

(2010) 08 OHC CK 0027

In the Orissa High Court

Case No : Writ Petition (C) No's. 9101, 9102, 9103, 9104, 9105, 9106, 9107, 9108, 9109, 9133, 9303, 9304, 9305 and 9372 of 2009

Trishakti Stone Crushing Unit and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 19
Industrial Disputes Act, 1947 — Section 25(B), 25(F)(B)

Citation : (2010) 2 ILR (Ori) 414 : (2010) 2 OLR 703

Hon'ble Judges : V. Gopala Gowda, C.J.;Indrajit Mahanty, J

Bench : Division Bench

Judgement

1. Mahanty, J.—In this batch of writ petitions, Petitioners who have set up Stone Crushing Units at various places within the State of Orissa have prayed for being provided with an alternate site by the Orissa Industrial Infrastructural Development Corporation or any of the State body or authorities on payment of costs and also to quash the notice of closure issued by the State Pollution Control Board, Orissa and/or to keep the same in abeyance till alternate site is provided to the Petitioners.

2. Mr. Y. Das, learned Senior Counsel appearing for the Petitioner on the outset submitted that although he had appeared for the Petitioners in those batch of writ petitions, he had no instructions in the matter and sought for the permission of the Court to address the Court as an amicus curiae. Learned Senior Counsel limited his prayer to seeking a direction to the State and/or authorities to provide the Petitioners with alternate sites complying with the requirements as stipulated by the State Pollution Control Board, within a limited period.

3. Mr. S.P. Mohanty, learned Counsel appearing for the State Pollution Board, Orissa vehemently argued that the present writ petitions are not maintainable and ought to be rejected outright since the issues/ contentions raised in the present batch of writ petitions are covered by earlier judgment of this Court, in

W.P(C) No. 5503 of 2007 and others dismissed by judgment dated 27.1.2009. He asserted that most of the Petitioners in this batch had also challenged the notification dated 17/18.7.2002 issued by the Government of Orissa in the Forest and Environment Department in exercise of power conferred by Sub-section (i) of Section 19 of the Air (Prevention and Control of Pollution) Act, 1981. The said prayer of the Petitioners and others were rejected and the writ petition was dismissed vide judgment dated 27.1.2009.

In this aspect, reliance was placed by the Petitioners on a judgment of the Supreme Court in the case of State of U.P. Vs. Nawab Hussain, as well as the judgment of this High Court in the case of Dr. Gyan Guru Das v. Central Vigilance Commissioner and Ors. 2008 (I) OLR 790 in order to substantiate his contention that, it is the well settled principle of law that a plea raised/ not raised in the earlier writ petition could not be questioned in a subsequent writ petition since such consideration is barred by the principle of Constructive Res Judicata.

4. In the light of the aforesaid submissions and on perusing the pleadings as well as the documents appended thereto, there is no dispute that the Petitioners herein had challenged the notification issued by the Government of Orissa, declaring the entire State of Orissa as AIR Pollution Control Area vide judgment dated 27.1.2009. A Division Bench of this Court dismissed W.P.(C) No. 16442 of 2005 and a batch of similar cases and came to uphold the validity of the notification declaring the entire State as Air Pollution Control Area as well as the "siting criteria" fixed by the State. The Court also did not find any merit in the prayer of the Petitioner to quash the order of sealing the units and accordingly the batch of writ petitions stand dismissed.

After dismissal of the aforesaid batch of writ petitions, the present Petitioners once again have filed the present batch of writ petitions with the prayer as noted hereinabove and an interim order was passed by the order dated 16.7.2009 directing that till the next listing of the case, no coercive action shall be taken against the Petitioners and this order has been extended from time to time.

At the very outset, in the circumstances as noted hereinabove, we are compelled to note our absolute concern with the manner in which the Petitioners' crushing units continue to operate in wanton disregard to all canons of law in the face of the closure notices issued by the State Pollution Control Board, Orissa as well as the directions of this High Court.

5. The very least that can be said in the present stage is that, the Petitioners have been adopting every means to continue operating their Stone Crushing Units by filing multifarious petitions from time to time and consequently continue to pollute the air in the area in which they operating and making the State Pollution Control Board into a mere spectator.

6. These very writ Petitioners had filed the earlier batch of writ petitions as noted hereinabove challenging the notification issued by the State of Orissa declaring entire State as an Air Pollution Control Area as well as the closure notices issued

by the State Pollution Control Board which were rejected and the writ applications were dismissed. While the Pollution Control Board, thereafter, attempted to execute the orders of this Court (upon dismissal of the batch of writ applications), these notices issued in purported execution or compliance of the direction of this Court are once again challenged in the present batch of writ petitions and once again interim orders of no coercive action are passed against them. This, in our considered view, amounts to a clear abuse of the process of the Court making it worse by the fact that, blatant violation of air pollution norms continue unabated till today. Therefore, we find no justifiable legal ground to entertain the challenge to the notices of closure issued by the State Pollution Control Board and hence reject the said prayer and vacate the interim orders.

7. Insofar as the prayer of the Petitioners seeking a direction to the State and/or authorities in the State to provide the Petitioners with alternate site is concerned, we are of the considered view that such a prayer ought to be considered favourably, especially, since not only this crushing units provides a source of livelihood to its owners or operators but also a source of livelihood to thousands of labourers who work at such crusher units.

8. Therefore, in keeping with the interest of the promoties of such stone crushing units as well as their workmen, and following the law laid down by the Hon"ble Supreme Court Cases in the case of M.C. Mehta v. Union of India and Anr. 1992 (SC) 3 256 as well as the judgment of the Supreme Court in the case of M.C. Mehta v. Union of India, AIR 1996 SC 2231 we direct as follows:

(i) All polluting stone crushing units which are operating without complying with the siting criteria and without approval of the State Pollution Control Board shall all stop functioning in the State of Orissa forthwith.

(ii) The District Administration as well as the Police authorities are directed to assist the State Pollution Control Board, Orissa in effecting closure of all such non-compliant stone crushing units immediately and file a compliance report before this Court by 6th September, 2010.

(iii) The Secretary in the Industries Department shall render all assistance to the stone crushing units in the process of relocation and copy of this order shall go to the Chief Secretary and Home Secretary to provide all necessary assistance, help and necessary facilities to all such industries which intend to relocate themselves at places which comply with the siting requirements stipulated by the State Pollution Control Board.

(iv) The allotment of plots, construction of factory buildings and issuance of licence and permission etc shall be expedited and granted on priority basis.

(v) In order to facilitate shifting of the non-compliant and polluting stone crushing units, the State is directed to set up "unified single agency" at the district level to act as a nodal agency to sort out ail the problems of such industries. The single window facility shall be set up in every district within one

month from today.

(vi) Appropriate site shall be identified within existing industrial estates and/or in other area as may be required and for such purpose, if required, immediate steps be taken for acquisition of land for meeting the aforesaid purpose.

(vii) The Stone crushing units which relocate in the new industrial estate or existing industrial estate shall also be entitled to any incentives which are normally extended to new industries in new industrial estate.

(viii) The closure order shall be unconditional and all such non-compliant stone crushing units must stop functioning with immediate effect.

(ix) The workmen employed in the stone crushing units shall be entitled to the rights and benefits as indicated hereunder:

(a) The workmen shall have continuity of employment at the new place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment;

(b) The period between the closure of the industry and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service;

(c) All those workmen who agree to shift with the industry shall be given one year's wages as "shifting bonus" to help them settle at the new location;

(d) The workmen employed in the industries which fail to relocate and the workmen who are not willing to shift along with the relocated industries, shall be deemed to have been retrenched with effect from 31.08.2010 provided they have been in continuous service (as defined in Section 25B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, one year's wages as additional compensation;

(e) The "shifting bonus" and the compensation payable to the workmen in terms of this judgment shall be paid by the management on or before 16.9.2010.

(f) The gratuity amount payable to any workmen shall be paid in addition.

9. The direction contained hereinabove shall not be limited to the Petitioners in the present batch of writ petitions but stands extended to all similar non-compliant stone crushing units operating throughout the State of Orissa as on date. The Industry Secretary is directed to put out a notice in all local dailies through out the State inviting applications from stone crushing units requiring relocation and a list shall be prepared of all stone crushing units who respond to such notice and all such persons duly verified/identified by the district authorities shall be entitled to the benefits of the aforesaid directions as well as must comply with the necessary direction as noted hereinabove in order to be entitled to the

benefits directed hereinabove.

10. With the aforesaid observations and directions, we dispose of the writ petitions. We make it clear that any violation of such directions shall be viewed very seriously by this Court and we expect that the State Pollution Control Board and all District/Police Administration adhere to such directions strictly both in letter and spirit and any person found violating the same shall be dealt in accordance with the provisions of the Contempt of Court's Act,

V. Gopala Gowda, C.J.

11. I agree.