 has been filed wherein the petitioner has reiterated the same by annexing a copy of the letter issued by the Government of Jharkhand to the Chairman of Navayuga Engineering Company Limited requiring certain information.

6) Counter affidavit has been filed on 14.06.2023 wherein the under Secretary, Tourism Department, Jharkhand, on instructions, have pleaded that the Chairman of Navayuga Engineering Company Limited vide its letter 12.01.2023 has given a proposal for construction of Q-Complex Phase-2 at Baidyanath Dham, Deoghar under their CSR activity. The proposal was sent to the Deputy Commissioner, Deoghar. The District CSR Committee and Baidyanath Dham Temple Management Committee have approved the proposal vide Annexure-C to the counter affidavit. In the said proposal, the Company concerned requested for exemption of State Goods & Services Tax, Labour Cess and other taxes, but as there is no provision for exemption of the taxes, therefore, a discussion was held with the Vice President of the aforesaid Company. Apropos to the said discussion, the Vice President of the Company has informed the Department that that Company is ready to undertake the construction of Q-Complex under the CSR activity with all applicable taxes. The Department of Tourism vide letter No.823 dated 24.04.2023 asked for the consent from Navayuga Engineering Company Limited on certain conditions related to monitoring of the proposed work which appears necessary to ascertain the quality of work and the said Company by virtue of their letter dated 28.04.2023 has given consent to the conditions. The Department of Tourism on 24.04.2023 also asked for consent of the Jharkhand State Building Construction Corporation, which vide their letter dated 08.05.2203

has given consent to the conditions relating to monitoring of the work, but at the same time, they have suggested for some conditions relating to the proposed construction. A meeting was held on 26.05.2023 in the Chairmanship of Secretary, Building Construction Department-cum-Managing Director, Jharkhand State Building Construction Corporation in which with Secretary, Tourism, Jharkhand; Director, Tourism, Jharkhand; Executive Director, Jharkhand State Building Construction Corporation and Sri D.P. Nema, Vice President, Navayuga Engineering Company Limited, to arrive at final conclusion on conditions related to execution and proper monitoring of the proposed work and set necessary timeframe for completion of the work. In the meeting, it was decided to obtain administrative approval from competent authority for the work to be executed under the CSR activity. Therefore, the proposal is again sent to the Industry Department, Jharkhand for approval of the Governing Body/Executive Council.

7) Thereafter, on 05.07.2023, another rejoinder affidavit has been filed wherein it is stated that 1st Phase of the Project was completed in June, 2017, however, the respondents-State had failed to take steps for construction of Phase-II of the Q-Complex. The petitioner claimed further therein that in the meeting it was decided that the timeline for construction of the 2nd Phase of Q-Complex will be completed within three months.

8) A further counter affidavit has been filed on 19.08.2023 wherein it is stated that the proposal for construction of Phase-II of Deoghar Q-Complex under the CSR activity was sent to the Industry Department for Level-II, Governing Body/ Executive Council’s approval as the amount is above 100 Crores. The Industry Department has informed that some amendment in Jharkhand CSR Policy is under process and suggested that the proposal may be considered as per Para 4 of the Central CSR Policy and FAQs issued by Ministry of Corporate Affairs, Government of India on CSR. According to Central CSR Policy and para 2.4 of the FAQs issued by the Ministry of Corporate Affairs, Government of India on CSR, the Government has no direct role in the approval and implementation of the CSR programmes/projects of the Company. The Q-Complex Phase-II is to be constructed on Government land for use of thousands of Kawariyas during Shrawani Mela, hence, the State Government’s Level approval and monitoring of quality of work seems necessary so that proper construction quality is maintained to check any mis-happenings in future due to poor built quality. Since the CSR Policy is under reconsideration and the existing CSR Policy is in force, the Government has taken a decision to construct the proposed Q-Complex from the State Fund and sought concurrence on this proposal from the Chief Minister’s office through proper official channel.

9) Thus, it is clear from the aforesaid statements made in the pleadings that there is no dispute that the shrine of Baba Baidyanath is one of the most important shrines in the country, being one of the 12 Jyotirlinga temples. It is also not disputed that the said Temple is thronged by lakhs of people, especially during shrawani Mela when people travel more than 100 kms by collecting holy

water from the River Ganges to be offered to the said deity Baba Baidyanath for religious purposes. The State has also not denied the fact that the existing facilities in the city of Deoghar are not sufficient for the lakhs of devotees who throng the Temple during Shrawani Mela. From the pleadings, it is also not disputed that the 2nd Phase of Q-Complex is also necessary in the interest of the public who believe in Sanatan Dharma and who visit the said shrine for Darshan or for offering holy water. The pleadings also reveal that it has been referred to the different Departments like Tourism and Industry and all the Departments have cleared the proposal. Now, the catch is whether the petitioner’s prayer to let the Navayuga Engineering Company Limited undertake the construction of the 2nd Phase of Q-Complex should be allowed, under the supervision of State Government’s officials regarding quality control, etc or should the State Government undertake the process of construction of 2nd Phase of Q-Complex?

10) The Corporate Social Responsibility has been involved keeping in view the concept of trusteeship of public money, Companies, who earn substantially by doing different activities including business, construction, manufacture in the country, have also some social responsibility towards the citizens of this country as provided under Section 135 of the Companies Act. The Hon’ble Supreme Court in M.K. Ranjitsinh v. Union of India, (2021) 15 SCC 1: 2021 SCC OnLine SC 326 at paragraph 12 has held as under:-

“12. In fact, a few suggestions were made in the course of arguments, as to how financial resources can be mobilized. One of the options that could be explored, is to invite the attention of each electricity utility engaged in the generation of power, to Section 135 of the Companies Act, 2013, which imposes corporate social responsibility upon companies having a specified net worth or turnover or net profit. Section 166 (2) of the Companies Act, 2013 ordains the Director of a company to act in good faith, not only in the best interest of the company, its employees, the shareholders and the community, but also for the protection of environment.”

11) In the case of Tata Consultancy Services Ltd. V. Cyrus Investments (P) Ltd., (2021) 9 SCC 449 : 2021 SCC OnLine SC 272, the Hon’ble Supreme Court has held as follows:-

“206. At first blush, these arguments, almost bordering on romantic idealism, appear very attractive. But on a deeper scrutiny, they are bound to get grounded. If we have a look at the history of evolution of corporate enterprises, it can be seen that there are three time periods through which development of corporate entities have passed. In the first period, large corporate houses were established by individuals with their own funds and those individuals and their families controlled both ownership and management of these enterprises. In the second time period, when professionalism became the “Taraka mantra”, families which promoted enterprises, retained ownership, but appointed professional managers to run the show. Thus ownership got divested from management. In the third time period, social participation increased by leaps and bounds through public issues and listing. This increased the social accountability and social responsibility of corporate entities. Every time a historical shift/change took place, the legal regime had to undergo a change, albeit at snail's pace."

12) In such situations, if a Company is coming out without seeking anything in return, then it is appropriate on the part of the State Government to allow the Company to carry out the development work, especially when it is for a pious purpose like facilitating the Darshan and offer holy water to the Kanwarias during the Shrawani Mela being observed with much funfair, devotion and rituals activities being done in the month of Shrawana. By allowing the said Engineering Company to spend about Rs.120,00,00,000/- in the 2nd Phase of Q-Complex, the State Government will not only be benefited from the Corporate Social Responsibility of the Company, but it shall also save that much of money from its Coffers which is in fact money belonging to the people of the State of Jharkhand which is being collected through different taxes, tolls and cess.

13) For the aforesaid reasons, we are of the opinion that the prayer of the petitioner merits consideration and we, hereby, allow the writ application and direct the respondent Nos. 2, 3 and 4 to allow the Navayuga Engineering Company Limited to undertake the 2nd Phase construction of Mega Destination, Deoghar (Construction of Q-complex) without any further delay. A writ of mandamus is accordingly issued.

14) However, there shall be no orders as to costs.

15) Pending Interlocutory Applications, if any, stand disposed of.

16) Urgent Certified copies as per Rules.