

(2011) 09 CHH CK 0015
In the Chhattisgarh High Court
Case No : Writ Petition (PIL) No. 2278 of 2011

Smt. Santoshi Rajan and Others

APPELLANT

Vs

NTPC Limited and Others

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2011) 2 CGBCLJ 407

Hon'ble Judges : Sunil Kumar Sinha, J;R.S. Sharma, J

Bench : Full Bench

Advocate : B.P. Sharma, Mr. Kshitij Sharma, Mr. Vivik Chopra and Mr. Sameer Uraon, for the Appellant; Rajendra Tiwari and Dr. N.K. Shukla s with Mr. P.S. Koshy, R.K. Tripathi and Mr. Aditya Khare, Advocates for the Respondent No. 1 to 3, Mr. Kishore Bhaduri, A.A.G. for Respondents 4 and 5 and Mr. Pankaj Shrivastava, Advocate for the Respondents No. 6, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—Petitioner No. 1 is President of Janpad Panchayat, Katghora, District Korba. Petitioner No. 2 claims to be a Social Worker and resident of Mohalain Bhata, Gatghora, District Korba. They have filed this Writ Petition, styled as Public interest Litigation (PIL), for quashing of Notice Inviting Tender No. KS/CS/2010-2011/184 dated 12.01.2011 issued by respondent No. 1/ National Thermal Power Corporation Limited (for short NTPC/NTPC Limited/NTPC Korba). NTPC Korba is a Government of India Enterprise running Korba Super Thermal Power Station. NTPC invited tenders on 12.01.2011 for awarding the work of "Dry Ash Filling in Fill-II Area from Existing Lagoons Near Dhanras Ash Dyke". The Estimated Cost of tender was Rs. 3254.39 Lakh and Earnest Money Deposit was Rs. 72,32,000/-. Various Companies offered their bids. According to the return filed by NTPC one M/s. Nagarjuna Construction Company Limited, Hyderabad has been found to be L-1, where as M/s. Subhash infraengineers Private Limited, Gurgaon has been found as L-2. When finalization of the tender was under process, the above 2 petitioners filed this writ petition mainly on the

ground that the entire area for which the tender was floated is covered with forest and several valuable trees, though the schedule of quantity says about forest clearance, but in the said column, there is no mention about the number of trees standing on the land and clear-cut details have not been mentioned in the schedule, earlier, in 2006 when the work for filling of ash dyke was going on, an accident took place as a result of which a local resident namely Jagdish Prasad@ Bokuram died for which an offence was registered bearing Crime No. 1038/2007 which is still pending consideration and thereafter the work was stopped by order of the State Government; a river is situated at a distance of 10-150 meters from the place where the ash dyke work is required to be done and in case of filling up of water it may cause untoward incident; the NTPC has not obtained requisite No-Objection Certificates as well as clearance from the respective State Department for execution of the said work; therefore, the above tender notice should be quashed.

2. NTPC/respondents 1 to 3 firstly filed preliminary objection to the maintainability of the writ petition as a PIL. They challenged the credentials of the petitioners and contended that this is sponsored petition. Their contention is that the petition has been filed by the petitioners on the behest of M/s. Subhash Infraengineers Pvt. Ltd. Whose offer was found as L-2. They have contended that the contents of the documents (Annexure-P/4) filed by the petitioners would show that it was made available to the petitioner from the office of one Mr. Lovedeep Mahajan who is an officer of the rank of Sr. Manager in M/s. Subhash infraengineers Pvt. Ltd. Whose Administrative Office is at Gurgaon (Haryana). The document Annexure P/4 has been sent from Gurgaon. It contains the name of Mr. Lovedeep Mahajan, therefore, the petition styled as PIL is not really of that very nature and it appears to be malafide at the instance of the rival group of the Company found L-1, who though participated in tender process, but could not achieve position of L-1. A detailed return was also filed later on in which the respondents have given history relating to allotment of the land to the NTPC, notification in favour of the NTPC of the year 1994 and the memo and declaration of the Government of erstwhile State of Madhya Pradesh which was issued in the year 1995 showing the allotment of land in favour of the NTPC for specific purpose mentioned therein. Respondents 1 to 3 have also contended in clear words that no documents have been filed by the petitioners to show that the river is situated at a distance of 100-150 meters from the place of ash dyke. The allegations with relation to not obtained requisite NOCs and clearance from the various departments of the State Government is also incorrect. They have contended that utilization of fly/pond ash is clearly permitted by the relevant notifications issued by the Central Government in 1999 and 2009 and the air and water consents issued by the Chhattisgarh Environment Conservation Board under the Air (Prevention and Control of Pollution) Act., 1981 and Water (Prevention and Control of Pollution) Act. 1974. They also contended that the place where the present work is to be executed does not have a single tree to be cut, for the reason that the said land has already been filled by ash in the

previous years and that at present the Management only wants to increase the height of the particular Fill-II area. As regard to clause of forest clearance referred to in the tender, they contended that it is only a precautionary clause inserted by the Management of NTPC to meet the requirement in case if there is any tree, which in the present case may not be required as there are no trees at all to be cut. They also contended that The Management of the NTPC is giving undertaking that whatever work is being awarded by way of subject tender all would be done purely in accordance with the norms and guidelines for this purpose as has been done in the preceding years with the strict adherence with the directives/guidelines/consent given from time to time by the concerned agencies.

3. State/respondents 4 & 5 have also filed return. They have supported the contentions of NTPC and have pleaded that NTPC intend to award contract of ash filling in low lying areas near their ash dyke located in village Dhanras. The dry ash is to be taken out from their ash dyke for the purpose of meeting the target of ash utilization fixed by the Ministry of Power, Government of India, which is in furtherance of the relevant guidelines on the use of fly ash/bottom ash/pond ash issued by the Ministry of Environment and Forest, Government of India, in the year 1999 and in the year 2009 under the Environment (Protection) Act. 1986 and which is also permitted under the consents given by Chhattisgarh Environment Conservation Board in the Air/Water Acts from time to time. They have pleaded in clear words in Para-4 of the return that no further clearance or permission is needed from the Government authorities for executing this work. They have further contended that Fill-II area has been acquired/allotted/diverted by the State and Central Government for the specific purpose of disposal of ash generated from Korba Super Thermal Power Station of NTPC and this land, which is under the ownership of the NTPC, is bereft of any trees and already filled with ash. They have very specifically pleaded that Fill-II area is at a distance of 400 meters from Hasdeo river. A map showing all this has been filed as Annexure-R/4-2.

4. Respondent No. 6 has also filed separate return. It has come with facts and figures. It is pleaded that the power generation capacity of NTPC is 2600 MW which is running regularly through traditional ash disposal system into the Dhanras ash pond which is situated near Dhanras village. Its aerial distance from NPPC is around 15 Km. Dhanras ash pond belonging to NTPC for disposal of ash slurry is almost saturated, therefore, no surplus area is available for disposal of fly ash as well as ash slurry. Thus, the NTPC has invited tender for dry ash filling in Fill-II area from existing ash pond. It is very specifically pleaded that there is no reserve or protected forest in the Dhanras ash pond and the entire area of the bund and their peripheral is surrounded by ash ponds of Chhattisgarh Power General Company Ltd. (West).

5. With the above pleadings on record, we have heard Mr. B.P. Sharma for the petitioner and Mr. Rajendra Tiwari, Sr. Advocate, Mr. Kishore Bhaduri, Additional

Advocate General and Mr. Pankaj Shrivastava for respective respondents.

6. Firstly, we shall examine as to whether it's a genuine and bonafide Public Interest Litigation (PIL) or it has been filed for extraneous reasons ?

7. Annexure-P/4 filed by the petitioners is schedule of quantity relating to the tender. This is part of the tender document. It appears to have been downloaded. At the top of this document name of Mr. Lovedeep Mahajan is mentioned in Computer/Fax font. Mr. Lovedeep Mahajan is Sr. Manager in M/s. Subhash Infraengineers Private Limited which is clear form letter dated 18.02.2011 (Annexure-R-1) issued by the said concern to the NTPC. Subhash Infraengineers Pvt. of which Mr. Lovedeep Mahajan is Sr. Manager was a tenderer in present NIT which is clear from Annexure-R-3 as also from averments in Para-7 of the return filed by the NTPC. According to the NTPC, M/s. Subhash Infraengineers Pvt. Ltd. Is L-2, and therefore, NTPC has called M/s. Nagarjuna Construction Company Ltd. Hyderabad (L-1) for further negotiation for awarding of contract work.

8. Mr. Rajendra Tiwari, learned Sr. Advocate appearing on behalf of the NTPC, has argued that since M/s. Subhash Infraengineers Pvt. Ltd. Could not get the contract, therefore, the 2 petitioners were set-up to file PIL to get NIT quash, so that, it another NIT is floated, the L-2 Company, of which Mr. Lovedeep Mahajan is Sr. Manager, may get a chance to further participate for getting the work.

9. Mr. B.P. Sharma, learned counsel appearing on behalf of the petitioners, has argued that the document (Annexure-P/4). was received by petitioner No. 1 with a representation relating to all this and thereafter petitioner No. 1 used that document in this PIL. The above explanation does not appear to be correct. There is no pleading in the writ petition that petitioner No. 1 had received representation in this regard. On the contrary a plea has been taken in Para 8.11 of the writ petition that raising all the grievances projected in the writ petition, the petitioner made a representation before the NTPC. The plea of receiving the document though representation made to petitioner No. 1 is coming for the first time when a reply was filed by the petitioners to the preliminary objection submitted in this regard. Therefore, the plea taken in this regard does not appear to be bonafide.

10. The solitary claim in the writ petition in for quashing of the NIT. How the quashing of the NIT would be in Public Interest? Petitioner No. 1 being the President of Janpad Panchayat and petitioner No. 2 being the Social Worker ought to have prayed for taking all possible preventive measures while executing the contract work. They ought to have prayed for directing the State authorities to see that there is no violation of Environmental Laws and nothing harmful in done during the course of execution of the contract work. This would have been in true spirit of public interest litigation, for which they would have been worried. But nothing of that kind has been prayed by them and they have straightway prayed for quashing of the NIT. Even they have not prayed for an absolute direction that the NTPC should not undertake exercise of awarding such contract

to any contractor in future also. This shows that the whole intention of the PIL is to frustrate the present tender process and none else which may be classified in the public interest.

11. In *State of Uttaranchal Vs. Balwant Singh Chaufal and Others*, the Supreme Court held that "Public interest litigation is not in the nature of adversarial litigation but is a challenge and an opportunity to Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of community and to assure them social and economic justice which is the signature tune of the Constitution. Government and its officers must welcome public interest litigation because it would provide them an occasion to examine whether the poor and the downtrodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of community, and whether social and economic justice has become a meaningful reality for them, or it has remained merely a teasing illusion and a promise of unreality, so that in case complaint in public interest litigation is found to be true, they can in discharge of their constitutional obligation, root out exploitation and injustice, and ensure to weaker sections their rights and entitlements." It was further held that "Public interest litigation is a product of realization of constitutional obligation of the court and the High Courts. In order to provide access to justice to poor, deprived. Vulnerable, discriminated and marginalized sections of society, the Supreme Court has initiated, encouraged and propelled public interest litigation. It is an upshot and product of the Supreme Court's deep and intense urge to fulfil its bounden duty and constitutional obligation. The origin and evolution of public interest litigation in India emanated from realization of constitutional obligation by the Judiciary towards vast section of society-the poor and the marginalized sections of society. This jurisdiction has been created and carved out by judicial creativity and craftsmanship. The Court realized that because of extreme poverty, a large number of sections of society cannot approach the court. Fundamental rights have no meaning for them and in order to preserve and protect fundamental rights of marginalized section of society, the Courts by judicial innovation and creativity started giving necessary directions and passing orders in public interest."

12. In *Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others*, it was held that when there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. A person acting bonafide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective (also see- *The Ramjas Foundation and Others Vs. Union of*

India and Others, nd K.R. Srinivas - Vs. R.M. Premchand, 1994 (6) 620).

13. If we examine the present matter in light of the above principles, it does not appear to us that present is a genuine and bonafide Public Interest Litigation (PIL) and it bears all purity of a PIL and it has not at all been filed for extraneous reasons or oblique consideration and we hold it accordingly.

14. In Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others, the Supreme Court held that even if a person files writ petition for vindication of his private interest but raise question of public importance involving exercise of power by men in authority, then it is duty of Court to enquire into the matte. On these principles, now we shall consider the points raised by the petitioners in the instant petition.

15. Before consideration on the above line, let us take note of undisputed ground realities.

16. The land in question and many other adjacent lands were acquired by the appropriate Government in the year 1994 for specific purpose of construction of NTPC ash dyke (phase-II). This is clear from notification u/ss 4 & 6 of the Land Acquisition Act. 1894. After due acquisition of the entire area, the lands were allotted and leased out to the NTPC on certain conditions and a huge amount of premium and annual rent were fixed by the concerned Government. The purpose for allotment was also made clear by the Government which remained as an unchanged condition. The notifications and the other documents relating to the above allotment showing the above public purposes have been filed by the NTPC as Annexure-R/5 & R/6. The NTPC is a Coal Based Thermal Power Plant and Ash is one of the by-products which comes out while power generation takes place in the plant. If the plant has to run, certain arrangement relating to ash pipe line, discharge panel, ash dyke and proper disposal of the ash is necessary, otherwise the entire functioning of the plant would be paralyzed and the power production will go to nil causing great loss to the public as also public money. That is why for all these specific purpose, the land in question was acquired and allotted to the NTPC. We have been told that the land in question so allotted to the NTPC for specific purpose in neither a green belt nor earmarked for any other purpose. On the contrary, memo of the Government (Annexure-R/6) would show that it was for the very purpose of establishment of the above systems of the plant. It has further been mentioned in the above memo that if land user is changed and there is any infringement of the condition of the lease qua-land user, the Government shall be entitled to fix penalty on the NTPC and it shall further be entitled to get back possession of the entire land/building and structure in their existing forms. Certain other conditions have also been imposed by the Government while granting permanent lease to the NTPC. This makes it clear that since the year 1994-95 the above land and other adjacent lands of the village were acquired and transferred to the NTPC on permanent lease and land user was also fixed. There is no dispute that the NTPC has not changed the land user. It is an admitted position that land earmarked for particular purpose in

being used for that very purpose. It is on these facts and circumstances the grounds raised by the petitioners have to be examined.

17. Learned counsel for the petitioners have argued that earlier in the year 2006 an accident took place in the ash dyke as a result of which a person namely-Jagdish Prasad @ Bhokuram died for which an offence has been registered vide Crime No. 1038/2007. Whether this can be a ground for not permitting the execution of the proposed work which shall ultimately result into closure of the plant? The answer would be no. This can be understood by a simple example. If a vehicular accident takes place on a national highway, the remedy would not be either to close the national highway or to leave the use of motor vehicles. The remedy would lie in taking such preventive measures which may stop the repetition of such accidents, like proper implementation of Traffic Rules, Driving Rules, signalling etc. on the highway and traffic awareness and education. Likewise to be implemented so that there may not be repetition of such accident but not that on account of an accident taking place in the ash dyke, the work of the ash dyke should be closed. Therefore, this argument has to be turned down.

18. It was next argued that the land in question is covered with forest. This has been vehemently denied by NTPC and the State Government. Even the Environment Conservation Board/respondent No. 6 has also denied this contention and has specifically pleaded that there is not reserved or protected forest in that area. It was argued that in schedule of work, column No. 1 says about forest clearance. Counsel for NTPC has contended that the above item has been added in abundant caution so that if any exigency arises for cutting even a single tree that can be met out. Moreover, this is a description of item NIT for which a PIL petitioner should not be worried because he is not a tenderer. We are of the view that merely on this account a Public Interest Litigation would not lie.

19. It was next argued that a river is situated at a distance of 100-150 meters from the proposed site, therefore, there may be a water contemplation. About the distance of river, we rely on the affidavit of the State Government. They have revenue authorities to give the correct position. According to the counter affidavit of the State Government, the river is situated at a distance of 400 meters from the proposed site. Mr. Tiwari and Additional Advocate General both have argued that in such a situation there would be hardly any chance of water contemplation as the ash dump in Fill-II area would be disposed of in a mechanical manner and would be utilized as per direction of the appropriate Government and no harm is likely to be caused to the river water.

20. Right to live in civilized society implies right to have decent environment. It is one of the basic human rights known to civilized society concept. Right to food, right to water does not mean to have simple food or water but it means to have good food and un-contemplated water which is useful for all. In the industrial areas to have decent environment. Development plans have important role. To maintain the ecological balance in the area is not only the duty of the State but is also an obligation on the society itself and the persons involved in developmental

works. If power generation has to be permitted in a thermal power plant, it is bound to give in result the by-products which may be hazardous or harmful to the society or to the ecosystem, but on this account alone there cannot be a complete restrain, but a balance has to be struck down, so as to maintain the ecosystem and to protect the life and liberty of the citizens. We are of the view that the solutions of such apprehensions would be to make proper arrangements and proper management in the project so that the ecological balance is maintained and there is no violation of environmental laws. In case on hand neither the State Government nor the Environment Conservation Board has made any complaint of violation of any environmental law by NTPC. The writs cannot be issued on mere apprehension of such nature. Moreover, NTPC has given undertaking in the return that there would be no violation of any environmental law and project would run in adherence to the environmental laws and the policies in this regard. In view of all this we do not find any substance in the above ground raised by learned counsel for the petitioners. We have carefully considered the facts of the instant case. We have also examined the existing situation in light of the environmental laws. After going through the entire facts and circumstances of the case, we do not find any substance in this writ petition filed as Public Interest Litigation (PIL). We are of the view that the petitioners have misused the provisions by filing the frivolous PIL which has delayed the developmental work. We, therefore, dismiss the writ petition and impose cost of Rs. 20,000/- (Rupees Twenty Thousand) on the petitioners.