
(2014) 09 OHC CK 0086
In the Orissa High Court
Case No : W.P. (C) No. 23855 of 2012

Ratnakar Satrusalya

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Citation : (2015) 119 CLT 64 : (2015) 5 FLT 117

Hon'ble Judges : Amitava Roy, C.J;B.R. Sarangi, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Amitava Roy, C.J.—Heard Mr. Sukanta Kumar Dalai, learned counsel for the petitioner, Mr. P.K. Muduli, learned Addl. Standing Counsel for the State-Opp. party, Mr. C.A. Rao, learned counsel for opp. party no. 10 and Mrs. B. Dash, learned counsel for opp. party no. 11.

2. The backdrop of the initiation of this proceeding is that the petitioner, who claims to be a public spirited civil citizen of the country, seeks intervention of this Court for an appropriate writ/direction to the Collectors of Puri, Ganjam and Khurda districts to demolish the illegal prawn gheries inside Chilika Lake and to prohibit zero nets, bamboo and mechanized diesel motor boats inside the said water area and to avoid noise and water pollution and, more particularly, to save the encompassing ecology, imputing that the Chilika Lake has been callously left unattended by the State Government. It has been alleged that the State-opposite party have failed to keep it free from prawn mafias and to maintain a free zone as directed by the Hon'ble Supreme Court in its judgment rendered in S. Jagannath Vs. Union of India and others, and that though it (State Govt.) is earning revenue of rupees eighty crores from tourism there at annually, it has done nothing meaningful except purportedly handing over the protection of Chilika Lake to opp. party no. 10. The petitioner has stated that neither the State Government nor opp. party no. 10 has any control over the prawn mafias, illegal mechanized motor boats, unauthorized construction of prawn gheries and

deteriorating noise and water pollution menace. The State Govt. though in terms of the judgment of the Hon''ble Apex Court is required to frame new rules on Chilika policy or to keep free zone therein and ensure against prawn culture or construction of prawn gheries/industries using zero nets, no meaningful vigil has been exercised, as a result whereof, crores of rupees are spent from the State Exchequer every year for eviction of unauthorized prawn gheries. The petitioner has also alleged that due to non-compliance of the direction of the Hon''ble Apex Court in its decision in S. Jagannath''s case (supra), everyday in the name of tourism thousands of motor boats are plying on Chilika leaving trail of polluting remnants of the diesel, carbon-dioxide, carbon-monoxide, etc. irreversibly polluting the water of the Lake. The petitioner has imputed as well that in violation of the relevant laws prawn hatcheries have been permitted to be set up by the concerned authorities impinging upon the wildlife forest sanctuary and forest lands to the great detriment of the environment in general. According to him, though representations (Annexure-2 series) have been laid before the concerned authorities ventilating public grievance founded on these violations, the same have remained un-disposed as on date and the illegalities are continuing unabated.

3. Opp. party no. 10-Chilika Development Authority at Bhubaneswar (for short, hereinafter referred to as the "CDA") in its counter while has admitted that, as entrusted to it, it has undertaken development work qua Chilika with due regard to its objectives, it has in categorical terms averred that it had not been given the responsibility of protection of the lake. According to it, the aspect of investigation and documentation of heavy metal concentration in sediment and water is being carried out by CDA at its Wetland Research and Training Centre (WRTC), Barkul and also by Central Inland Research Institute (CIFRI) of ICAR, Kolkata and that of agricultural pollution is being monitored by CIFRI. The opp. party has referred to also a final report of the CIFRI on the study of heavy metal concentration in the sediment, water and fin-fishes and shellfishes of Chilika Lake during 2010-12 indicating that heavy metals were noticed at below detectable limit wherefrom it was concluded that Chilika fish was free from toxic heavy metal contamination and thus there was no health issue involved in consuming Chilika fish. It has stated further that the State Government has constituted Task Force for Puri, Khurda and Ganjam districts for eviction of illegal prawn culture gheries in Chilika Lake since 1998-99 and that opp. party no. 10 had been providing necessary funds to the Districts Administration as per their requisition in connection with eviction activities to facilitate eviction of prawn gheries. Two barge mounted excavators designed by IITM, Chennai have also been provided by the CDA to the respective Collectors. It has been assailed too that Government clearance has also been obtained for procurement of further four barge mounted excavators to be applied for demolition of gheries in the three districts. Opp. party no. 10 has stated that the operation of prawn hatcheries in the wildlife forest area is not regulated by it.

4. In his interim application registered as Misc. Case No. 1698/2014, the

petitioner has alleged further that, in the meanwhile, the Collectors of Puri, Ganjam and Khurda districts have illegally recommended for conversion of culture sources into capture sources and to operate the same, have suggested that this be leased out in favour of co-operative societies for the year 2013-14, thus, exceeding the number of sources contrary to the direction of the Hon''ble Apex Court in S. Jagannath's case (supra) as well as the policy framed by the State Government. Stay of operation of the above recommendations said to be contained in 17.12.2008 (Annexure-A/4) and 23.5.2009 (Annexure-C/4) to the application has been prayed for.

5. Opp. party no. 11, in his counter, does not respond either way to the averments made in the writ petition.

6. Except opp. party nos. 10 and 11 none of the opp. parties have filed their counter.

7. Learned counsel for the petitioner while reiterating the above pleaded assertions has submitted that an appropriate writ/direction be issued granting the relief, as prayed for.

8. We have considered the pleaded facts and the documents on record. According to the petitioner, the representation filed by him before the concerned authorities (Annexure-2 series) highlighting the facts as narrated in the writ petition have remained un-responded.

9. A conjoint reading of the writ petition and the counter filed by opp. party no. 10 gives rise to the irreconcilable facts. In this view of the matter, while there cannot be two opinions that the directions of the Hon''ble Apex Court as rendered in S. Jagannath's case (supra) have to be complied with by all concerned, it is essentially necessary at the outset to decisively conclude on the authenticity of the allegations made in the petition.

10. This Court on the basis of the pleadings and the documents alone does not consider it discreet to undertake a fact finding enquiry. It is thus considered appropriate, at this stage, to close this proceeding by leaving the petitioner at liberty to file an appropriate representation detailing the facts and particulars as in the writ petition supported by the relevant documents before Chief Secretary to Government of Odisha. If the same is done, the authority would cause a comprehensive enquiry to be made on the allegations made after duly notifying all the functionaries/institutions involved and require the report thereof to be submitted to him within a time frame to be fixed. Needless to say that necessary action as called for on the basis of the report bearing in mind the decision of the Hon''ble Supreme Court in S. Jagannath's case (supra) would next be taken by the State Government in the right earnest without undue delay.

The petition is disposed of in the above terms.