

Bidhu Bhusan Harichandan vs Dist Collector Khurda on 24 December, 2021

Author: Adarsh Kumar Goel

Bench: Adarsh Kumar Goel

Item No. 02

Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH

Original Application No. 54/2018/EZ
&
(I.A. No. 39/2020/EZ)

Bidu Bhusan Harichandan

Applicant(s)

Versus

District Collector, Khurdha & Ors.

Respondent(s)

Date of hearing: 24.12.2021

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Applicant(s) : Mr. Sankar Prasad Pani, Advocate

For Respondent(s) : Mr. Deepak Kumar Pani, ASC for R-1, 5 to 8 & 9,
Ms. Papiya Banerjee Bihani, Advocate for R-2,
Mr. Gora Chand Roy Choudhury, Advocate for R-3,
Mr. Subrat Satpathy, Advocate for R-4,
Mr. Surendra Kumar, Advocate for CPCB.

ORDER

1. Grievance in this application is against illegal laterite stone mining at 40 different sites in about 500 acres area in the villages Tapanga, Anda Jhinki and Jhari under Nijigarh Tapang Panchayat. The area includes Cashew Jungle (forest), Gramya Jungle (forest) and Gochar land meant for

grazing.

2. According to the applicant, mining is resulting in damage to the environment and loss to the revenue and is conducted without requisite EC and consents under Air (Prevention & Control of Pollution) Act, 1981 and Water (Prevention & Control of Pollution) Act, 1974, in violation of judgments of the Hon'ble Supreme Court inter alia in Deepak Kumar & Ors. v. State of Haryana & Ors.¹ The Applicant brought this illegality to the notice of concerned authorities including Secretaries of Revenue and Forest & Environment Department, Chief Administrator, Jagannath Temple, District Collector, Khurda, Superintendent of Police, Khurda, State PCB and SEIAA, Odisha on 10.09.2018 but no action has been taken.

3. The application was filed on 16.12.2018. On 04.02.2019, notice was issued to the respondents - Collector Khurda, State PCB, SEIAA, Odisha, Chief Administrator, Jagannath Temple Administration, Superintendent of Police, Khurda and other respondents. A Joint Committee comprising of Senior Scientist/Engineer, CPCB, District Magistrate, Khurda, Member Secretary, SEIAA, Odisha and representative of the State PCB was constituted to conduct inspection and to give a report to this Tribunal within two months.

4. The matter was thereafter considered on several occasions. Reference may be made to some of the orders. Vide order dated 20.11.2019, action taken report filed by the Committee was considered and found unsatisfactory and a fresh report was sought. On 01.10.2020 the Tribunal considered I.A. No. 39/2020/EZ filed by the Sub-Collector, Khurda, seeking direction to the State PCB to recover the compensation from the owners of the vehicles transporting the mineral. The environmental compensation was assessed at 1,80,46,411/-. Tribunal rejected the suggestion and observed that compensation has to be recovered not only from the drivers but also from the persons undertaking the illegal mining who were required to be identified. On (2012) 4 SCC 629 14.06.2021, the Tribunal considered report dated 02.12.2020 filed by the Sub-Divisional Magistrate, Khurda and found the same to be unsatisfactory as the violators were not identified. Action plan for restitution by the Jagannath Temple Administration was also found to be unsatisfactory. It was observed that while it was mentioned that there were 26 stone quarries (the number of quarries is 59 as per letter dated 09.08.2021 furnished to the Chief of Shree Jagannath Temple Administration by Geo Consultants Private Limited), there was no mention about any clearance granted for such mines. Again, on 08.10.2021, the Tribunal considered the affidavit of the Tehsildar Khurda which failed to give particulars of the persons engaged in illegal mining. On 06.12.2021, affidavit of the Collector Khurda dated 03.12.2021 was taken on record to the effect that restoration plan involved cost of 11,75,00,000/-. Supplementary affidavit dated 23.12.2021 has been filed on behalf of the applicant to the effect that mining was continuing without any remedial action. The same is also taken on record

5. We have heard learned Counsel for the parties and perused the records.

6. Learned Counsel for the applicant submitted that there is large scale unregulated and unscientific illegal mining to the detriment of public revenue as well as environment and public health and those conducted mining are not being made accountable which is failure of rule of law. The mining has

been conducted without any authority of owner - the Jagannath Temple Administration, Respondent No.4. In its affidavit in Para 5(iii), it is stated that Notice No. 2513, dated 08.03.2019 has been issued for auction of the said quarries which was duly published by the Sub-Collector, Khorda cum-Competent Authority of Shree Jagannath Temple administration. There is no clearance of environmental regulators, as stated by learned Counsel for SEIAA and State PCB. Still, no remedial action has been taken. Violation is of high magnitude. From the estimate of cost of restoration, which is said to be around 12 Crores, illegal mining may be of several crores. As per law laid down inter alia in Common Cause v. Union of India² and as per Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, the entire value of the mined mineral has to be recovered from the person undertaking illegal mining, apart from environmental compensation for damage to the environment, on restoration principle with deterrent element, having regard to the financial capacity of the law violators. Action has also to be taken against the vehicles used in the process of transportation of illegally mined material by way of forfeiture. It appears that there is all round failure of the Administration in safeguarding the public revenue as well as protecting the environment. This calls for remedial action, including action against the erring Officers who may either be involved in collusion or negligence. Illegal mining is not only an offence under the Mines and Minerals Act but also under the Environment (Protection) Act, 1986, Air (Prevention & Control of Pollution) Act, 1981 and Water (Prevention & Control of Pollution) Act, 1974. Further, any person collecting proceeds of the crime under the said Acts automatically commits an offence under Section 3 of the Prevention of Money Laundering Act (PMLA), 2002. It is also an offence of theft under Indian Penal Code (IPC). Apart from statutory regulators, the Police Authorities as well as Enforcement Directorate (ED) have not taken any action in respect of such crimes.

2 (2017) 9 SCC 499

7. In view of above, we direct Home Secretary, DGP and Chairman, State PCB, Odisha to hold a joint meeting within two weeks and constitute an appropriate Special Task Force (STF) to consider registering a criminal case for investigation of the crime in question to identify the violators and bring them to justice. Apart from such action, there is need for further preventive and remedial action for protection of environment and enforcement of environmental laws, including recovery of compensation and restoration measures. A joint Committee comprising of MoEF&CC (Regional Office at Bhubaneswar), CPCB, State PCB, SEIAA, Odisha and District Magistrate, Khurda may meet within two weeks to plan remedial action in this regard. The State PCB will be the nodal agency for coordination and compliance. The Committee may undertake visit to the site, interact with the stakeholders and plan further action. The Committee may also ascertain the identity of the law violators in coordination with the investigators or otherwise and proceed against them for enforcement of environmental norms, including action of stopping the illegal mining. It may furnish its action taken report within four months by email at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The report may also be uploaded on the website of CPCB to enable any of the parties to file response thereto.

List for further consideration on 25.04.2022.

A copy of this order be forwarded to Home Secretary, Chief Secretary, DGP, Odisha, MoEF&CC (Regional Office Bhubaneswar), CPCB, State PCB, SEIAA, Odisha and District Magistrate, Khurda by email for compliance.

Adarsh Kumar Goel, CP Sudhir Agarwal, JM B. Amit Sthalekar, JM Brijesh Sethi, JM Dr. Nagin Nanda, EM Saibal Dasgupta, EM December 24, 2021 Original Application No. 54/2018/EZ & (I.A. No. 39/2020/EZ) AVT