

(2014) 09 JH CK 0067

In the Jharkhand High Court

Case No : Writ Petition (Civil) Nos. 7657, 7668, 7687, 7700, 7715, 7720, 7721, 7730, 7791, 7913 and 8049 of 2012

Pawan Kumar Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21, 21(b)

Citation : (2014) 4 AJR 673 : (2014) 4 JLJR 287

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : S.L. Agarwal, Advocate for the Appellant; Shamim Akhtar, S.C., Ajit Kumar, A.A.G. and Saket Upadhyay, J.C. to A.A.G, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—Mr. S.L. Agarwal, the learned counsel appearing for the petitioners in all the writ petitions has submitted that a common question, "whether respondent-Forester has jurisdiction to issue notice directing the petitioner(s) to close down the brick manufacturing unit/crushing unit" is involved in all the writ petitions. In some of the writ petitions the petitioner(s) sought a direction upon the respondents for not interfering with the petitioners' unit. Since the issue involved in all the writ petitions is similar, by this common order all the writ petitions are disposed of.

FACTS:

W.P.(C) 7700 of 2012 - Pawan Kumar Singh

2. The petitioner, the proprietor of M/s. Kanak Bricks, is engaged in the business of manufacturing bricks in the District of East Singhbhum. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimney after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 and

invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner was granted permit under Rule 31 of the Jharkhand Minor Mineral Concession Rules, 2004 vide letter dated 26.06.2009. After issuing notification dated 29.03.2012, on 07.11.2012 some officers of the Government of Jharkhand visited the unit of the petitioner and directed him to close down the brick kiln. Two pages of notification dated 29.03.2012 was handed over to the petitioner and the petitioner was informed that in view of the notification dated 29.03.2012, the petitioner's unit is required to be closed down.

W.P.(C) 7657 of 2012 - M/s. R.D.S. Bricks through its proprietor Shri Sunil Kumar Singh.

3. The petitioner, M/s. R.D.S. Bricks, is engaged in the business of manufacturing bricks in the District of East Singhbhum since 2000. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimney after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner was granted permit under Rule 31 of the Jharkhand Minor Mineral Concession Rules, 2004 vide letter dated 27.10.2008, 31.10.2009, 13.10.2010 and 18.10.2011. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. After the Central Government issued notification dated 29.03.2012, the Forester, Bhadudih, Jamshedpur issued closure notice dated 05.11.2012 directing the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972.

W.P.(C) 7668 of 2012 - M/s. G.S. Enterprises through its partner Sunit Ghosh

4. The petitioner, M/s. G.S. Enterprises, is engaged in the business of manufacturing bricks in the District of East Singhbhum since 2005-2006. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimney after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner was granted permit under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 vide Permit No. 50 of 2005-06. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. After the Central Government issued notification dated 29.03.2012, the Forester, Bhadudih, Jamshedpur issued closure notice dated 05.11.2012 directing the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972.

W.P.(C) 7687 of 2012 - Smt. Bimla Sharma

5. The petitioner- Smt. Bimla Sharma, the proprietor of M/s. B.K.S. Bricks, is engaged in the business of manufacturing bricks in the District of East Singhbhum. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimney after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner was granted permit under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 vide letter dated 11.12.2004. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981. After the Central Government issued notification dated 29.03.2012, the Forester, Bhadudih, Jamshedpur issued closure notice dated 11.10.2012 directing the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972.

W.P.(C) 7715 of 2012 - Arun Kumar

6. The petitioner- Arun Kumar is engaged in the business of manufacturing bricks in the District of East Singhbhum. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimney after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner was granted permit under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 vide Permit No. 19 of 2006-07. After the Central Government issued notification dated 29.03.2012, on 07.11.2012 some officers of the Government of Jharkhand visited the unit of the petitioner and directed him to close down the brick kiln. Two copies of notification dated 29.03.2012 was handed over to the petitioner and the petitioner was informed that in view of the notification dated 29.03.2012, the petitioner's unit is required to be closed down.

W.P.(C) 7720 of 2012 - M/s. Super Bricks through its proprietor Rajesh Kumar Gupta

7. The petitioner, M/s. Super Bricks, is engaged in the business of manufacturing bricks in the District of East Singhbhum. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimney after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner was granted permit under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004. The petitioner was granted certificate by the Department of Industries, West Singhbhum, Chaibasa vide Certificate dated 25.09.2010. After the Central Government issued notification dated 29.03.2012, the Forester, Bhadudih,

Jamshedpur issued closure notice dated 27.10.2012 directing the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972.

W.P.(C) 7721 of 2012 - Bipendra Singh

8. The petitioner- Bipendra Singh is engaged in the business of manufacturing bricks at Mauza Nutandih Village in Chandil since 1999-2000. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimney after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner was granted permit under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 vide letter dated 22.11.1999, 26.02.2007 and 08.12.2009. After the Central Government issued notification dated 29.03.2012, the Forester, Bhadudih, Jamshedpur issued closure notice dated 27.10.2012 directing the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972.

W.P.(C) 7730 of 2012 - Shan Bricks through its proprietor Ram Bijay Singh

9. The petitioner, Shan Bricks, is engaged in the business of manufacturing bricks in the District of East Singhbhum. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimney after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner was granted permit under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 vide letter dated 05.12.2003. After the Central Government issued notification dated 29.03.2012, on 05.11.2012 some officers of the Government of Jharkhand visited the unit of the petitioner and directed him to close down the brick kiln. Two copies of notification dated 29.03.2012 was handed over to the petitioner and the petitioner was informed that in view of the notification dated 29.03.2012, the petitioner's unit is required to be closed down.

W.P.(C) 7791 of 2012 - Universal Stone Crusher through its proprietor Raghunath Mohanti

10. The petitioner, Universal Stone Crusher, is engaged in the business of manufacturing bricks in the District of East Singhbhum since the year, 2005. The petitioner was granted licence in Form "Q" vide letter 12.01.2009, 11.01.2010 and 17.02.2011 by the Department of Mines under Rule 61 of Jharkhand Minor Mineral Concession Rule, 2004. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981 and he has been granted "No objection certificate by Jharkhand State Pollution Control Board under Section 25

& 26 of Water (Prevention & Control of Pollution) Act, 1976. After the Central Government issued notification dated 29.03.2012, the Forester, Bhadudih, Jamshedpur issued closure notice dated 27.10.2012 directing the petitioner to close down the brick kiln failing which action would be taken under the Wild Life (Protection) Act, 1972.

W.P.(C) 7913 of 2012 - Amitava Sen

11. The petitioner, Amitava Sen, is engaged in the business of manufacturing bricks in the name and style of M/s. G.S. Bricks in the District of East Singhbhum. Prior to 1999 mobile chimneys were installed for manufacturing bricks however, vide notification dated 05.10.1999, the Central Government prohibited mobile chimney. Thereafter, the petitioner installed fixed chimney after taking permission from the Department of Mines under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 and invested more than Rs. 10 lacs for constructing fixed chimney. The petitioner was granted permit under Rule 31 of the Jharkhand Minor Mineral Concession Rule, 2004 vide letter dated 24.11.2010. After the Central Government issued notification dated 29.03.2012, on 07.11.2012 some officers of the Government of Jharkhand visited the unit of the petitioner and directed him to close down the brick kiln. Two copies of notification dated 29.03.2012 was handed over to the petitioner and the petitioner was informed that in view of the notification dated 29.03.2012, the petitioner's unit is required to be closed down.

W.P.(C) 8049 of 2012 - Universal Stone Crusher through its proprietor Raghunath Mohanri

12. The petitioner, Universal Stone Crusher, is engaged in the business of manufacturing bricks in the District of East Singhbhum since the year, 2005. The petitioner was granted licence in Form "Q" vide letter 12.01.2009, 11.01.2010 and 17.02.2011 by the Department of Mines under Rule 61 of Jharkhand Minor Mineral Concession Rule, 2004. The petitioner's unit was granted consent to operate by the Jharkhand State Pollution Control Board under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981 and he has been granted "No objection certificate by Jharkhand State Pollution Control Board under Section 25 & 26 of Water (Prevention & Control of Pollution) Act, 1976. After the Central Government issued notification dated 29.03.2012, the Member Secretary, Jharkhand Pollution Control Board vide letter dated 14.11.2012 refused to consent under Section 21(b) of the Air (Prevention & Control of Pollution) Act, 1981 and directed the petitioner to close down his unit.

13. Mr. S.L. Agarwal, the learned counsel appearing for the petitioner (s) has submitted that the notice issued by the respondent-Forester is without jurisdiction in as much as, neither under the Environment (Protection) Act, 1986 nor under the notification dated 29.03.2012, the Forester has jurisdiction to issue notice to close down a unit/industry. It is further submitted that without affording opportunity of hearing, the impugned notice has been issued and therefore, it is

liable to be quashed. Challenging the action of the respondent-State of Jharkhand in ordering closure of the petitioner's unit; it is submitted that the notification dated 29.03.2012 does not expressly prohibit the operation of the petitioners' unit started prior to 29.03.2012 and therefore, the respondent-State of Jharkhand cannot direct closure of the petitioners' unit.

14. It is submitted that the notification dated 29.03.2012 issued by the Ministry of Environment and Forest, Government of India prohibits activities in the area within 5 k.m. from the boundary of the protected area of the Dalma Wildlife Sanctuary after 29.03.2012 however, it does not expressly prohibits operation of industries running prior to 29.03.2012 and therefore, the State of Jharkhand cannot implement the notification dated 29.03.2012 from a retrospective date. It is further submitted that it is abundantly clear from the notification dated 29.03.2012 that after the publication of the said notification in the official gazette, no new polluting industry shall be allowed to be set-up within Eco-sensitive Zone however, nowhere it is indicated in notification dated 29.03.2012 that the industries running for years prior to. 29.03.2012 shall be closed down.

15. Per contra, Mr. Ajit Kumar, the learned counsel appearing for the State of Jharkhand has raised a preliminary objection to the maintainability of the writ petition. It is submitted that in view of the notification dated 29.03.2012 it is the duty of, the Forest Officers to ensure the compliance of the notification dated 29.03.2012 and the respondent-Forester has rightly issued notice and directed the petitioner to close down the polluting unit. It is further submitted that since the unit of the petitioner(s) falls under the category of "prohibited activity" no show-cause notice was required to be issued to the petitioner (s) as all such units which fall under the prohibited category have to be mandatory closed down. Moreover, the notification dated 29.03 2012 has not been challenged by the petitioner (s) and therefore, action taken thereunder is not open to challenge by the petitioner (s).

16. The learned Additional Advocate General has further submitted that the notification dated 29.03.2012 itself provides that the activities within the Eco-sensitive Zone around the Dalma Wildlife Sanctuary have to be examined in the light of prohibition contained in Annexure-3 to the said notification. Since, earthen soil is required for manufacturing bricks, the activity carried on by the petitioner(s) falls under commercial mining which is a "prohibited activity" in Annexure-3 and therefore, it can neither be permitted nor regulated in terms of notification dated 29.03.2012. It is further submitted that only non-polluting, non-hazardous small scale industries, agriculture, floriculture, horticulture and agro-based industries producing product from indigenous goods from the Eco-sensitive Zone and which do not have adverse impact on environment may be permitted in the Eco-sensitive Zone. However, with respect to crushing and mining activities it has abundantly been made clear in notification dated 29.03.2012 that no mining activity except for bona fide domestic use of local residents or crushing activity shall be allowed within the Eco-sensitive Zone.

17. Before advertng to the contention of the learned counsel for the petitioner (s) that the respondent-Forester has no jurisdiction to issue notice and the said notice is liable to be quashed on the ground that no opportunity of hearing was afforded to the petitioner (s), the background for issuing notification dated 29.03.2012 may usefully be noticed.

18. It is an admitted position that the notification dated 29.03.2012 issued by the Ministry of Environment and Forest, Government of India is not under challenge. The importance of Dalma Wildlife Sanctuary has been noticed in the notification dated 29.03.2012 thus:

"AND WHEREAS, the Asian Elephant is the species of vital importance in Dalma Wildlife Sanctuary, besides, some of the most endangered species like Ratel, Wild Dog, Mouse Deer, Indian Giant Squirrel, Python, Pangolin, Serpent Eagle, etc; are also found in this Sanctuary;

AND WHEREAS, the forests of this Sanctuary intercept rainfall and help recharge ground water aquifer and protect rivers and streams against siltation by minimizing soil erosion and the Sanctuary has a well knit network of 159 streams spreading throughout the Sanctuary, out of which 82 are perennial or serai perennial and the rest 77 streams are of seasonal nature. Suhranarekha River, Subarnarekha Canal and Dimna Lake are fed by these stream;

AND WHEREAS, it is necessary to conserve and protect the area around the protected area of Dalma Wildlife Sanctuary as Eco-sensitive Zone from ecological and environmental point of view."

19. It appears that a draft notification was published in the Gazette of India on 05.04.2011 inviting objections and suggestions from all persons likely to be affected thereby. After considering the objections/suggestions received in response to the draft notification, the Central Government notified the area upto 5 k.m.s. from the boundary of the protected area of the Dalma Wildlife Sanctuary in the State of Jharkhand as the "Eco-sensitive Zone." Accordingly, an area of 522.98 Sq. km. in East Singhbhum and Saraikella-Kharswan district has been notified and declared as Eco-sensitive Zone. The power of the Central Government declaring the area around Dalma Wildlife Sanctuary as "Eco-sensitive Zone" is also not under challenge. In fact the petitioner (s) has/have accepted the validity of notification dated 29.03.2012.

20. Now coming to the question of issuance of notice by the respondent-Forester without affording an opportunity of hearing, it has to be seen whether a show-cause notice if issued could have provided such information/materials, considering which the brick kiln of the petitioner (s) could not have been ordered to be closed down.

21. Though, in notification dated 29.03.2012 specifically it continued after the area upto 5 k.m.s. from the boundary of Dalma Wildlife Sanctuary has been declared as the "Eco-sensitive Zone". With respect to industrial units, the

notification dated 29.03.2012 provides as under:

"Industrial Units:

- (a) On or after the publication of this notification in the Official Gazette, no new polluting industries shall be allowed to be setup within the Eco-sensitive Zone;
- (b) any non-polluting, non-hazardous, small-scale and service industry, agriculture, floriculture, horticulture or agro-based industry producing products from indigenous goods from the Eco-sensitive Zone, and which do not cause any adverse impact on environment, may be permitted in the Eco-sensitive Zone;
- (c) no establishment of new wood based industry shall be permitted within the limits of Eco-Sensitive Zone.

Ground water:

- (a) Extraction of ground water for bona-fide agricultural and domestic consumption of the occupier of land shall be allowed.
- (b) Extraction of ground water for industrial, commercial use shall require prior written permission, including the amount that can be extracted, from the State Ground Water Board and the Monitoring Committee.
- (c) No sale of ground water shall be permitted except with the prior approval of the Monitoring Committee constituted under paragraph 4.
- (d) The conservation of water and its distribution, from existing facilities within the Eco-sensitive Zone, other than sanctuary and forest areas, shall be regulated in accordance to the provisions of the Forest (Conservation) Act, 1980 (69 of 1980).
- (e) Appropriate steps shall be taken to prevent contamination or" pollution of water, including from agriculture activities."

22. It is well-settled that the applicability of the principles of natural justice cannot be confined in a straight-jacket formula and in fact its applicability depends on facts and circumstances in a particular case. The activity carried by the petitioner (s) falls under the commercial mining activity and a perusal of Annexure-3 to notification dated 29.03.2012 makes it abundantly clear that it falls under the prohibited activity. It is true that the notification which has not been expressly made retrospective cannot be given a retrospective operation however, I am of the opinion that the activity, which has been categorized as "prohibited activity" in notification dated 29.03.2012, even though operating prior to 29.03.2012, cannot be permitted to continue. In these facts a show-cause notice was not required to be issued to the petitioners.

23. I find substance in the contention of the learned Additional Advocate General that once notification dated 29.03.2012 has been issued and unit of the petitioner (s) has been categorized in "prohibited category", the jurisdiction of the respondent-Forester cannot be challenged by the petitioner.

24. In the result, I find no merit in the writ petitions and accordingly, all the writ petitions are dismissed.