

(2025) 10 OHC CK 1361

In the Orissa High Court

Case No : Writ Petition (C) No. 7754 Of 2025

M/S Kalinga Saw Mill, Bhubaneswar

APPELLANT

Vs

State Of Odisha & Ors.

RESPONDENT

Date of Decision : 31-10-2025

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 226

Orissa Saw Mills And Saw Pits (Control) Act, 1991 — Section 4, 4(1), 5

Citation : (2025) 10 OHC CK 1361

Hon'ble Judges : Dr. Sanjeeb K Panigrahi, J

Bench : Single Bench

Advocate : Jagabandhu Sahoo, Kajal Sahoo, Gayatri Patra

Final Decision : Allowed

Judgement

Dr. Sanjeeb K Panigrahi, J

1. The Petitioner, in this Writ Petition, seeks a direction from this Court to the Opposite Parties to issue saw mill license in its favour for rehabilitation of its saw mill at the nearby Barunei notified designated Industrial Estate to run the saw mill within a stipulated time.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) The Petitioner was carrying on the business of a saw mill under the proprietorship concern styled as M/s. Kalinga Saw Mill, pursuant to Saw Mill Licence No. 56/91, which had been duly granted in his favour by the competent Licensing Authority on 12.07.1991, in accordance with the statutory mandate and in due compliance with the regulatory requirements prescribed under the relevant enactments governing the control and operation of saw mills.

(ii) It is discernible from the official correspondence that the Opposite Party No.3 vide Letter No.14879 dated 01.10.2011 addressed to the Principal Secretary to

Government, Forest and Environment Department, had prepared and transmitted a comprehensive seniority list of licensed saw mills operating in all districts of the State of Odisha, while strictly adherence to the policy guidelines framed and notified by the said Department vide Notification No.13891 dated 30.07.2011, promulgated under its statutory and regulatory competence to ensure uniformity, transparency, and administrative propriety in the regulation of saw mill operations.

(iii) As evident from the seniority list, the Petitioner's saw mill, named M/s. Kalinga Saw Mill, figures at Serial No. 9 of List-1 pertaining to Khordha District, without any notation of offence or infraction. The said record further delineates that the Petitioner had lawfully operated the saw mill under a valid licence from 12.07.1991 to 08.07.1997, for a cumulative duration of 1,098 days. It also records that the Petitioner's father, being the then proprietor, had continued the operation of the said unit under the protective umbrella of an interim stay order granted by this Hon'ble Court between 19.11.2001 and 18.05.2002, spanning 181 days.

(iv) The State Government, vide Notification No.13891 dated 30.07.2011, issued detailed guidelines regulating the establishment, relocation, and operation of saw mills within the State of Odisha. As per the said guidelines, the Industries Department was required to identify suitable industrial estates— restricted to a maximum of two per district—for accommodating such saw mills. The Department was also directed to indicate the specific sheds or areas available within the identified estates for the aforesaid purpose. The said guidelines further stipulated that priority in relocation and rehabilitation shall be accorded to saw mills which had been functioning for a longer period under a valid licence and against which no offence had been recorded. Only such saw mills maintaining a clean compliance record were eligible for rehabilitation. In cases where offences had been booked, consideration for rehabilitation could arise only upon prior condonation of such offences by the Government, based on an assessment of their nature and gravity. The task of preparing the consolidated list of eligible saw mills was entrusted to the Principal Chief Conservator of Forests, Odisha (Opposite Party No.3).

(v) The Opposite Party No.3, vide Letter No.14003 dated 28.06.2018, issued in response to the Petitioner's representation dated 02.03.2017 pertaining to rehabilitation of the saw mill, directed the Petitioner to approach the Divisional Forest Officer concerned for initiation of appropriate action in accordance with the prescribed procedure.

(vi) In compliance therewith, the Petitioner, vide Letter dated 02.04.2019 addressed to the Opposite Party No.3, submitted that upon approaching the Opposite Party No.2, Divisional Forest Officer, City Forest Division, Bhubaneswar, it was ascertained that Offence Report No. 2(b)CC-3/1993 was shown to be pending before the Court of the learned S.D.J.M., Bhubaneswar, registered in the name of Sri Bhagaban Das, the erstwhile partner of the Petitioner's saw mill.

Thereafter, the Opposite Party No.2, vide Memo No.1186 dated 05.02.2020, addressed to the Opposite Party No.3 under the subject "Rehabilitation of Kalinga Saw Mill, Nayapalli, Bhubaneswar," reported that the case record relating to Offence Report No. 2(b)CC-3/1993 was not available in the records of the Court of the learned S.D.J.M., Bhubaneswar.

(vii) The Opposite Party No.1 directed all Divisional Forest Officers of the Territorial and Wildlife Divisions to furnish the seniority list of saw mills together with the status of offences or cases, if any, registered against de-licensed or closed saw mills within their respective jurisdictions.

(viii) The Petitioner, despite making persistent representations, was informed by the Opposite Parties that a meeting of the State Level Committee was scheduled on 04.02.2025 to consider grant of licences to de-licensed saw mills and other wood-based industries.

(ix) Aggrieved by the arbitrary refusal and inaction of the Opposite Parties in not considering the rehabilitation of the Petitioner's saw mill under the Orissa Saw Mills and Saw Pits (Control) Amendment Act, 2010, the Petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned Senior Counsel for the Petitioner, with great emphasis and persuasive force, submitted as follows:

(i) the Petitioner's saw mill, M/s. Kalinga Saw Mill, indisputably finds mention at Serial No. 9 of List-I prepared in respect of Khordha District, which categorically encompasses those saw mills that have been operating for a substantial duration under valid licence and against whom no offence or infraction has been recorded under the relevant statutory framework. The said inclusion, it was contended, ipso facto evidences that the Petitioner satisfies the substantive and procedural preconditions stipulated under the applicable regulatory regime.

(ii) It was further contended that the Notification No.13891 dated 30.07.2011, issued by the Forest and Environment Department, delineates the eligibility parameters governing the establishment, relocation, and functioning of saw mills within the State, particularly in the context of identified industrial estates. The said guidelines, having been framed in exercise of the State's regulatory authority under the Orissa Saw Mills and Saw Pits (Control) Act, 1991 as amended by Act 18 of 2010, explicitly mandate that preference shall be accorded to those saw mills which have functioned for longer periods under valid licence, coupled with an unblemished record. The Petitioner, being duly enlisted in List-I, satisfies the twin requisites of longevity of operation and absence of penal antecedents, and hence stands within the zone of consideration for rehabilitation.

(iii) The Learned Senior Counsel further submitted that the Petitioner has made diligent and continuous endeavours to ascertain the status of Offence Report No. 2(b)CC-3/1993, including resorting to the statutory mechanism under the Right

to Information Act, 2005. The information furnished by the Assistant State Public Information Officer, District Court, Bhubaneswar, unequivocally discloses that the said record is not traceable or available in judicial custody.

(iv) It was vehemently argued that when the adjudicating court itself has acknowledged its inability to trace or locate the record of an alleged offence dating back to 1993, the same cannot, either on the ground of law or equity, be employed as an adverse factor to divest the Petitioner of his statutory entitlement to consideration for rehabilitation. The principle of *lex non cogit ad impossibilia*—that the law does not compel performance of an impossible act—was invoked to emphasize that the Petitioner cannot be penalized for circumstances wholly beyond his control.

(v) It was next urged that a manifest departure from the principle of parity has occurred inasmuch as several other saw mills similarly circumstanced, and even those enumerated under List– II (which includes units having recorded offences), have been extended the benefit of rehabilitation under identical policy parameters. The denial of analogous consideration to the Petitioner, notwithstanding his inclusion in List–I, constitutes an arbitrary and discriminatory exercise of administrative discretion, offending the constitutional guarantee of equality enshrined in Article 14 of the Constitution of India.

(vi) Learned Counsel further submitted that the Petitioner’s case merits sympathetic and judicious consideration for relocation and rehabilitation within the Industrial Estate at Barunei, Khordha, which has been duly notified by the State Government as an industrial cluster earmarked for the establishment of saw mills under the extant policy. The Petitioner, having operated for a considerable duration under a valid licence, is statutorily entitled to priority under the said guidelines, which seek to balance environmental regulation with the legitimate industrial interests of lawfully operating units.

(vii) It was contended that the persistent inaction and omission on the part of Opposite Party Nos. 2 and 3 in processing the Petitioner’s representation and in giving effect to the policy guidelines have resulted in serious civil and economic prejudice. Such omission, it was urged, amounts to colourable exercise of administrative discretion, being arbitrary, unreasonable, and violate of Articles 14 and 19(1)(g) of the Constitution of India.

(viii) Despite repeated approaches and representations, coupled with assurances from departmental authorities, the matter has been kept pending for an unreasonably long period, thereby defeating the legitimate expectation of the Petitioner that his case would be considered in accordance with law. The prolonged administrative silence, it was contended, constitutes constructive denial of justice and frustrates the object of the 2011 policy.

(ix) In the conspectus of the aforesaid submissions, Learned Senior Counsel prayed that this Court may be pleased to issue appropriate writ or direction commanding the Opposite Parties to consider and grant rehabilitation of the

Petitioner's saw mill in the notified Industrial Estate at Barunei, Khordha, in strict conformity with the Notification dated 30.07.2011 and the Orissa Saw Mills and Saw Pits (Control) Amendment Act, 2010, within a time-bound framework, so as to subserve the ends of justice.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. Learned Counsel for the Opposite Parties, while strenuously opposing the writ petition, advanced elaborate submissions, which may be succinctly summarized as follows:

(i) At the very outset, it was contended that the present writ petition is not maintainable, the Petitioner having invoked the extraordinary jurisdiction of this Court without bona fides and in suppression of material particulars. The Petitioner's assertion of inclusion at Serial No. 9 of List-I is ex facie untenable, as the said list is statutorily confined to saw mills having an unblemished record and functioning under a subsisting and valid licence. A litigant who approaches the writ court must, as a matter of settled principle, do so with clean hands, and suppression of relevant facts vitiates the invocation of equitable jurisdiction under Article 226 of the Constitution.

(ii) It was submitted that the Petitioner's unit is admittedly tainted by Offence Report No. 2(b)CC-3/1993, registered for violations of Rules 4, 12, and 14 of the Orissa Timber and Other Forest Produce Transit Rules, 1980, which remains pending before the Court of the learned S.D.J.M., Bhubaneswar. The pendency of an uncondoned offence proceedings constitutes a legal disability under the governing policy, disentitling the Petitioner from claiming the benefit of classification under List-I. The doctrine of clean record eligibility, forming part of the 2011 Guidelines, operates as a condition precedent for consideration of rehabilitation, the non-fulfilment of which renders the Petitioner's claim non est in law.

(iii) It was further contended that the Petitioner's saw mill was established and operated within the statutorily prohibited radius of ten kilometres from the boundary of a reserved forest, thereby attracting the absolute embargo under Sections 4 and 5 of the Orissa Saw Mills and Saw Pits (Control) Act, 1991. The prohibition so imposed, being statutory in nature and in furtherance of environmental conservation, is absolute, leaving no discretion to the administrative authority to condone or regularize an illegality ex post facto. The licence issued in 1991, valid only until 12.07.1994, thus stood automatically lapsed upon expiry, and no renewal could have been lawfully granted in contravention of the statutory prohibition.

(iv) Learned Counsel further drew the attention of this Court to the policy guidelines notified vide Notification No. 1868 dated 11.08.2011 (published in the Official Gazette dated 30.07.2011), framed under the 1991 Act as amended by the Orissa Saw Mills and Saw Pits (Control) Amendment Act, 2010. The said guidelines, which derive statutory force from the enabling provisions of the

parent enactment, are prescriptive in character and lay down a closed set of eligibility conditions for relocation and rehabilitation of saw mills within identified industrial estates. These include:

(a) continuous operation under valid licence; (b) absence of offence record, except where condonation is expressly accorded by the State Government;

(c) seniority-based listing by the Principal Chief

(d) possession of requisite technological infrastructure.

(v) It was further contended that the Petitioner fails to meet even a single parameter of eligibility. The existence of an uncondoned offence record, coupled with the absence of a valid subsisting licence and the location of the saw mill within a prohibited forest radius, operates as a complete bar to consideration. The right to rehabilitation, it was argued, is not a vested or enforceable right but a policy discretion subject to statutory preconditions, and no writ of mandamus can issue to compel the State to act *contra legem*.

(vi) Under Rule 4 of the guidelines, it is incumbent upon eligible units to furnish their willingness for rehabilitation within the prescribed time. The Petitioner, not being part of the notified eligible list, neither submitted any such willingness nor expressed option within the stipulated period. Consequently, the Petitioner lacks *locus standi* to maintain the present proceeding, as no legal right, whether vested or contingent, accrues in his favour.

(vii) The record further discloses that the original licence stood issued to one Sri Hiralal Patel by the Divisional Forest Officer, Puri Forest Division, on 12.07.1991, authorizing operation over Plot No.1327, Nayapalli, Bhubaneswar, valid until 12.07.1994. Although an application for renewal was filed on 27.06.1994, no renewal was ever granted, and the statutory presumption of cessation under Section 5 of the 1991 Act thus stands attracted.

(viii) Reliance was placed on the authoritative pronouncement of the Full Bench of this Court in O.J.C. No.1826 of 1994 (decided on 02.12.1994), which upheld the constitutional validity of Section 4(1) of the 1991 Act, enunciating that the legislative prohibition against the operation or establishment of saw mills within ten kilometres of any forest area is absolute and admits of no administrative discretion. The same principle was reiterated in O.J.C. No.11164 of 1996 (decided on 02.02.1996), wherein it was further clarified that the restriction operates in *rem* and not merely in *personam*.

(ix) In view of the cumulative statutory disqualifications, the absence of condonation, and the lapse of licence, it was contended that the Petitioner's plea for rehabilitation is devoid of legal merit. The policy of rehabilitation being a matter of governmental discretion and not a matter of right, judicial interference is unwarranted unless the decision is shown to be perverse, arbitrary, or actuated by *mala fides* — none of which, it was urged, is established herein. Hence, the writ petition is liable to be dismissed in limine as misconceived and devoid of any

cogent cause of action.

IV. COURT'S REASONING AND ANALYSIS:

5. Heard learned counsel for the parties and perused the materials placed on record.

(i) It is admitted that the Petitioner was granted a valid license in 1991 and operated for several years. The inclusion of the Petitioner's unit in List-I indicates official recognition of compliance and seniority.

(ii) The sole impediment cited by the Opposite Parties is the alleged pendency of Offence Report No.2 (b) CC-3/1993. However, as evidenced from the D.F.O.'s communication dated 05.02.2020, the said record is not traceable in the Court of the learned S.D.J.M., Bhubaneswar. The principle *lex non cogit ad impossibilia* — the law does not compel the impossible — squarely applies to the facts of the present case. The Petitioner cannot be penalized for the non-availability of judicial records which is beyond his control.

(iii) In *Maneka Gandhi v. Union of India* (1978) 1 SCC 248 the Supreme Court held that administrative discretion must be exercised in a just, fair, and reasonable manner consistent with Article 14. The present inaction of the authorities, despite the Petitioner's eligibility and repeated representations, is neither fair nor reasonable.

(iv) The doctrine of legitimate expectation as elucidated in *Navjyoti Coop. Group Housing Society v. Union of India* (1992) 4 SCC 477 which may be applied with vigor in the present case. The Petitioner, having been recognized in List-I and having fulfilled the prescribed conditions, was legitimately expecting consideration under the prevalent policy. As submitted, the Petitioner's original site fell within the prohibited ten-kilometer radius is misconceived. The 2011 guidelines themselves envisage relocation into industrial estates precisely to regularize such saw mills. Thus, past location cannot permanently disqualify an otherwise eligible applicant.

(v) The record further demonstrates that several similarly placed saw mills, even those categorized under List-II, have been rehabilitated. The selective exclusion of the Petitioner, without any cogent justification, amounts to hostile discrimination and violates the equal protection as envisaged under Article 14, which has been duly in *E.P. Royappa v. State of Tamil Nadu* (1974) 4 SCC 3 and *State of M.P. v. Nandlal Jaiswal* AIR 1987 SC 251 by the Supreme Court of India.

(vi) Administrative power, though discretionary, must operate within the bounds of reasonableness and non-arbitrariness. As held in *S.G. Jaisinghani v. Union of India* AIR 1967 SC 1427 discretion when unguided by reason degenerates into arbitrariness. The failure of the Opposite Parties to decide the Petitioner's representation for over a decade is nothing but a classic instance of such arbitrariness. Thus, the inaction of the Opposite Parties amounts to arbitrary exercise of administrative power, infringing Articles 14 and 19(1)(g) of the

Constitution.

6. CONCLUSION:

7. In light of the above discussion, this Court holds that the Petitioner's saw mill, being reflected in List-I, satisfies the prima facie eligibility under Notification No.13891 dated 30.07.2011; since the alleged offence case of 1993, whose record is untraceable, cannot form a valid ground to deny consideration.

8. Accordingly, the Writ Petition is allowed in part with the following directions:

(i) The Opposite Party No.3 (Principal Chief Conservator of Forests, Odisha) shall reconsider the Petitioner's case for rehabilitation and grant of licence under Notification No.13891 dated 30.07.2011, without being influenced by the untraceable offence record referred to hereinabove

(ii) The entire exercise shall be completed within a period of ONE month from the date of communication of this judgment.

9. Interim order, if any, passed earlier stands vacated.