

(2013) 07 JH CK 0035

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 3197 of 2012

Suresh Oraon

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : (2013) 3 EFLT 833

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Anup Kumar Agrawal, for the Appellant; Anoop Kumar Mehta, Advocate for the C.C.L., Mr. Rajesh Shankar, G.A. and Mr. Abhay Prakash, Advocate for the State, for the Respondent

Judgement

1. The present writ petition has been filed in the name of Public Interest Litigation seeking direction to issue mandamus to the respondent to stop mining and related work within 3 Km. area of any village/cluster and direction to the respondents not to do deep hole blasting and general blasting within three Km. area of any village/cluster and further direction and order to the respondent to immediately remove the coal reservoir from the residential area of Kusumtola of Chatra District and to pay the compensation to every victim of the Kusumtola of village Henjda to the tune of Rs. One lac. It has been stated in the writ petition that the respondents are doing open cast mining in Kusumtola of Tandwa Block at Chatra District and they are doing deep hole blasting in the area without following the stipulated norms. It is also stated that F.I.A.N. (Food First Information & Action Network with Human Rights Against Hunger) Germany had done a fact finding on the above mentioned problem of the Kusumtola and submitted report to the Prime Minister of India and asked for immediate action. It is further stated that in furtherance of which the Hon''ble Prime Minister office had send a letter to the Chief Minister of Jharkhand which was forwarded to the Home Department, Government of Jharkhand and the same was forwarded to the Sub Divisional Magistrate, Chatra. In the light of the said letter, a proceeding was held u/s 133 Cr.P.C. and an absolute order was passed on 16th November,

2011. In the said proceeding, following findings have been recorded in the order dated 16th November, 2011:-

- a. Life and property of villagers of about 2500 population living around 6 village/cluster are unsafe due to happening of mining/blasting so near of the township.
- b. Due to deposition of thick layer of the dust on crops and decreasing of water level, the agriculture, condition of drinking water are adversely affected the interest of community. Due to the problem of the dust there are trouble in getting breath.
- c. Due to self oxidization of the large coal reservoir the environment near the village has got polluted and still happening and the villagers have faced trouble in getting the breath.
- d. Due to the mining of remaining surrounding area except six village/cluster of about 2500 population, the villagers have surrounded from all the sides and their problem has increased due to non happening of legal displacement and they become economically weak. Traditional agricultural work has destroyed.
- e. Due to heavy machines used in mining and fly of dust due to serial deep hole blasting their quality of life has adversely affected.

Thereafter, following order was passed:-

- a. In any case deep hole blasting/general blasting never be done near the cluster so that the structure of house/school may shaken and the danger of life and property cause to the people living/studying/teaching in them. The place of blasting have been so far from the cluster that house/teaching institution does not get damaged through unsafe way. In the light of ground realities the review of D.G.M.S. is necessary. The safety of life and property shall be doubtful if there will be deep whole blasting within the limit of 100 meter to 300 meter.
- b. Due to the fire caused and the continuous burning along with smoke in big coal reservoir due to self oxidization, the said reservoir is necessary to remove within the time limit of two months that is till 16.01.2012. In future, near the clusters (within 2 Km.) coal reservoir have not be formed so that it can be prevented from the side effect of the self oxidization.
- c. For reducing the problem of thick dust, C.C.L. sprays the water in the area in a regular basis and the mining work with the heavy machine/blasting has been done after the 2 km. distance from the cluster. Only after the lawful migration of all the villagers of 6 village/cluster, the C.C.L. does the mining work.
- d. C.C.L. assures that the impact of dust on the agriculture work and life and property of general citizen be less, breath related illness be reviewed from time to time so that it can be protected from the Asthama, Bronchitis, Salinas and other breath related disease.
- e. To maintain the water level in the area, the mining work have been done far

from the water sources/agricultural land so that the general citizen will not have to struggle for food and drinking water.

2. It is submitted by the counsel for the petitioner that the petitioner himself visited the said area and done a fact finding and collected some of the photographs, which prove the act of illegality of the respondents and it farther proves that the order of the Sub Divisional Magistrate has never been followed by the petitioner. Then the petitioner gave the facts and the law relating to the air, water and noise pollution as well as of public nuisance and elaborated the threat the life and limb of the villagers and specially the school children and indicated that it will result into the erosion of forest. Along with the petition, the petitioner placed on record photographs of houses having damages and so many cracks in the houses. On the 10.07.2012, this Court directed the respondent to look into the matter immediately because it has been alleged that due to the blasting etc. properties of the residents is being damaged which is apparent from the photographs. On 03.01.2013, the respondent company submitted that the respondent after obtaining the requisite permission from the competent authority, is undertaking the mining operation including the mining by blasting within the area which has been given to the respondents for mining operation. Therefore, the other issues which we have also taken note of. Then, this Court directed the Deputy Commissioner, Chatra to submit a detailed report about the conditions of the Damodar river near the C.C.L. area in question. In pursuance of it, learned counsel appearing for the State has shown us several photographs which we have perused and have been shown to the learned counsel for respondent-company. The learned counsel for the respondent-company drew our attention to the reply filed to answer the affidavit filed by the Deputy Commissioner, Chatra. According to the learned counsel for the respondent-company the area in question where the mining operation is going on, is the Purnadih open cast project of the respondent-company-M/s. C.C.L. The said Purnadih open cast project is an area of 751.74 Hectares. This project includes both surface and underground together with mining lighter which have been acquired by the Union of India for coal mining purpose vide notification dated 14.05.1990. The respondent-C.C.L. to carry out mining of coal through open cast upon the acquired land of the Purnadih O.C.P. were required to obtain prior environment clearance under the provisions of Environment Protection Act, 1986 and the Rules framed thereunder as also under E.I.A. Notification, 2006. According to the learned counsel for the respondent, for the said purpose, the respondents applied for the terms of reference (TOR) which was granted by E.A.C. and thereafter, Environment Management Plan was submitted to the State Pollution Control Board. A public hearing of stake holders was held and the E.M.P. was submitted before the Expert Appraisal Committee of M.O.E.F. The E.A.C. has also approved Environment Management Plan of the respondent-company. The said approved plan of the E.A.C. was placed before the Ministry of Environment and Forest and M.O.E.F. having fully satisfied with the Environment Management Plan for carrying out the coal mining project of 3 million tone per annum

production has been pleased to grant environmental clearance vide their order/ letter dated 19 May, 2009. As per the reply of the respondent-company, Purnadih O.C.P. stretches right upto the bank of river Damodar and therefore, the M.O.E.F. has imposed a condition laid down in Para 2A(iv) which provides that M/s. C.C.L. has to construct an embankment on the bank of the river stretching upto 4.4 kms. and the height of the embankment has to be at least 5 mts. i.e. about 15 feet of the highest flood level. We are not concerned with this condition for embankment. Then in Para 10, it has been stated that the respondent-company also obtained "No Objection Certificate" under the Water Act, 1974 as also under Air Act, 1981. Then, the State Pollution Control Board inspected the site and on being fully satisfied with respect to the claim of the petitioner, granted N.O.C. to the respondent from 16.11.2010.

3. In the background and strength of these certificates, the respondent-company started coal mining operation in the area. This area as per the Para 13 of the reply of the respondent is water deficient area and little water is collected in the lease hold area is used for sprinkling on the roads and other mining uses such as fire fighting, washing of HEMM etc. Empathetically it has been stated that not a drop of water is discharged by the respondents into the river Damodar from any point within the lease hold area. It is stated that during the mining operation, quarrying of coal over burden is removed and the same is dumped at a distance of about 500 mts. away from the river bank. No over burden is dumped into river Damodar. In any case, this over burden, presently kept at O.B. dumped is to be filled up after extraction of coal is complete, then it is stated that the respondent-company has planted 250 trees per hectares.

4. In Para 15, it is stated that river Damodar which originates about 15 to 20 Kms. upstream of Purnadih OCP and passes through the coal belt of Jharkhand is under the control of the Damodar Valley Corporation having its registered office at Kolkata. For carrying out any work on the river Damodar or for utilizing water for all kinds of consumption by an industry, permission is required to be obtained from DVC. As coal from the lease hold area of Purnadih OCP was required to be dispatched across the river to the other side of the river bank and then use the road available for transportation elsewhere or Dakra railway siding located at a distance of about 8 Kms., the CCL was required to construct a cause way. For this purpose, an application was submitted before the DVC, Kolkata and permission has been granted for construction of cause way. The cause way is about 12 mts. in width and about 80 mts. long to connect the other side of the bank of the river. It is stated that about 200 trucks carry coal to Dakra railway siding and empty trucks after unloading, return to the project. About 100 trucks of coal is transported by consumers on their own to their respective destination where they consume the same.

5. The contention of the respondent company in the reply in Para 17 is that they are not destroying the quality of water of river Damodar. It is also submitted that with prior permission of the DVC, the respondent-company has sunk two sumps

in the river and they are drawing about 4.65 million gallon water per day which is equivalent to 160 lacs litres per day of water on payment of water charges and water cess. This water taken from the river Damodar is pumped to the Water Treatment Plant of the respondent-company and after treatment it is supplied to the workers and officers of the company. It is also submitted that quality of the water was tasted number of times and it was found that the water is portable and containing no harmful elements. We have given details of the reply filed by the respondent-company which shows that according to the respondent-company, the respondent-company has completed all the legal formalities of acquiring land, taking permission from the Pollution Control Board under the Water Act and the report was prepaid by the Environment Management Committee which was thoroughly examined by the expert committee and was placed before the Committee of the Ministry and the river which is near to the mining area, is managed by the Damodar Valley Corporation constituted under the statutory provision and having the full responsibility to manage the Damodar river and its water. So, according to the respondent-company they are doing all the lawful work and therefore, they are not creating any pollution in any manner either in the river or in the water of the river. To understand the consequences of the work done by the respondent-company we have to take the help of latest technology by putting the photographs in our order itself. Therefore, we are putting the some of colour photographs in our order.

6. In view of the stand taken in the reply of the respondent-company and in view of the photographs appears to be a total conflicts and that conflict is that a person/company's right who has obtained all the relevant permissions under all the laws and by application of mind of all expert persons, who deals with the matters of all sort of pollutions that is air pollution, water pollution and the environment pollution that persons who are resident of the area and are facing the actual environment on spot as indicated in the photographs which can be seen in this order itself. Without much detailed comments, we can straight way come to the conclusion that if those laws which have been referred by the respondents result into a situation as indicated in the photographs, then it will be appropriate by the legislature to rethink by those work were communicated at all if they can resort as indicated in the photographs. If the laws are correct then the governance of the government are required to be looked into the matter that whether all those experts are in fact gave permission resulting into such great public nuisance to the extent which cannot describe in words and can only be seen on spot and some glimpses can be seen from the photographs. We are shocked to see the photographs. Entire big areas of the river and the river side are virtually under the coal mines area where probably no person can think to breath. It will be appropriate to mention here the photographs which we have already reproduced in the order are not the photographs produced by the writ petitioner but these photographs have been submitted by the learned counsel appearing for the State by obtaining these photographs from the Deputy Commissioner of the area. Here another question arises is that apart from the

authorities responsible to implement such important laws relating to the environment and who are responsible to prevent the area from the water and noise pollution and the authorities who are to see that there should not be erosion of the forest, there is one another company i.e. DVC who is responsible for the management of Damodar river as stated by the respondent company in their counter. DVC has also right to give permission to draw water from the river area in huge quantity and only one company. The petitioner have one unit to obtain license to draw water of 4.65 million gallon per day which is equivalent to 160 lacs litres per day of water. Whether such company has discharged its duty to see that total nature of the Damodar river has not been destroyed by the persons to whom they have been granted license.

7. In Para 23 of the reply affidavit the respondent-company has stated that there is reference of the coal stock of over one lac tone causing coal dust to be flown into the river near Jamdih bridge. It is also submitted by the respondent-company that this heap of coal does not belong Purnadih OCP. The heap is of reject coal belonging to Punjab State Power Corporation which has leased out the area to M/s. Monet Daniel Washery who are the authorized operator of the washery. It is learnt that M/s. Monet Daniel Washery was to use this reject coal in their reject captive power plant located in Raigarh in the State of Chhatisgarh but due to some reasons they are unable to transport the same. There were allegations of the coal stock on the southern bank of river near Jamdih bridge cannot be attributed to M/s. CCL.

8. In this view of the matter, we would like to issue notice to M/s. Monet Daniel Washery as well as to the Punjab State Power Corporation. M/s. CCL to is directed provide address of Punjab State Power Corporation and M/s. Monet Daniel Washery so that notice be issued to this company to show cause as to why action may not be taken against the above corporation and the company for causing public nuisance and hazardous in the area.

9. Since new materials have come on record of which we have taken note, therefore, the State is directed to give copies of these photographs to the learned counsel for the respondent-CCL and learned counsel for the petitioner with the soft copy in CD which has also been given to this Court today.

10. The respondent-CCL is given opportunity to address the issue and directed to show cause why the order may not be passed directing the respondent-CCL to clean the entire area of river and remove all pollutants at the cost of the company which may run into not only in crores of rupees or 100 crores of rupees, it may be thousands of crores of rupees.

11. At this juncture, we would like to mention that in the counter reply, M/s. CCL has addressed more on the point how it get the license for operating the mines and less to show what is factual position at the spot. The reply has been filed in the form of affidavit. It is settled law that in affidavit the deponent is required not only to state on oath which the deponents wants to but it is the duty of the

deponent to state on oath all the facts, correct facts and the relevant facts in the knowledge of deponent. The issue was with respect to mining, deep hole mining, pollution, damage of properties etc. It also has already come on record that in addition to above, there was huge pollution in entire river which is shocking, yet the CCL has not addressed on the point to assist the Court in Public Interest Litigation. In fact it is the respondents who may state whether there is grave pollution on the site or not and if there is grave pollution then how it occurred which is having direct connection with the activities of the respondent itself.

12. Be that as it may, we are giving further opportunity to the respondent CCL to state clearly that the coal which is apparent in the photographs in which area the coal came from the mining operation of the CCL irrespective of the fact how it came and whether it was because of the transportation conducted by the CCL company itself or by the other transporters but materials and the particles covering the entire area is of the company's mining operation's product or by-product or ancillary incident.

13. The notice may also be issued to the DVC at its Kolkata office who may show cause that why action may not be taken against the DVC also if the DVC was responsible to manage the affairs of the Damodar river and who is granted license to draw water to M/s. CCL for its Purnadih OCP project.

14. Copy of this order along with the photographs and the writ petition be sent to the M/s. Monet Daniel Washery as well as to the Punjab State Power Corporation and Damodar Valley Corporation along with the notice.

15. All the respondents including the above parties, may submit their stand by filing the affidavit on or before 26th August, 2013.

16. Notice be issued without any delay by the office.

17. Mr. Delip Jerath, learned counsel is requested to take the notice and may seek instruction from the DVC. Therefore, there is no need to issue notice to the DVC.

18. Put up this case on 26th August, 2013 Copy of the order be given to the learned counsel for the CCL, learned counsel for the State, learned counsel for the Pollution Control Board and learned counsel Mr. Jerath for DVC.