

(2010) 11 OHC CK 0069

In the Orissa High Court

Case No : Writ Petition (C) No. 17555 of 2010

M/s. Shree Jagannath Minerals

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 19
Constitution of India, 1950 — Article 19(1), 21, 51A
Environment (Protection) Act, 1986 — Section 5
Environment (Protection) Rules, 1986 — Rule 4
Industrial Disputes Act, 1947 — Section 25B, 25F

Citation : (2011) 2 OLR 174

Hon'ble Judges : V. Gopala Gowda, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V. Gopala Gowda, C.J.—This batch of Writ petitions were listed together as the facts, grounds and reliefs sought for in these Writ petitions are common. Accordingly, they are heard together and are disposed of at the stage of preliminary hearing.

2. We have heard Mr. J.K. Tripathy, learned Senior Advocate appearing for the petitioners and the learned Government Advocate appearing for the opp. parties 1, 3, and 4.

All these petitioners are carrying on stone crusher operation by establishing Crusher Units within the State of Orissa. They have prayed for issuance of a writ/ direction to the opp. parties to allow these petitioners to run their crusher units till an alternative suitable plot is allotted to each of them as per the direction given by this Court in W.P. (C) No. 9101 of 2009 and other connected writ petitions disposed of on 04.08.2010.

3. The case of the petitioners in all these writ petitions is that the State Government in exercise of powers conferred by sub-section (i) of Section 19 of

the Air (Prevention & Control of Pollution) Act, 1981 declared the entire State of Orissa as Pollution Control Area vide Notification dated 17/18.07.2002. Prior to the said Notification, as of now though various enactments were there, the same were not strictly adhered to by the State Government. The sole objective of declaring the entire State as Pollution Control Area by the State Government was to prevent and control air pollution consequent upon extensive industrialization of the State. The State Government when felt that the Stone Crusher Units are responsible for generating emission of dust particles causing air and environmental pollution, resorted to severe effective measures to control the same thereby fixing various air pollution prevention measures. The Orissa Pollution Control Board (hereinafter referred to as "the Board" in short) took drastic steps/measures for implementing various environmental laws and rules in respect of Stone Crusher Units with the ultimate aim to control the pollution caused due to running of Stone Crusher Units. By such action, the Stone Crusher Units were forced to close down causing colossal financial losses and harassments to the owners of the said Units depriving them of their livelihood, as a result, the labourers, both skilled and un-skilled, engaged in the crusher units and earning their livelihood are forced to starvation.

Therefore, the petitioners, finding no other way out formed an Association in the name and styled as "the Jajpur District Stone Crusher Owners Association" of which the petitioners are the members and made representation to the Hon"ble Chief Minister of Orissa on 16.12.2009 appraising him of their genuine difficulties and suggesting some remedial measures and requested the Hon"ble Chief Ministry to intervene in the matter. In the said representation, the Crusher Owners Association while requesting the Hon"ble Chief Minister to lift the sitting criteria of 500 meters distance from National Highway/State Highways, suggested and undertook to install some pollution Controlling devices of high standard in their respective units so as to check/control the pollution better than the prescribed norms.

4. It is the further case of the petitioners that while their representation (Annexure-1) was pending they came across a Notice floated by O.P. No. 2-the Member Secretary, State Pollution Control Board, Orissa, Bhubaneswar in the local daily newspaper on 26.08.2010 indicating therein, inter alia, that all the Stone Crusher Units of Orissa are required to stop functioning forthwith pursuant to the judgment dated 04.08.2010 passed by this Court in the aforesaid Writ petition. During the said period, they also came across an Order/Notification dated 06.08.2010 issued by the Government of Orissa in the Department of Forest and Environment (O.P. No. 1) indicating that "No stone crusher shall be established/operated within 200 meters from the State Highway (SH) and National (NH)" and the District. Collectors shall ensure that no stone crusher continues to operate in violation of these directions beyond three months of issue of this Notification. Further, the District Collectors shall ensure physical closure/demolition of said Stone Crusher Units which do not comply with the directions made therein.

Thereafter, the petitioners made necessary query and obtained a copy of the aforesaid judgment and stopped functioning their Stone Crusher Units on and from 06.09.2010 since a general direction was issued by this Court concerning all the crusher units in the State. It is stated that neither the petitioners of the present writ petitions nor their Association was party to the said judgment. Therefore, they could not apprise the fact of submission of their representation to the Hon''ble Chief Minister referred to hereinabove supra. Therefore, they are before this Court narrating the facts stated hereinabove supra.

5. It would be relevant to extract the relevant portion of the common judgment dated 04.08.2010 passed by this Court in W.P. (C) No. 9101 of 2009 and connected writ petitions with reference to the present Writ Petitions.

8. Therefore, in keeping with the interest of the promoties of such stone crushing units as well as their workmen, and following the law laid down by the Hon''ble Supreme Court Cases in the case of M.C. Mehta Vs. Union of India (UOI) and Others, as well as the judgment of the Supreme Court in the case of M.C. Mehta v. Union of India, AIR 1996 SC 2231 , we direct as follows:

(i) All polluting stone crushing units which are operating without complying with the sitting criteria and without approval of the State Pollution Control Board shall all stop functioning in the State of Orissa forthwith;

(i) The District Administration as well as the Police authorities are directed to assist the State Pollution Control Board, Orissa in effecting closure of ail such non-compliant stone crushing units immediately and file a compliance report before this Court by 6th September, 2010;

(iii) The Secretary in the Industries Department shall render all assistance to the stone crushing units in the process of relocation and copy of this order shall go to the Chief Secretary and Home Secretary to provide all necessary assistance, help and necessary facilities to all such industries which intend to relocate themselves at places which comply with the sitting requirements stipulated by the State Pollution Control Board;

(iv) The allotment of plots, construction of factory buildings and issuance of license and permission etc. shall be expedited and granted on priority basis;

(v) In order to facilitate shifting of the non-compliant and polluting stone crushing units, the State is directed to set up a "unified single agency" at the district level to act as a nodal agency to sort out all the problems of such industries. The single window facility shall be set up in every district within one month from today;

(vi) Appropriate site shall be identified within existing industrial estate and/or in other area as maybe required and for such purpose, if required, immediate steps be taken for acquisition of land for meeting the aforesaid purpose;

(vii) The stone crushing units which relocate in the new industrial estate or

existing industrial estate shall also be entitled to any incentives which are normally extended to new industries in new industrial estate;

(viii) The closure order shall be unconditional and all such non-compliant stone crushing units must stop functioning with immediate effect;

(ix) The workmen employed in the stone crushing units shall be entitled to the rights and benefits as indicated hereunder:

(a) The workmen shall have continuity of employment at the new place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment;

(b) The period between the closure of the industry and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service;

(c) All those workmen who agree to shift with the industry shall be given one year's wages as "shifting bonus" to help them settle at the new location;

(d) The workmen employed in the industries which fail to relocate and the workmen who are not willing to shift along with the relocated industries, shall be deemed to have been retrenched with effect from 31.08.2010 provided they have been in continuous service (as defined in Section 25-B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, one year's wages as additional compensation;

(e) The "shifting bonus" and the compensation payable to the workmen in terms of this judgment shall be paid by the management on or before 16.9.2010;

(f) The gratuity amount payable to any workmen shall be paid in addition.

6. It is contended by the learned Senior Advocate for the petitioners that the above said common judgment adversely affects these petitioners as they were not parties to that case. Therefore, the aforesaid direction issued to all Stone Crushing Units for closure of their units is in violation of principles of natural justice. Apart from the said legal ground, he has contended that the direction issued in the said common judgment to all the crusher units is causing heavy financial loss to them as the directions confined in the operative portion of the order at paragraph 8 (ix) from (a) to (f) are compelling them to continue with the workmen who had been employed in their crusher units; and in that event, each one of the crusher unit is required to pay the salary and other service benefits to their workmen; and even in the event of permanent closure the retrenched employees shall be paid with retrenchment compensation as per the provisions of the Industrial Disputes Act. Therefore, the above directions issued to the Stone Crusher Units in the State would cast voluminous burden upon the petitioners. Hence, the fundamental right of the petitioners, as guaranteed under

Article 19(1)(g), is violated, and this is the main ground on which the petitioners are entitled for the relief sought for.

7. It is further contended that the representation submitted by the petitioners to the Hon''ble Chief Ministry suggesting for deployment of modern and scientific technology to reduce pollution below the permissible limit of 240 mcg³ is even less than 50% of the prescribed limits of 600 mcg³. Therefore, the petitioners are entitled for the relief sought for and further it is contended by the learned Senior Advocate that the basic philosophy behind the scientific and administrative criteria in imposing the restriction against running of the Stone Crusher Units, is to restrict the air pollutions appearing on account of rapid growth of industrialization in the State. If that is so, the sole object and purpose of imposing restriction, there may not be any justifiable reasons to disallow the Crusher Units like that of the petitioners to run their plant installing scientific as well as mechanical devices satisfying the standard required in that behalf, for materially restricting the pollution. If crusher units are intended to run their business by deploying various modern and scientific mechanical devices and that too satisfy the standard of requirement for running the crusher units as directed by this Court in the earlier common judgment; the same need not be given effect to for the reasons that there will not be any air and water pollution as observed in the said judgment. Therefore, it is contended by Mr. Tripathy that the petitioners are entitled for the relief sought for.

8. Learned Government Advocate appearing for opposite parties 1, 3 and 4 opposes the prayers of the writ petitioners in these petitions by contending that if the prayers sought for by the petitioners are allowed it would amount to review of order passed by this Court in earlier common judgment and further contended that none of the petitioners has the consent order of carrying and operating their crusher units that would be in contravention of the Laws and Rules framed for checking air, water and environmental pollution. The same, of course, opposes the Notification declaring the entire Orissa as "Pollution Control Area". Further, it is contended by him that this Court having regard to the undisputed fact that by operating the Stone Crushing Units within the distance prescribed by the State Government both from National Highways and State Highways and without complying with the sitting criteria has rightly observed in the earlier judgment that it jeopardizes the agricultural, horticultural and floricultural production of nearby areas and thereby it adversely affects the food production, which has to be increased at par with the growth of population in the State. Therefore, the public interest would suffer to the larger extent, if individual interest of these petitioners is allowed. Hence, learned Government Advocate requests this Court for dismissal of all these writ petitions.

9. With reference to the aforesaid rival legal contentions raised by the parties, we have gone through the factual as well as the legal contentions, various Notifications/Orders passed by the Government, and the earlier order passed by this Court in this regard, with a view to find out as to whether the petitioners are

entitled for the reliefs they sought for.

10. The important undisputed fact in all these writ petitions is that the petitioners have not obtained the consent Order from the Board and are also not out of Pollution Control Area. To our repeated questions, learned Senior Advocate for the petitioners has admitted that they have not obtained consent order from the Board, but nonetheless they have been promoting and carrying on Stone Crushing business long before the restrictions imposed by the Notification as also the provisions of Environmental Protection Act, 1986.

11. Having regard to the aforesaid undisputed fact that the petitioners are carrying on their Stone Crusher business in their respective places not only without fulfilling the sitting criteria but also not obtaining consent from the Board, for which their Units are generating environmental pollution & causing damage not only to agricultural fields but also causing health hazards to the residents of the surrounding area and also affecting the persons travelling on National Highways and State Highways and having gone through all these glaring facts where life of thousands of residents of the localities put to stake at the instance of the petitioners who were operating stone crushing units and thereby creating dust area resulting health hazards and damages to flora and fauna of the locality, petitioners are not entitled to the relief sought for.

12. Further, this Court in its recent decision in W.P. (C) No. 9101 of 2009 referred to supra after taking into consideration all the aspects of such matters, Notifications/Orders issued by the Government in exercise of its statutory power, the object of various provisions with reference to the Acts for protection of Air, Water & Environment etc., keeping in view the public interest at large & various constitutional rights guaranteed upon them, and after following the decisions rendered by the Hon'ble Supreme Court in M.C. Mehta Vs. Union of India (UOI) and Others, as well as in M.C. Mehta v. Union of India, AIR 1996 SC 2231 issued certain directions keeping in view the undisputed fact that most of the Stone Crusher Units in the State are running their business without fulfilling the sitting criteria and without obtaining due consent from the Board. In the aforesaid judgment this Court never expressed any opinion that the Stone Crusher Units, those who are complying with the sitting criteria and running their business with due consent of the Board, should be stopped. Rather the Court at paragraph-8 made certain directions upon the Government for better facilitation of the Crushing Units of the State. This Court has made observation all polluting stone crushing units which are operating without complying with the sitting criteria and without approval of the State Pollution Control Board shall stop functioning in the State of Orissa forthwith.

13. The submission of the learned Senior Counsel for the petitioners, to the extent that if crusher units are intended to run their business by using various modern and scientific mechanical devices and that too satisfy the standard of requirement for running the crusher units the aforesaid judgment given by this Court need not be given effect to and the petitioners be allowed to operate their

stone crushers unit, cannot be accepted for the reason that even if they will use various modern scientific devices to prevent air pollution, they cannot be allowed to run the stone crushers without fulfilling the sitting criteria and obtaining necessary consent from the Board. Further, the submission of the learned senior counsel for the petitioners that as the present petitioners were not the parties in the aforesaid proceeding they could not apprise the factual aspects of the matter and without affording any opportunity of hearing their Units have been stopped, for that reason they may be allowed to run their Stone Crushing Units cannot be accepted for the reason that in the aforesaid judgment this Court has made it clear that the direction contained in that judgment shall not be limited to the petitioners in that batch of writ petitions but stands extended to all similar non-compliant stone crushing units operating throughout the State of Orissa as on date. Therefore, if we allow the present petitioners to run their units, who are not fulfilling the sitting criteria as well as they were running their business without consent of the Board, it will run contrary to the directions issued by this Court and would amount to reviewing our own order. For this reason also these writ petitions are liable to be dismissed.

14. Further, the Government of Orissa in exercise of its statutory power conferred by Section 5 of the Environment (Protection) Act, 1986 read with Rule 4 of the Environment (Protection) Rules 1986 and the notifications of the Govt. of India in the Ministry of Environment and Forests (Department of Environment, Forest and Wildlife No. SO-52 (E) dated 10.02.1988 order has been passed by the Government of Orissa in the Department of Forest and Environment, with a view to protect the environment and ecology of the locality taking into account the public interest at large to see that there shall not be any health hazards of the inhabitants, educational institutions, hospitals etc and also to see that no agricultural, horticultural and floricultural lands of the local inhabitants are damaged, which will hamper the livelihood of the family of the local farmers. The said order has been passed by the State Government in conformity with the statutory provisions which has the laudable object to see that there shall not be any Air & Water pollution as well as sound pollution near the educational institutions, hospitals, public places and in the local area.

15. It is the constitutional duty on the part of the State Government to take utmost care of the environment and ecology rather than the private or commercial interest. The aforesaid principle is no more res-integra. In the case of Common Cause, A Registered Society Vs. Union of India and Others, , while dealing with the environmental issues, the Supreme Court has categorically held as under:

160. The Court also appears to have invoked the "Doctrine of Public Trust" which is a doctrine of environmental law under which the natural resources such as air, water, forest, lakes rivers and wildlife are public properties "entrusted" to the Government for their safe and proper use and proper protection. Public Trust Law recognizes that some types of natural resources are held in trust by the

Government for the benefit of the public. The "Doctrine of Public Trust" has been evolved so as to prevent unfair dealing with or dissipation of all natural resources. This doctrine is an ancient and somewhat obscure creation of Roman and British law which has been discovered recently by environmental lawyers in search of theory broadly applicable to environmental litigation.

161. This doctrine was considered by this Court in its judgment in *M.C. Mehta Vs. Kamal Nath and Others*, to which one of us (S. Saghir Ahmad, J.) was a party. Justice Kuldeep Singh, who authored the erudite judgment and has also otherwise contributed immensely to the development of environmental law, relying upon ancient Roman "Doctrine of Public Trust", as also the work of Joseph L. Sax, Professor of Law, University of Michigan and other foreign decisions, wrote out that all natural resources are held in "trust" by the Government. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes....

(Emphasis added)

In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the Supreme Court held as under:

46....The most vital necessities, namely, air, water and soil, having regard to right to life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others. Having regard to the right of the community at large it is permissible to encourage the participation of amicus curiae, the appointment of experts and the appointments of Monitory Committees. The approach of the Court has to be liberal towards ensuring social justice and protection of human rights. In *M.C. Mehta v. Union of India* this Court held that life, public health and ecology has priority over unemployment and loss of revenue. The definition of "sustainable development" which Brundtland gave more than 3 decades back still holds good.

(Emphasis added)

In *Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others*, a three Judge Bench of the Hon'ble Supreme Court also while dealing with these environmental issues observed that what should be the approach of the Court in such matters and held as under:

42. As far as this Court is concerned, being conscious of its constitutional obligation to protect the fundamental rights of the people, it has issued directions in various types of cases relating to the protection of environment and preventing pollution. For effective orders to be passed, so as to ensure that there can be protection of environment along with development, it becomes necessary for the Court dealing with such issues to know about the local conditions. Such conditions in different parts of the country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts

and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or noncompliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by this Court. more effective implementation of the same can, in a number of cases, be effected, if the High Courts concerned assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology.

16. It is also necessary for us to refer to United Nation Organization's Resolution where India being a signatory has to put due diligence to environmental pollution, i.e., by strictly implementing the provisions of the Act, 1981 as well as the Act, 1986 as discussed hereinabove. It is also the mandate of our Constitution that the fundamental duties enshrined in Part-I V-A vis-a-vis Article 51 -A (g) of the Constitution have been enumerated to protect and improve the industry, environment including forest, lake, river and wild life and to have compassion for living creatures.

17. In view of the aforesaid clear cut discussion about rights and duties, duties cast upon the State Government as well as the Central Government to discharge its stand and obligation by enhancing laws, and the State Government has rightly discharged its statutory function by issuing Notifications/Orders and the same have rightly been enforced. With regard to the aforesaid provisions of the fundamental duties Chapter, the Supreme Court in a catena of cases decided statutory duties of both the State Government and the Pollution Control Board to ensure that the environment is protected in the larger interest of the public. Therefore, the Notification has rightly been issued by the Government of Orissa and it cannot be said that said statutory function is bad in law. In the process of its proper implementation, crusher owners are required to obtain consent orders from the Board with proper procedure and consent orders can only be given after proper field verification at the proposed crusher units keeping in mind the distance criteria. Even if they come within the distance criteria, the petitioners cannot be entitled to get the consent order for the reasons stated supra unless they fulfil all the sitting criteria:

18. In view of the above, we do not find any cogent reason to entertain these writ petitions. The writ petitions fail and the same are accordingly dismissed.

19. No order as to costs.