

(2016) 07 JH CK 0007

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 445 of 2013

Nishikant @ Nishikant Dubey

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 20-07-2016

Acts Referred:

Citation : (2017) 1 JBCJ 200

Hon'ble Judges : Mr. Virender Singh, CJ. and Mr. Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : Dr. S.N. Pathak, Senior Advocate, Mr. Rakesh Kumar Roy and Mr. Diwaker Upadhyay, Advocates, for the Petitioner; Mr. Ajit Kumar, Addl.A.G, for the Respondents; Mrs. Nitu Sinha, C.G.C, for the Govt. of India

Final Decision : Disposed Off

Judgement

Virender Singh, C.J. - The instant Public Interest Litigation relates to construction of Punasi Dam in the district of Deoghar, which project was sanctioned in January, 1982. At that time, the expenditure to be incurred on the entire project was around Rs.30 Crores whereas, the State has already incurred Rs.170 Crores in the said project till date, but with no substantial progress. We took a serious note of it.

2. During the pendency of the instant petition, what was brought to our notice by Mr. Ajit Kumar, learned Additional Advocate General is that the Assistant Inspector General, Ministry of Environment & Forest, Govt. of India had become too hyper-technical in the matter in not granting its approval for going ahead with the project whereas, all the legal formalities have already been completed at the end of the State for forest clearance. In fact, No Objection Certificate under Section 2 of the Forest Conservation Act, 1980 for divergence of forest land for non-forest purposes was required. Mr. Rajiv Sinha, learned ASGI was thus, directed vide order dated 21.07.2015 to ensure some positive response from respondent No.4, undoubtedly in accordance with the rule position and not in violation of any Act. The matter then lingered down on account of there being

no response from the side of respondent No.4 or the Ministry of Environment & Forest. At one stage, the copy of proposal prepared by the Executive Engineer, Water Resources Development Department (Punasi Dam Project, Deoghar) was also handed over to the learned counsel appearing for Union of India for handing over the same to the Ministry of Environment, Forest & Climate Change (Forest Conservation Division), Government of India, for its response.

3. What appears to the Court is that the sole objection now raised by the Ministry of Environment, Forest & Climate Change, as contained in its letter dated 27.05.2016, is reproduced herein below:

"The FAC also noted that the 26 CA sites made available for compensatory afforestation are great in number with many of the patches being too small to manage. The FAC recommended that the CA sites should be reselected keeping in mind that these should not be more than 10 in number. Accordingly a revised CA scheme be prepared and submitted along with an undertaking from the User Agency to fund the same. The sites shall be inspected by the Regional Office and shall be finalised only on the satisfaction of the Regional Office."

4. Mr. Ajit Kumar, learned Additional Advocate General states that the State has already proposed 26 plots for compensatory afforestation as required in law whereas, the objection now raised is that it should be in 10 plots. He further submits that it appears that this objection has been raised for the sake of convenience of the respondent No.4 without there being any force of law in the said objection. He further states that in 20 plots, the exercise of compensatory afforestation has already been done by the State and the remaining plots is under process and likely to be complete in the shortest possible period.

5. We are of the view that the objection raised by the respondent No.4 has no substance in it.

6. We direct the Ministry of Environment, Forest & Climate Change (Forest Conservation Division), Government of India to accord forest clearance under Section 2 of the Forest Conservation Act, 1980 so that the project of construction of Punasi Dam at Deoghar picked up in the year 1982 and has stalled for last more than 34 years and reached a particular stage, is complete without any further waste of time, which in turn would be beneficial to the entire city on account of scarcity of drinking water being faced by the residents of Deoghar and around.

7. The instant Public Interest Litigation stands wrapped up accordingly.