

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) PIL No.6375 of 2023

Prasanta Kumar Das

....

Petitioner

Mr. S. K. Dalai, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. Debakanta Mohanty, AGA for State

CORAM:

ACTING CHIEF JUSTICE DR. B. R. SARANGI

MR. JUSTICE MURAHARI SRI RAMAN

ORDER
29.11.2023

Order No.

05.

1. The matter is taken up through hybrid mode.
2. Heard Mr. S. K. Dalai, learned counsel for the Petitioner and Mr. Debakanta Mohanty, learned Additional Government Advocate (AGA) for the State-Opposite Parties.
3. The Petitioner has filed this writ petition in the nature of a Public Interest Litigation (PIL) praying for a direction to the Opposite Parties No.3 to 13 to take prompt action to stop illegal mining by way of mechanized manner, to adopt guided and controlled method for transportation of sands, to cause an independent inquiry in relation to the illegal practice adopted by Opposite Parties No.3 to 13 and declare the present auction procedure for grant of mining lease as illegal, arbitrary, tainted with *mala fide* and against larger public interest.
4. Mr. Dalai has contended that on account of illegal sand mining on the riverbed of Kathajodi, not only water pollution and air

pollution are caused but also such activities of mining and transportation of sand cause health hazards. This apart, accidents do occur as the vehicles ply between 7 A.M. and 10 P.M. It is further contended that though the State authorities have stated to have issued direction to the lessees restricting transportation of sand during 7 A.M. to 10 P.M., it is an eyewash, as every-day, a large number of heavy vehicles, like—Hyva trucks carrying sand move on road causing inconvenience to the public at large. Apart from the above, it is contended that there is a mechanized way of mining, which is not permissible as per the guideline issued by the Government. In spite of that, the lessees are violating the terms and conditions prescribed for mining operation and no action or adequate steps have been taken against them.

5. Mr. Mohanty has contended that all possible and effective steps have been taken by the State authorities to see that there is no illegal mining of sand by the lessees. To substantiate this contention, he has relied upon the affidavit dated 19th July, 2023 filed by the Collector, Cuttack sworn in by Mr. Bhabani Shankar Chayani, wherein references have been made to certain documents and the Enquiry Report annexed thereto as Annexure-A series, which specifically state as follows:

*“.....Meanwhile, show-cause notices have been issued to the violators by the concerned Tahasildars in addition to imposition of penalty. Copies of the said notices are annexed hereto as **Annexure-J**.*

Hence, from the above facts it can be concluded that, stringent actions are being taken against the lessees for violation of provisions of OMMC Rules, 2016. Whenever the matter of mechanized extraction of sand has come to

the notice of Revenue Authority, penalty as applicable is being imposed against the lessees.

Lastly, it may be noted that in the meanwhile, the Steel & Mines Department, Odisha vide Gazette Notification No. 3603/S&M, Dtd. 27.12.2012 has amended the OMMC Rules, 2016. As per the amended Rules, the Dept. of Steel and Mines is taking over the control of minor minerals from the Revenue Dept., wherein the Tahasildar is no more the competent authority and in its place the Mining Officer of respective districts has been declared as competent authority. Similarly the controlling authority has been replaced from District Collector to Deputy Director of Mines of respective zone. The transfer of minor mineral sources are going on and may be completed soon.”

6. On perusal of the said Enquiry Report, it is seen that in the communication dated 3rd April, 2023 (Annexure-A) made by the Additional District Magistrate, Cuttack to the Sub-Collector, Sadar, Cuttack and Sub-Collector, Banki, the following direction of this Court passed in the present case on 16th March, 2023 has been quoted.

“..... Collector, Cuttack to make an enquiry and inform the Court on an affidavit what the current position is. The Collector will in the process of conducting an inquiry issue notice to the alleged violators and after giving them hearing take appropriate action if he finds that, the violation stand prima facie established. The affidavit of Collector, Cuttack be filed positively by 1st May-2023”

7. Thereafter, the Sub-Collector, Banki vide letter dated 20th April, 2023 has communicated the Additional District Magistrate (ADM) (Touzi & Loans), Cuttack that the Tahasildar Banki and Tahasildar, Damapada have been directed to conduct detail enquiry in the matter and report compliance thereof. In response thereof, the

Tahasildar, Banki vide letter dated 18th April, 2023 has submitted the factual report to the Sub-Collector, Banki. Paragraph 3 thereof reads as follows:

“3. To control illegal extraction / extraction of sand beyond lease area, field functionaries are visiting the sairat sources in every fortnight and competent Authorities visit the sources in every month. Further Tahasil level enforcement teams have been formed for checking illegal mining & transportation of minor minerals on regular basis with the periodic help of CDEF team, CDA, Cuttack. Regular enforcement have been carried out by the enforcement Team to prevent theft of minor minerals and Royalty as well as Penalty is being collected. The detailed list of collection of Royalty & Penalty is attached as Annexure-A.”

8. Similarly, the Tahasildar, Damapada has also communicated the Sub-Collector, Banki vide letter dated 17th April, 2023 in the same way as has been mentioned above by the Tahasildar, Banki. On 27th April 2023, the Sub-Collector, Sadar, Cuttack has also communicated the ADM, the relevant portion of which reads as under:

“All the guidelines issued vide letter No. 12611 / R&DM dt. 26.04.2019 of Revenue & Disaster Management Department for regulating the sand quarrying in the state are being strictly followed by the Tahasildars. It is pertinent to mention that as per clause D (iv), for prevention of any sort of illegal sand mining – the Revenue Administration & Police Administration shall seize all machines, vehicles etc. used for carrying out illegal sand quarrying is also diligently followed with respect to all sources in case of any deviations are being observed.

As per the guidelines of Revenue & Disaster Management Department, field functionaries are regularly visiting the sairat sources every fortnight & the competent authority used to visit the sairat sources every month to prevent the theft of minor minerals. Further, regular

enforcement operations are being conducted by the Tahasil team with the help of CDEF team of CDA, Cuttack under the scheme “Prevention of theft of Minor Minerals and eviction activities” to control the illegal activities regarding mining & transportation of minor minerals. Hence from the above facts it can be safely concluded that there is no deliberate extraction of sand beyond lease area and no Govt. official is having any kind of unholy nexus with the bidders. When the matter of mechanized extraction has come to the notice of the Revenue Authority, suitable fine are being imposed against the defaulting bidders.”

9. So far as Annexure-D series are concerned, these are replies/letters issued by the persons interested in the matter stating that the allegations are not correct.

10. Having heard learned counsel for the parties and after going through the materials available on record, it is seen that though notice had been issued to the Opposite Parties including the State on 16th March 2023, till date no counter has been filed by the State and today, Mr. Mohanty, learned AGA, seeks time to file counter affidavit. But, it is brought to our notice by the Bar that the situation and the ground reality are so alarming that the Cuttack city is filled up with pollution and, therefore, this Court is not inclined to take into consideration the prayer made by the State seeking time to file counter. If the affidavit sworn to by the then Collector—Mr. Chayani and the documents forming part of enquiry report enclosed thereto are examined, with reference to the submission made on behalf of the State, it would be made clear that a false and frivolous affidavit has been filed by a responsible officer of the State Government viz., the then Collector, Cuttack. It is observed on scrutiny that the replies/letters of interested persons are replete and

replicated explanations and the enquiry report prepared being based on such explanation, the affidavit containing such false and incorrect factual position is not acceptable. Since such a false affidavit has been filed by such a responsible officer without visualizing the ground reality, this Court takes a very serious view of the matter. Day in and day out, it is observed that the quarrying operation is being done by mechanized way and, as such, Sub-Clause.iv of Clause-C of the guidelines issued by the Department of Revenue and Disaster Management, Government of Odisha dated 26th April, 2019, which deals with quarrying/mining operation, has been violated. The said Sub-Clause.iv reads as follows:

“C. Quarrying/Mining operation:

xxx

xxx

xxx

iv. No quarrying operation of sand shall be allowed through mechanized means and suction method.”

11. As it appears, a large number of excavators are being utilized by the lessees to remove the sand from the riverbed of Kathajodi. By this process, the lessees are violating the condition stipulated under Sub-Clause.iv as quoted above. Even though this fact has been brought to the notice of the authority concerned by way of filing the present petition, it appears that the authorities, who are in-charge of the same, have not taken care of and attempted to control the situation; rather they, as it appears, have hand in glove with the lessees for the reasons best known to them. More particularly, when this case is still pending for adjudication and notice has also been issued to them, they are not taking sincere effort to file a proper affidavit, by way of counter, which shows that the authorities are encouraging the lessees to go for illegal mining and, therefore, they

are all parties to the illegal extraction of sand, for which they should also be penalized by initiating appropriate proceedings against them. More so, this Court is concerned about the public health and safety of the people and environment, which is the part of Article-21 of the Constitution of India. To protect the interest of all citizens, if the State authorities, who have been vested with powers by the Constitution to provide good health and to take proper care, fail to perform their duties and the same is violated at their behest, this Court will not appreciate the same and, as such, the persons who are in the helm of affairs should be suitably dealt with in accordance with law.

12. The affidavit which has been filed by the then Collector on 19th July, 2023 itself is based on false information and flimsy statements supplied to him and, therefore, it is construed that the said affidavit is a false one and criminal proceedings should be initiated against such persons, which would be a lesson for others. It has also been seen that the vehicles indulged in illegal mining of sand have been imposed with penalties and money has been realized, but such penal action is insufficient/inadequate as the law being violated. The authority cannot apply the method, which is suitable to both the authority and the lessees. In any case, imposition of penalty may be one of the reasons for violation of the guidelines, but that cannot be extended to illegal mining of sand, especially when the lessees know the provisions of law fully well. On the one hand the authorities are allowing the lessees to go for mechanized mining of sand quarry, on the other hand they are permitting to do so by protecting them simply imposing certain penalties, and that itself

shows the callous action of the authorities. The documents filed by the State, along with the enquiry report, clearly show the authorities have admitted that there is excess mining/quarrying of sand.

13. At this point of time, learned AGA states that he does not want to press the said affidavit dated 19th July, 2023 and seeks one opportunity to file a fresh affidavit. This Court is of the considered view that if one opportunity is granted to the Opposite Parties and they will rectify their mistake within fifteen days, then this Court will not pursue the proceedings against the authorities concerned.

14. Call this matter after fifteen days. The counter affidavit shall be filed by the State in the meantime.

(DR. B. R. SARANGI)
ACTING CHIEF JUSTICE

(M. S. RAMAN)
JUDGE

M. Panda