
(2014) 08 JH CK 0021

In the Jharkhand High Court

Case No : Cr. M.P. Nos. 3964, 4708 and 4762 of 1993 (R)

V.R. Kochar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Forest Act, 1927 — Section 10, 33, 52, 64

Citation : (2015) 1 AJR 110 : (2014) 3 JLJR 595

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : B.P. Verma and P.S. Dayal, Advocate for the Appellant; Pankaj Kumar, M.B. Lal and S.C. Choudhary, Advocate for the Respondent

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioners and learned counsels for the State. Criminal Miscellaneous No. 3964 of 1993 (R) and Criminal Miscellaneous No. 4708 of 1993 (R) arise out of the same case, whereas Criminal Miscellaneous No. 4762 of 1993 also relate to the similar case and accordingly, all these three applications were heard together and are being disposed of by this common order.

2. The petitioners in all the three cases are the officers of West Bokaro Collieries of the then Tata Iron & Steel Company Limited (herein after referred to as TISCO", but now, Tata Steel). The petitioners of Criminal Miscellaneous No. 3964 of 1993 (R) and Criminal Miscellaneous No. 4708 of 1993 (R), have been made accused in G No. 692 of 1992, wherein cognizance has been taken by the learned Chief Judicial Magistrate, Hazaribag, by order dated 29.7.1993 for the offence under Sections 33, 52 and 64 of the Indian Forest Act; and the petitioners in Criminal Miscellaneous No. 4762 of 1993 (R), have been made accused in G No. 10 of 1993, wherein cognizance has been taken by the learned Chief Judicial Magistrate, Hazaribag, by order dated 29.7.1993 for the offence under Sections 33 and 64 of the Indian Forest Act. The petitioners have also prayed for quashing of the entire criminal proceedings against them in both the aforesaid cases.

3. G No. 6.92 of 1992 was instituted on the basis of the prosecution report submitted on 11.4.1993 by the O.P. No. 3, wherein it is alleged that on 19.12.1992 the Forest Guard saw that in Pundi protected forest the accused persons were cleaning the forest area and removing the earth and they were arrested by the forest officials. The prosecution report shows that upon enquiry the involvement of the petitioners were also found and in the prosecution report it is made clear that the accused persons were involved in mining operation with the help of dozers in Plot Nos. 577, 791, 792 and 794 within Pundi protected forest upon an area of 226.30 acres. The dumpers were seized under Section 52 of the Indian Forest Act and four accused persons were arrested under Section 64 of the said Act. Alleging that the offence under Section 33 of the Indian Forest Act was made out against the petitioners, the prosecution report was submitted on the basis of which cognizance was taken against the petitioners for the offence under Sections 33, 52 and 64 of the Indian Forest Act.

4. So far as G No. 10 of 1993 is concerned it appears from the prosecution report submitted on 11.4.1993, that on 7.1.1993 the accused persons were found engaged in cleaning the forest area and involved in the mining process. It is alleged that the petitioner No. 2 in Criminal Miscellaneous No. 4762 of 1993 managed to flee away along with the labours involved in the mining process, but the petitioner No. 1 in the said Miscellaneous case was apprehended at the spot, as he also challenged the forest officials. It is also alleged that on 6.1.1993 also, two dumpers which were employed in the mining process were seized and some accused persons were also apprehended who were forcibly freed and the dumpers were taken away. It was also alleged that apart from these protected forests in question, in other protected forests also illegal mining was being done by the TISCO, and in this prosecution report, so far as Pundi protected forest is concerned, it is stated that the offence was committed on plots No. 220, 417, 576, 577, 791, 792, 793, 794, 798 and 1418 measuring in all 226.30 acres apart from other forests, including 10.90 acres of land in Duni protected forest. On the basis of the prosecution report the cognizance was taken in this case by the Chief Judicial Magistrate, Hazaribag, for the offence under Sections 33 and 64 of the Indian Forest Act.

5. According to the petitioners, they have been falsely implicated in this case and there had been several rounds of litigations between TISCO and the State of Bihar (Now Jharkhand) with respect to the right to carry out the mining-operations in these protected forests. It is submitted that the facts giving rise to this case are fully detailed in Tata Iron and Steel Co. Ltd. Vs. State of Bihar (Now Jharkhand) and Others, , and the necessary facts have also been stated in the respective applications, which are detailed herein below.

6. According to the petitioners' case, on 21.11.1946, the erstwhile Raja of Ramgarh executed a long term lease in favour of Bokaro and Ramgarh Ltd., in respect of 4299.84 acres of land for colliery purposes, w.e.f., 1.3.1946. Subsequently, on 23.1.1947 the lessee, Bokaro and Ramgarh Limited, granted a

sub-lease with respect to those lands to the West Bokaro Limited on the same terms and conditions. In the year 1950, the Bihar Land Reforms Act was enacted and the same came into force on 25.9.1950. The said Act provided for transfer of estates and tenures in the State, and under the provisions of Section 10 of the said Act, it was deemed that the estates and tenures in which there were subsisting lease of mines or minerals, immediately before the date of vesting, had been leased by the State Government to the holders of the subsisting lease for remainder of the term of the lease and the holders were entitled to retain the possession of the lease hold property. Thus, by virtue of said provision, the right of the erstwhile Raja of Ramgarh as lessor stood eliminated and the State of Bihar became the lessor by operation of law. Subsequently, Section 10-A was incorporated in the parent Act by Bihar Land Reforms (Amendment) Act, providing that the interest of every lessee of mines and minerals, which was subject to a sub-lease, would, with effect from such date as might be notified by the State Government in the Official Gazette, vest in the State and thereafter the sub-lessee, would hold his lease directly under the State Government. As such, with effect from this amendment the interest of the lessee, i.e., Bokaro and Ramgarh Limited in the lease hold property was extinguished and the sub-lessee West Bokaro Limited became the direct lessee under the State of Bihar. There was also a suit, being Title Suit No. 45 of 1960 in the Court of Subordinate Judge, Hazaribag, which was ultimately compromised between the State of Bihar and the West Bokaro Limited which ultimately ended in execution of an agreement dated 29th March, 1973, whereby the said company was recognized as the lessee in respect of the lease hold properties w.e.f. 27th October, 1964, subject to the payment of royalties at the rate prescribed by law. In the said agreement the Government also accepted West Bokaro Limited, as the direct lessee upon the terms as set out in the deeds of sublease and supplementary lease, both dated 23rd January, 1947, entered into between Bokaro and Ramgarh Limited and West Bokaro Limited. Subsequently, West Bokaro Limited was amalgamated with Tata Iron & Steel Company Limited together with all its assets and liabilities and properties, w.e.f., 1st April, 1973 and even the Mines Department, Government of Bihar, permitted West Bokaro Limited to transfer its lease hold interest with respect to the lease hold properties to TISCO under the provisions of Section 37 of the Mines and Minerals (Regulation and Development) Act 1957, by memo No. 2102M dated 9th April, 1974.

7. It appears that 4299.84 acres of land sub-leased in favour of West Bokaro Limited, included the area approximately of 1472.35 acres of forest land which were declared to be protected forest, including the protected forests of Pundi and Duni. According to the petitioners' case, by memo No. 4735 dated 10.12.1975 the Divisional Forest Officer granted permission under the Indian Forest Act for carrying out the mining operations in the lease hold area upon 468.62 acres of land in village Duni and Pundi. Similarly, by other orders such permissions were given with respect to the other lands in the protected forest. According to the petitioners' case the area of 226.30 acres of land in village Pundi and 10.90

acres of land in village Duni had been cleared prior to 1980 and the drilling process as well as mining operations were started prior to that, which fact is however, disputed by the forest officials. The present forest cases were filed against the petitioners due to the mining operations in these 226.30 acres of land situated in village Pundi.

8. TISCO filed C.W.J.C. No. 767 of 1993(R) in this Court challenging the interference in their mining operations by the forest officials in spite of the existing mining lease granted in their favour, stating that though they had filed representation before the Chief Conservator of Forests also, the same was not attended to or dealt with. The said writ application C.W.J.C. No. 767 of 1993 (R) was disposed of by a Division Bench of this Court by order dated 24.2.1993, which has been brought on record as Annexure-4, in which, inter alia, the following directions were given:--

"Firstly, the Chief Conservator of Forest concerned is directed to deal with and dispose of the letter of the petitioner stated in paragraph 18 of the petition after giving a personal hearing to the petitioner and after passing a speaking order. This must be done by 15th March, 1993, and the first date of hearing shall be in the office of the Chief Conservator of Forest concerned on 2nd March, 1993.

Secondly, the petitioner is a holder of mining lease. Until and unless such mining lease is terminated in accordance with law or it expires by efflux of time, the respondents and their officers are restrained from interfering with the working of the mining activities of the petitioner. It is needless to say that while carrying on mining activities, the petitioner will not contravene any provision of the Forest Conservation Act and if they do so all action under the law can be taken against them.

Meanwhile, there shall be status quo until and unless such final decision is taken by the Chief Conservator of the Forest or any other competent superior officer."

(Emphasis supplied).

9. In compliance of the said order the Regional Chief Conservator of Forests, Hazaribag, by order contained in memo No. 722 dated 15.3.1993, after hearing both the parties gave his specific findings with respect to all the disputed forest lands, which has been brought on record as Annexure-5. As regards the area of 226.30 acres of land in Pundi, it was found by the Regional Chief Conservator of Forests, Hazaribag, that clearance and drilling works were completed on the said land prior to 1980, but the mining operations were started after 25.10.1980 (i.e., the date when the Forest (Conservation) Act came into force). Same was the finding with respect to 10.90 acres of lease hold land in village Duni. After giving these findings, the Regional Chief Conservator of Forests, Hazaribag, passed the order as follows:--

"It can be thus construed that permission is needed for areas which were not broken or cleared before 25.10.1980. In this particular case the clearing of forest

growth was done prior to 25.10.1980 but the area was not exactly broken for mining purposes. This needs to be clarified by the Government of India as to whether permission will be required in this particular case. Such clarifications may take a considerable time. In the meantime, therefore the company is permitted to continue their mining and other activities till such time clarifications of the Central Government is received."

(Emphasis supplied).

10. It is thus clear that even the Regional Chief Conservator of Forests, Hazaribag, was not clear about the position, whether the permission of the Central Government was required for carrying out the mining process on these lands, but in the meantime the Company was permitted to continue with the mining and other activities till such clarification was received from the Central Government. Documents have been brought on record by the State opposite parties to show that this finding of the Regional Chief Conservator of Forest was challenged by the Forest Department both on the factual ground as well as on the ground of jurisdiction, inasmuch as, according to the opposite parties, the Regional Chief Conservator of Forest was not authorised by the High Court to decide the matter, rather it was the Chief Conservator of Forest who was directed by the High Court in its order dated 24.2.1993 passed in C.W.J.C. No. 767 of 1993(R) to decide the matter. This objection, however, in my considered view is not sustainable in the eyes of law, inasmuch as, the order of this Court quoted above would clearly show that the "Chief Conservator of Forest concerned" was directed to decide the matter "or any other competent superior officer" was also authorised to decide the matter. If the lease hold lands fall in the jurisdiction of Regional Chief Conservator of Forest, Hazaribag, he is certainly the "Chief Conservator of Forest concerned", who was directed to decide the matter. However, much deliberation is not needed on this, inasmuch as, this was also relied upon by this Court in another round of litigation between Tata Iron and Steel Co. Ltd. Vs. State of Bihar (Now Jharkhand) and Others, , which is again a decision of the Division Bench of this Court. In the said judgment this Court has taken into consideration the fact that the Regional Chief Conservator of Forests, Hazaribag, had given a finding that an area of 226.30 acres in village Pundi was reported to have been cleared prior to 1980 and drilling was done for the purpose of mining estimates for coal mining, but the mining operations had been started after 25th October, 1980 and the same was the position with 10.90 acres of land with respect to village Duni. In the said decision this Court has also taken note of the fact that the view of the Regional Chief Conservator of Forests, Hazaribag, was sought to be reviewed and a resolution was adopted by the Forest and Environment Department of the Government of Bihar on 7th August, 1993, on the basis of the information having been received in respect of 466.90 acres of forest area, which was treated as disputed area and a further enquiry was felt necessary before the Government took a final decision in the matter. Thereafter, TISCO wrote to the Minister concerned and reiterated its stand that the land comprising the disputed lands had been cleared prior to 25.10.1980,

and as such there had been no violation of the provisions of the Forest (Conservation) Act. But ultimately, by letter dated 15.11.1994 issued by the Conservator of Forests, TISCO was prohibited from carrying out the mining operations in village Pundi and Duni. TISCO again challenged the said letter dated 15.11.1994 in this Court in C.W.J.C. No. 3426 of 1994(R) reiterating its stand that the lands in question had been cleared and were no longer within the forest lands as claimed. The said writ application was disposed of on 2nd July, 1996, by quashing the said order impugned on the ground that the same was issued by an authority who was subordinate to the Regional Chief Conservator of Forests, and who did not, therefore, had the authority to override the decision of his superior officer.

11. Thereafter by letter dated 2nd July, 1997, issued by the Additional Secretary, Department of Forest and Environment, Government of Bihar to the Senior Chief Manager, West Bokaro Collieries of TISCO, it was informed that the job of survey, exploration and drilling work in Pundi and Duni comprising a total area of 468.78 acres were done after 25th October, 1980, as such the provisions of Forest (Conservation) Act, 1980 would be applicable to the said lands and that mining operations could be carried on thereupon only after obtaining permission from the Central Government. The Company was, therefore, instructed to stop all the mining works in village Pundi and Duni comprising over a total area of 468.86 acres, as otherwise the same would be in contravention of the Forest (Conservation) Act and action would be taken in accordance with law. Aggrieved by this order, the Tata Iron & Steel Company Limited again moved before this Court in C.W.J.C. No. 2150 of 1997 (R) which was ultimately disposed of by a Division Bench of this Court on 29.6.2005, as reported in Tata Iron and Steel Co. Ltd. Vs. State of Bihar (Now Jharkhand) and Others, . In the said decision, this Court taking into consideration all the aforesaid facts has again given the following direction:--

"24. On consideration of the submissions made on behalf of the respective parties, the fact scenario which emerges is that with regard to the lease comprised in the two villages namely, Duni and Pundi, the petitioner company had obtained permission under the Indian Forest Act from the competent authorities to clear land for mining purposes. It is also clear that drilling operations had been commenced as exploratory measures for coal mining operations. It is not clear as to whether the said lands after being cleared had actually been broken for the purposes of mining. While it has been asserted by Mr. Pal that on the strength of the various interim orders passed from time to time in different proceedings before the Court, mining operations had continued in certain portions of the lands which formed subject matter of the present writ application. It has also been asserted by the learned Advocate General that the same required confirmation. In this state of affairs, we are inclined to direct the petitioner company to apply to the Central Government for necessary permission to commence mining operations in the lands comprised in villages Duni and Pundi under the provisions of the Forest (Conservation) Act, 1980. But keeping in

mind the assertion made on behalf of the company that they had continued mining operation in portions of the lands which had been cleared prior to 25th October, 1980, we also feel that pending the disposal of the application to be made by the petitioner company it should be allowed to continue mining operations in the areas within the said disputed areas where it is stated that mining operations had continued. We, therefore, dispose of the writ application with leave to the petitioner company to apply to the Central Government within six weeks from date under the relevant provisions of the Forest (Conservation) Act, 1980 for permission to commence mining operations in the areas in question and if such application is made, the same is to be considered and disposed of by the appropriate authority of the Central Government within the time prescribed under the rules."

"25. For a period of six weeks and, thereafter, till such time as the Central Government does not take a final decision on the application that may be filed by the Tata Iron and Steel Company Limited, the petitioner company will be entitled to continue with mining activities in Duni and Pundi but the same will be strictly restricted to the areas where such activity is being currently undertaken by the Tata Iron and Steel Company Limited and no coercive steps will be taken against the Tata Iron and Steel Company Limited or its officials or contractors, while carrying out such mining activity in the said areas. The Tata Iron and Steel Company Limited undertakes to refrain from and is also restrained from engaging in any mining activities in the two aforesaid villages outside the areas where they are currently, engaged in mining operations. If no application is made within the aforesaid period, the respondents will be free to take steps in accordance with law."

12. Thus, this Court ultimately permitted the Company to continue with the mining operations in the disputed areas of Duni and Pundi and leave was granted to the Company to apply to the Central Government within six weeks from the date of order for permission to commence mining operations in the areas in question and if such application was made the same was to be considered and disposed of by the appropriate authority of the Central Government within the time prescribed under the Rules. It was also directed that no coercive steps shall be taken against TISCO or its officials or the contractors while carrying on such mining activities in the said area so long as the mining operations were strictly restricted to the areas where the mining operation was currently undertaken by TISCO. According to the case of the petitioners, the required application had already been given by the Company to the Central Government and the matter is still under consideration.

13. In backdrop of the aforesaid facts, learned counsel for the petitioners submitted that since the entire matter is under dispute and the right of the Company to carry out the mining operations in village Pundi and Duni have also been recognized by this Court in several writ applications, it cannot be said at this stage that the petitioners were not entitled to carry out the mining

operations in the areas involved in these cases. Indeed, it is submitted by the learned counsel for the petitioners, that even the Forest Department was not very sure whether the permission of the Central Government was required for carrying on the mining operations in the disputed area, as is apparent from the order passed by the Regional Chief Conservator of Forests, Hazaribag, as contained in Annexure-5 to these applications and he opined that this needs to be clarified by the Government of India whether such permission was required in the present case or not. Learned counsel further submitted that by the decision of this Court reported in *Tata Iron and Steel Co. Ltd. Vs. State of Bihar (Now Jharkhand) and Others*, , the Company has been allowed to carry out the mining operations in the disputed area, pending the decision of the Central Government and in that view of the matter it is apparent that no offence can be said to be made out against the petitioners under Section 33 of the Forest Act. It is submitted that at least the petitioners cannot be said to have the mens rea for committing the offence. Learned counsel accordingly, submitted that the impugned orders dated 29.7.1993 passed by the learned Chief Judicial Magistrate, Hazaribagh, in G No. 692 of 1992 and in G No. 10 of 1993 and the entire criminal proceedings against the petitioners in both these cases cannot be sustained in the eyes of law.

14. Per contra, learned counsel for the State has referred to the statements made in the counter-affidavit to show that the mining operations were not initiated in the disputed lands prior to 25.10.1980, i.e., prior to the coming into force of the Forest (Conservation) Act. Learned counsel for the State has accordingly, reiterated the stands of the opposite parties taken in the aforementioned rounds of litigations as discussed above, and submitted that the offence is clearly made out against the petitioners and accordingly, there is no illegality in the impugned orders taking cognizance against them. It is submitted by the learned counsel that the matter is still in dispute which can only be settled after a fair trial and accordingly, there can be no interference either in the orders taking cognizance or the continuance of the criminal cases against the petitioners.

15. After having heard learned counsels for both the sides and after going through the record, I find that though there is disputed question of fact involved in these cases, whether the mining operations were started on the disputed lands prior to coming into force of the Forest (Conservation) Act, 1980, or thereafter, but the fact remains that the right of TISCO to continue with the mining operations have been recognized by this Court also in several round of litigations, and in fact, by the last order dated 29th June, 2005, in C.W.J.C. No. 2150 of 1997 (R), as reported in *Tata Iron and Steel Co. Ltd. Vs. State of Bihar (Now Jharkhand) and Others*, , the Company has been allowed to continue with the mining operations in the disputed areas of village Pundi and Duni, until the matter is decided by the Central Government. There is also a direction by this Court for not taking any coercive steps for carrying out the mining activities in the said areas.

16. Thus, I am of the considered view that though the matter is a disputed one and the final decision is yet to be taken by the Central Government, but the fact remains that the right of the Company for carrying out the mining operations has been recognised by this Court as well, and it has been allowed to continue with the mining operations. This much is certain that no mens rea for committing an offence can be attached to the action of the petitioners in carrying out the mining operations and accordingly, no offence can be said to be made out against them.

17. This apart, the impugned orders taking cognizance clearly show that there is apparent lack of application of judicial mind by the Chief Judicial Magistrate, as cognizance has also been taken for the offences under Sections 52 and 64 of the Indian Forest Act, even though these are not the penal provisions at all. Section 52 of the Indian Forest Act relates to the seizure of the property liable to confiscation, whereas Section 64 of the Indian Forest Act relates to the power of arrest without warrant. Such non-application of mind by a Judicial Officer is not expected while taking cognizance of the offence.

18. Be that as it may. Since it has been held that the right of the Company and the petitioners to continue with the mining operations in the areas involved in the present cases have already been recognized by this Court, and they have also been allowed to continue with the mining operations till the final decision of the Central Government, further directing that no coercive steps shall be taken against them for carrying out the mining operations, the criminal cases against the petitioners cannot be allowed to continue. It is also held that there was complete lack of mens rea for committing an offence on the part of the petitioners and on this score also, the criminal cases against the petitioners cannot be allowed to continue. Accordingly, the impugned orders dated 29.7.1993 passed by the learned Chief Judicial Magistrate, Hazaribag, in G No. 692 of 1992 and G No. 10 of 1993, as also the entire criminal proceedings against the petitioners in both these cases, are hereby, quashed. All these applications are accordingly, allowed.