

(2008) 08 OHC CK 0145

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 220 of 2007

Shakti Bricks

APPELLANT

Vs

The Collector, Bhadrak and Others

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21
Orissa Minor Minerals Concession Rules, 1990 — Rule 24(1), 3
Penal Code, 1860 (IPC) — Section 143, 149, 294, 342, 353

Citation : (2008) 41 OCR 290

Hon'ble Judges : Indrajit Mahanty, J

Bench : Single Bench

Advocate : Prafulla Kumar Rath, R.C. Jena, P.K. Satpathy, R.N. Parija and A.K. Rout, for the Appellant; Chittaranjan Nanda, S.N. Kar, A.C. Mohanty, R.C. Rath, N. Das, N.M. Praharaj, P. Das, A. Parida, M. Behera and S. Acharya for Opp. Party No. 7, Subha Bikas Panda, M.K. Dash and P.K. Beura for Opp. Party No. 8, for the Respondent

Final Decision : Allowed

Judgement

Indrajit Mahanty, J.—The Petitioner-M/s. Shakti Bricks, represented by its Proprietor Sri Bibhuti Bhusan Mishra, has filed this writ application seeking a direction to the District Administration as well as the police authorities to provide protection to the life and property of the Petitioner who claims to be threatened by the private opposite parties 5 and 6 who are allegedly restraining them from carrying on their business activity and trade.

2. In course of proceeding, certain intervenors either supporting the Petitioner intervened and they were impleaded as opposite parties 7 and 8.

3. The main grounds of challenge as narrated in this writ application are:

(a) The freedom of carrying on occupation, trade and business is one of the Fundamental Rights of a citizen of this country provided under Article 19(1)(g) of the Constitution of India. The Petitioner's industry which has been lawfully

registered and is supposed to carry on his business but then only because he could not satisfy the demand of the private opposite parties, they have been creating illegal impediment by blocking the village road for transporting the materials from the Petitioner's industry.

(b) As a result, the loss suffered by the Petitioner is huge and enormous. In view of the illegal act of the opposite parties, the Petitioner's right of carrying on business and occupation is affected and the District Administration who are authorities of the State are supposed to protect the same by preventing the illegalities being committed. Though the Petitioner has sought for protection by representation to all the authorities, inaction on their part is unjust, illegal and contrary to law.

4. The Petitioner asserts that the Petitioner-firm is a registered as an industrial unit under the District Industries Centre and the Petitioner and his family members have been carrying on business of Brick Kiln Unit for more than 15 years, over 8-10 acres of land said to be recorded in their favour under Routrapur Mouza. He asserts that the property over which the Brick-Kiln is situated stands recorded in the name of the Petitioner's father. It is also asserted that the Brick Kiln is located about 26 K. Ms and 24 K. Ms from. N.H.-5 and N.H.53 and the railway line respectively. The Petitioner states that for the purpose of running his business, he has obtained "No Objection Certificate" from the Tahasildar, Bonth and the Unit has also obtained "consent order" for carrying on business of Brick Kiln as required u/s 21 of the Air (Prevention and Control of Pollution) Act, 1981 from the Orissa Pollution Control Board. It is also asserted that the initial consent order granted by the Pollution Control Board on 24.12.2005 was originally valid up to 31.3.2006 and on expiry of the same, the Petitioner has applied for renewal of consent and such renewal has been granted in favour of the Petitioner extending the same up to 31.3.2011.

5. The Petitioner contended that the younger brother of the Petitioner had entered into an agreement with Nrusingha Nath Jew Trust Board for utilizing their sandy soil for the purpose of preparing raw material for the Brick Kiln business under Routrapur Mouza. It is stated that the local Tahasildar objective to the same, effected seizure of the raw bricks manufactured by same sandy soil obtained from Nrusingha Nath Jew Trust Board and put the same to public auction. The Petitioners' younger brother being the highest bidder offered Rs. 1 lakh and on being successful, deposited the said amount of Rs. 1 lakh with the Revenue Authority and took possession of the bricks.

6. The Petitioner submits that for carrying coal, which is required for the purpose of firing the brick kiln, the Petitioner had to use the only passage for transport such materials, which runs through the village Patkura. It is stated that some anti-socials and criminals of the locality, named in the petition including opposite parties 5 and 6, demanded huge amount of contribution from the Petitioner and since the Petitioner did not support their demands, they obstructed the passage running through their village by putting an unauthorized gate and started

demanding contribution from all the trucks carrying materials to and from the Petitioner's unit as well as from the labourers, working in the said unit. It is further submitted that the persons named in paragraph-10 of the petition also assaulted the Tahasildar, Bonth while he was carrying on auction of raw materials and the Tahasildar has lodged an F.I.R. before the police against such anti-socials, some of whom were arrested and some remain absconding.

7. It is stated that since no further action was taken against the said law breakers, the Petitioner had to approach this Court in W.P.(Crl.) No. 51 of 2007 and this Court was pleased to dispose of the same by directing the O.J.C., Agarpada P.S. to take appropriate action against the accused persons. It appears that the accused persons had approached this Court and obtained bail and it is alleged that, those accused persons taking advantage of the bail order granted by this Court, carried on committing similar activities and whenever the Petitioner's trucks loaded with coal and/or bricks were sought to be carried over the public road, these accused persons with their supporters blocked the passage by sitting in front of the vehicle, as a result of which the Petitioner's business activities have come to a standstill. It is further asserted that on an occasion, the Petitioner's truck driver was assaulted by the accused persons and when he lodged the F.I.R. against them, no action whatsoever has been taken against them. Accordingly, the Petitioner has filed the writ application praying for issue of writ of certiorari and/ or mandamus and/or any other directions commanding the Superintendent of Police, Bhadrak to provide adequate police protection to the Petitioner for carrying on his trade or business.

8. A counter affidavit dated 23.7.2007 has been filed by opposite party No. 4-O.I.C., Agarpada P.S. alleging therein that the Petitioner had not obtained any permission from the competent authority regarding running of his Brick Kiln for the year 2006-07 for which the Tahasildar, Bonth had been to Brick Kiln of the Petitioner for spot enquiry and had submitted an enquiry report dated 26.6.2007 stating that the Petitioner had manufactured bricks unauthorisedly. The O.J.C. avers that during the spot enquiry of the Tahasildar, he noticed one Check-gate had been putting in the village road for collecting Chanda (Donation) from each truck carrying bricks. It appears that the Tahasildar, Bonth instructed the villagers to remove the check-gate from the village road as it is a public road but the villagers opposed him and on the written report of the Tahasildar, Agarpada P.S. Case No. 1/2007 was registered under Sections 143, 342, 294, 353, 506 & 149 I.P.C. read with Section-3 SC/ST (P.A.) Act against 11 accused persons. It is further stated that in course of investigation, four accused persons had obtained anticipatory bail from this Court and one accused was arrested and forwarded to the court and other accused persons surrendered in the court of S.D.J.M., Bhadrak and were released on bail subsequently. In paragraph-II of the said counter affidavit, it is averred by the O.I.C. that subsequent to the representation made by the Petitioner, the police has taken adequate protective measures and has also registered cases and apprehended some accused persons. It is further stated therein that since lifting of brick is a continuous affair

it is not possible on the part of the police to provide continuous protection. A further "additional affidavit" on behalf of opposite party No. 4-O.I.C., Agarpada P.S. was filed on 31.10.2007, alleging that the Petitioner had manufactured bricks unlawfully and for the said purpose the Petitioner had appeared before the Tahasildar, Bonth on 12.7.2007 and on admitting that he had manufactured bricks unauthorisedly, he agreed to pay penalty for it. But till date the Petitioner has not paid any penalty and, therefore, he is not entitled to the relief sought for in the writ application. Further, it is stated therein that no police protection shall be given to the Petitioner for shifting of his finished products or otherwise as it would put the entire district administration and police in bad light and will only boost the confidence of people violating laws for their petty self-interest. It is also averred that it can lead to serious law and order problems in the areas in future.

9. In the rejoinder affidavit filed by the Petitioner in reply to the counter affidavit of O.P.4-O.I.C., it is stated that the Petitioner's industry which has been lawfully established, should be allowed to use the public road and the proceeding against the Petitioner initiated by the Tahasildar, Bonth vide case No. 3/2007-08 imposing penalty and royalty of Rs. 60,000/-, has been closed with the Petitioner's depositing the demanded amount and, therefore, there could be no question of Petitioner's business activities being violative of any statutory provision. It is further averred that the Petitioner is entitled for protection of his life and property as guaranteed under Article 21 read with Article 19(1)(g) of the Constitution of India and it is the constitutional obligation of the police to provide protection to the citizens and denying the said protection amounts to be the violation of the Petitioner's constitutional rights.

10. As noted hereinabove, a group of persons headed by one Narayan Ch. Bhutia claiming to be the villagers of village Pattakana have been impleaded as opposite party No. 7. In their intervention application, the interveners claim that the Petitioner was excavating earth from the embankment of the river Shalandi which belongs to the Irrigation Department, Govt. of Orissa and adjacent reserve communal (Gochar) land belonging to the deity Sri Nrusinghanath Dev under the administrative control of the Endowment Department. They asserted that the Petitioners have been carrying on illegal Brick Kiln for more than 15 years by removing thousands of trees from adjoining government land and their actions have been resulted in soil erosion, environmental pollution and ecological imbalance, due to which over 1000 acres of agricultural land lost its fertility and become unfit for agricultural operation. It is contended that the soil erosion and excavation of earth near to the bed of river Salandi causes weakness to the embankment and therefore, there is every possibility of flood to the adjoining villagers. Apart from the aforesaid factual assertions, it is averred by the intervenors that Rule-3 of the Orissa Minor Mineral Concession Rules, 1990 (in short "1990 Rules") provides that no person shall undertake any quarrying operations for the purpose of extraction, collection and/or removal of minor minerals, except. under and in accordance with the terms and conditions of

quarry lease, permit and/or auction sale provided under these rules. It is further submitted that Rule 24(1) of the 1990 Rules provides that whoever contravenes the provisions of Rule-3 shall be liable to punishment with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000/- only or both. It is submitted that the Petitioner and his family members have contravened the provisions mentioned in Rule-24(1) of 1990 Rules and are liable for the penalty under the same and the bricks made by the earth extracted by violating Rule-20 becomes property of the Government and, therefore, neither the Petitioner nor his family members have any right on those bricks. Therefore, no direction should be issued to provide police help from taking away these bricks.

11. A further set of interveners headed by Arun Kumar Prusty, have intervened and have been impleaded as opposite party No. 8 in the present proceeding. They, on the other hand, support the prayer of the Petitioner and state that they are belonging to the village Patkana and are labourers working in the Petitioner's industry and state that their livelihood is at stake since the private opposite parties and interveners who are villagers of Mouza Routrapur are preventing the Petitioner's vehicle from moving through the village which is the only road thereby affecting their livelihood. They asserts that the industry in question is not creating any kind of hazard to the intervener No. 7 and asserts that private opposite parties 5 and 6 demanded huge amount of "batti" (donation) from the Petitioner as a pre-condition for carrying on such business.

12. In the light of the aforesaid controversy since opposite party No. 3 (Tahasildar) had not filed any counter affidavit, a direction was issued to the Tahasildar, Bonth on 4.12.2007 directing him to file an affidavit indicating the legal impediment if any exists for not granting the prayer sought for by the Petitioner. In terms of the said direction, an affidavit was filed by the Tahasildar-O.P.3 on 18.12.2007. From this affidavit, it appears that the Petitioner's firm which operates a Brick Kiln is situated at Routrapur and the land on which the Brick Kiln is located, stands recorded in the name of Bibhuti Bhusana Mishra, the proprietor of Petitioner-firm. The Tahasildar further stated that the Petitioner had manufactured approximately 17.5 lakhs of bricks without the prior permission of the competent authority and that the Petitioner had deposited an amount of Rs. 60,600/- towards penalty, royalty etc. on 27.09.2007. Most importantly, the Tahasildar has stated in paragraph-5 that the Petitioner had manufactured the above bricks "using his own land".

13. In the light of the aforesaid contention and/or the averments of the Tahasildar in his affidavit, it is apparent that the Petitioner-firm is a registered small-scale industry manufacturing bricks and is located at Routrapur Mouza. This unit was issued a "No Objection Certificate" by the Tahasildar on 11.3.2003 and the State Pollution Control Board has also given its consent to the Petitioner to operate the brick kiln and the said consent is valid up to 31.3.2011. The assertion of the Petitioner is that the Petitioner's unit is established over his own

land which is accepted by the Tahasildar in his counter affidavit. The sale of 2.5 lakhs bricks on the allegation of non-payment of royalty, is also an admitted fact. It is also a matter of fact that the Petitioner's brother, being the highest bidder at the public auction, had paid Rs. 1 lakh to the Revenue Authority and purchased those bricks in auction. It is also a further matter of record that there is only public road which runs through the village Patakana for communicating to and from the Petitioner's unit.

14. In the light of the averments made in the various affidavits, noted hereinabove, it is clear that the issues raised against operation of the Petitioner's Brick Kiln were raised for the first time only during the month of January, 2007 and not on any point of time earlier thereto. The assertion made by the Petitioner is that certain individuals belonging to Routrapur Mouza started demanding "dada batti" (forced donation) from each truck going to and from the unit of the Petitioner, is borne out from the Spot Enquiry Report of the Tahasildar. It is averred by the O.I.C., Agarpada in his counter affidavit that villagers of Mouza Patakana had set up a "check gate" on the village public road and that when the Tahasildar requested them to remove the same, the relevant law and order situation compelled the Tahasildar to lodge an F.I.R. under various sections of I.P.C before the local police.

15. The assertions made by the intervener-O.P.7 that the Petitioner's unit has been situated on Govt. Gochar land and causing environmental pollution and endangers to the villagers at large, is not borne out from the records. The affidavit of the Tahasildar indicates that the Petitioner's Brick Kiln is located on his "own private land". In so far as the environmental pollution is concerned, the Petitioner has annexed as Annexure-4, the consent of the Staty Pollution Control Board to operate the Brick Kiln in question and the same is valid till 31.3.2011. In so far as danger to the villagers is concerned, the same is not affirmed by the Tahasildar in his affidavit and on the contrary, the Tahasildar himself has granted "No Objection Certificate" on 11.3.2003 for operating the brick kiln and such allegation to the contrary made by the intervenors cannot be accepted.

16. The only objection raised by the O.J.C. in his counter affidavit is that by the date of the said affidavit the Petitioner had not paid the assessed penalty as demanded, but the Tahasildar has accepted the fact that the Petitioner had deposited the said assessed penalty of Rs. 60,600/- in respect of 17,50,000 bricks.

17. In the light of the aforesaid fact, it now becomes important to determine as to whether the prayer of the Petitioner seeking direction to the Superintendent of Police to provide necessary legal protection to carry on the trade / business should be passed or not? The O.I.C. in one of its counter affidavit has asserted that the brick business being a continuous activity, necessary protection cannot be provided and there is likelihood of the law and order situation, that may arises if such direction is issued.

18. Hence, it is relevant to quote Articles 21 and 19(1)(g) of the Constitution of India herein below:

21. Protection of life and personal liberty.- No person shall be deprived of his life or personal liberty except according to procedure established by law.

19. Protection of certain rights regarding freedom of speech, etc.-(1) All citizens shall have the right (g) to practise any profession, or to carry on any occupation, trade or business.

Article "19(1)(g)", is contained in part-III of the Constitution under the heading Fundamental Rights of India. In terms thereof, all citizens of India have a right to practise any profession, or to carry on any occupation, trade or business. In terms of the said Constitutional right, the Petitioner having obtained "No Objection Certification" from the Tahasildar in 2003 and having registered itself in the District Industry Center as small-scale industry and further, after having obtained the necessary consent from the said Pollution Control Board which remains valid as on date, is entitled and is guaranteed the right to carry on his occupation trade or business by the Constitution of India. The Petitioner who is also a citizen of India is entitled not to be deprived of his personal liberty except in accordance with to the procedure established by law as guaranteed under Article-21. Both the Articles read together along with the fact that the Tahasildar, Bonth admits that there is no legal impediment for the Petitioner to carry on his business, justifies the Petitioners' prayer.

19. In view of these facts, it is the constitutional obligation of the State and its agencies including the police to ensure that no impediments are cast on a citizen from practicing his profession or carrying on any occupation, trade or business.

20. In the present case, I am of the considered view that the stand of the police authorities that they are not in a position to provide necessary protection, is clearly opposed to the constitutional rights guaranteed under the Constitution to every citizen of India. Since I am of the considered view that there is no legal impediment for the Petitioner from carrying on his business or occupation and/ or since no legal impediment has been cited and/or brought to my notice, the police authorities are duty bound and are under a Constitutional obligation to every citizen including the Petitioner to provide all necessary assistance so that lawful business can be carried on. It needs to be kept in my mind that demand for unlawful donation for various oblique purposes, and it is proved in this case that the villagers had set up a check-gate on a public road and the Tahasildar has directed to remove the same. I reiterate that it is obligatory on the part of the District Administration as well as the police authorities to ensure that no such unlawful act, such as setting up of check-gates for the purpose of collecting donation, should be allowed and whenever such gates being put up, immediate actions should be taken to remove the same and to take appropriate action against the persons who have erected such gates for such unlawful purposes. No doubt, the local villagers may have certain complaints against the industries

operating in their locality and it is open for such villagers to make representation, or to act as law-abiding citizens by bringing it to the notice of appropriate authorities. Even if any infraction ever occurs, neither the Constitution of India nor the law of this country authorize any individual or group of individuals to take law into their own hands and to start collecting donations by setting up check-gates/road blocks at their respective villages over public roads and thereby impeding the lawful business of any citizen.

21. In view of the conclusions arrived by me hereinabove, the District Collector, Bhadrak and the Superintendent of Police, Bhadrak as well as the O.J.C., Agarpada are directed to provide all necessary assistance in order to ensure that the public road is permitted to be used by all persons including the Petitioner without any impediment and/or inconvenience. In case of any obstruction to the movement of such vehicle to and from the Petitioner's Brick Kiln, immediate assistance and prosecution against the accused persons must be taken immediately. For such purposes, if required, the police may set up a out-post to be located at the village along with necessary police personnel to ensure compliance of those directions. This would be the only manner by which the rule of law can be enforced and at the same time, the obligation of the State to its citizens can be fulfilled.

22. Accordingly, the writ petition is allowed with the aforesaid directions.