

(2022) 08 OHC CK 0034
In the Orissa High Court
Case No : Writ Petition (C) No. 16758 Of 2022

Saroj Kumar Sahoo

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 03-08-2022

Acts Referred:

Citation : (2022) 08 OHC CK 0034

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Gyaneswar Satpathy, S.N. Das

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. The writ petition was moved on 8th July, 2022. On behalf of petitioner it was submitted that he operates a stone crusher. Impugned are memos dated 21st September, 2020 and 30th September, 2020, respectively issued by the District Magistrate and the Sub-Collector. Attention was drawn to communication dated 31st May, 2021 issued by State, recommending restriction of Eco Sensitive Zone (ESZ) of Similipal Hadagarh Wildlife Sanctuary to 1 km from reference points 5 to 8, as mentioned in Table-B in Annexure-IB of the draft notification. Judgment dated 3rd June, 2022 of the Supreme Court in, inter alia, I.A. no.1000 of 2003 in Writ Petition (Civil) no.202 of 1995 (In Re: T.N. Godavarman Thirumulpad Vs. Union of India and others), paragraph 44 was relied upon for directions made thereby. Petitioner contended, State having already recommended, the ESZ must be limited to 1 km from the reference points in the boundary of the sanctuary.

2. Mr. Satpathy, learned advocate appears on behalf of petitioner and submits, his client's stone crusher unit is 3.9 kilometers away from said reference points in the boundary. Therefore, his client's unit is well away from the buffer zone of one kilometer.

3. Mr. Das, learned advocate, Addl. Standing Counsel appears on behalf of State and had submitted, against impugned memos petitioner had moved this Court earlier by W.P.(C) no.27854 of 2020 (petitioner's own case), disposed of by co-ordinate Bench on 16th October, 2020. Mr. Satpathy replied, the direction was for consideration of representation, after which his client's unit was sealed by the administration.

4. Today Mr. Das refers to communication dated 31st May 2021 from Special Secretary to Government to Additional Secretary, Ministry of Environment, Forest and Climate Change (MoEF & CC) (ESZ Division), Government of India to submit, State Government had recommended restricting the ESZ of Similipal Hadagarh Wildlife Sanctuary to 1 kilometer from said reference points but this has not been notified by MoEF and CC. On query from Court regarding the impugned communications requiring environmental clearance issued by competent authority from National Board of Wild Life (NBWL) in respect of petitioner's crusher unit, Mr. Das refers to paragraph-31 in judgment dated 3rd June, 2022 (supra). Said paragraph is reproduced below.

"31. On the point of buffer zone for activities outside the sanctuaries/national parks, the National Board of Wildlife in its 21st meeting held on 21st January 2002 adopted National Wildlife Conservation Strategy. Paragraph 9 of the Strategy document concerns the buffer areas around the national parks and sanctuaries. It has been recorded therein:

"Lands falling within 10 kms of the boundaries of National Parks and Sanctuaries should be notified as Eco-fragile Zones under Section 3(v) of the Environment (Protection) Act and Rule 5, Sub-rule 5(viii) and (x) of the Environment (Protection) Rules."

(quoted verbatim from paperback)

But it does not appear from the said affidavit that said proposal of notifying 10 kilometres as boundaries of the national parks and sanctuaries as Eco-fragile zone was finalized."

5. Relevant paragraph from communication dated 31st May, 2021, relied upon by State, is reproduced below.

"In view of the above, the State Government now recommends restricting the ESZ of Similipal Hadagarh Wildlife Sanctuary to 1 km from the reference point 5 to 8 as mentioned in the Table-B and Annexure-IIB of the draft notification instead of reference point 3 to 5."

It appears State Government had already recommended buffer zone of 1 kilometer from reference points 3 to 5. By this communication, it altered the reference points to points 5 to 8. In the circumstances, there is nothing on record to show basis for impugned communication dated 21st September 2020 saying that 15 stone crusher units operating in areas coming under 10 kilometers radius of ESZ of Similipal Bio-Sphere area are violating National Green Tribunal

(NGT) as operating without environment clearance from NBWL. The buffer zone standing recommended at 1 kilometer from the reference points, its expansion to 10 kilometers by the Additional District Magistrate appears to be without authority.

6. The Supreme Court by judgment dated 3rd June, 2022 (supra) said in paragraph-31 as extracted above. It does not appear therefrom there was declaration of law regarding requirement of obtaining clearance certificate from NBWL for operating stone crusher units beyond the recommended buffer zone. Nothing has also been shown by State for Court to find otherwise. In this context reference is made to record in order dated 8th July, 2022, wherein petitioner's contentions based on the facts, were recorded therein.

Paragraph-3 from said order is reproduced below.

"3. The facts are as above. Court does not find necessity of requiring State to file counter. Instead, it will duly issue instructions for hearing and disposal of the writ petition on adjourned date or thereafter."

7. Impugned communication dated 21st September, 2020 and 30th September, 2020 respectively issued by Additional District Magistrate, Mayurbhanj and Sub-Collector, Udala are set aside and quashed. This will not prevent State from requiring petitioner to operate his stone crusher unit in accordance with law.

8. The writ petition is disposed of.

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