

Arun Kumar Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Nov-16-2016

Appellant : Arun Kumar

Respondent : The State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI L.P.A. No. 391 of 2014 with L.P.A. No. 389 of 2014 with L.P.A. No. 392 of 2014 with L.P.A. No. 393 of 2014 with L.P.A. No. 394 of 2014 with L.P.A. No. 395 of 2014 with L.P.A. No. 396 of 2014 with L.P.A. No. 402 of 2014 with L.P.A. No. 404 of 2014 (Against the Judgement dated 16.9.2014 passed in W.P.(C) No. 2761 of 2014 and analogous cases by the learned Single Judge). ----- L.P.A. No. 391 of 2014 M/s R.D.S. Bricks, a proprietorship firm, Jamshedpur Appellant with L.P.A. No. 389 of 2014 M/s Dinkar Bricks, a proprietorship firm, Jamshedpur Appellant with L.P.A. No. 392 of 2014 Arun Kumar Appellant with L.P.A. No. 393 of 2014 M/s Sona Bricks, a proprietorship firm, Jamshedpur Appellant with L.P.A. No. 394 of 2014 M/s Shan Bricks, a proprietorship firm, Jamshedpur Appellant with L.P.A. No. 395 of 2014 Amitava Sen Appellant with L.P.A. No. 396 of 2014 Sri Narayan Singh Appellant with L.P.A. No. 402 of 2014 M/s G.S. Enterprises, a proprietorship firm, Jamshedpur Appellant with L.P.A. No. 404 of 2014 Pawan Kumar Singh Appellant Versus 1. State of Jharkhand 2. The Secretary, Forest and Environment Department, Government of Jharkhand, Ranchi.

3. The Monitoring Committee, Eco Sensitive Zone, Jamshedpur. 2 4. Deputy Forest Conservator & Zonal Director, Elephant Project-cum-Co-ordinator, Monitoring Committee, Eco Sensitive Zone, Jamshedpur. .. Respondents (In all Appeals) ----- For the Appellants : Mr. Rajiv Ranjan, Sr. Advocate Indrajit Sinha & Manoj Kumar, Advocates For the Respondents : M/s Ajit Kumar, AAG, Vikash Kumar & Sreenu Garapati, Advocates ----- PRESENT : HONBLE MR. JUSTICE H. C. MISHRA HONBLE MR. JUSTICE Dr. S.N. PATHAK By Court:- All these letters patent appeal arise out of the common Judgment and as such, they have been heard together and being disposed of by this common Judgement.

2. Heard learned counsels for the appellants and learned counsel for the respondent State.

3. The appellants in these cases are brick kiln owners running their brick kilns within the area up to five kilometers from the boundary of the protected area of Dalma Wide Life Sanctuary. They were running their brick kilns under license and upon getting N.O.C. from the Pollution Control Board. The Union of India, in its Ministry of Environment and Forests, issued notification bearing No.S.O.680 (E) dated 29.03.2012, whereby in exercise of the power conferred under Section 3 of the Environment (Protection) Act,1986, the area up to five kilometers from the boundary of the protected area of Dalma Wild Life Sanctuary was declared as Eco-sensitive Zone. The area, which were declared Eco-sensitive zone, have been detailed in the notification. The notification further stipulated that a Zonal Master Plan for the Dalma Eco-sensitive Zone shall be prepared by the State Government, in such manner as are specified under the Wild Life (Protection) Act, 1972, the law relating to town and country planning for the time being in force in the State, the divisional working plans and the guidelines issued by the Central Government, within a period of one year from the date of the notification and approved by the Central Government in the Ministry of Environment and Forests. It was again provided in the said notification that pending the preparation for the Zonal Master Plan for the Eco-sensitive Zone and approval thereof by the Central Government, all new activities, specified in Annexure-3 to the notification, shall be allowed only after the proposals are scrutinized and approved by the Monitoring Committee referred to in paragraph 4. Paragraph 3 of the notification detailed the

prohibited, 3 regulated and permitted activities in Dalma Eco-sensitive Zone, and as regards the Industrial Units, it provided as follows:- Industrial Units (a) On and after the publication of this notification in the Official Gazette, no new polluting industries shall be allowed to be setup within the Eco-sensitive Zone; (b) any non-polluting, non-hazardous, small-scale and service industry, agriculture, floriculture, horticulture or agro-based industry producing products from indigenous goods from the Eco- sensitive Zone, and which do not cause any adverse impact on environment, may be permitted in the Eco-sensitive Zone; (c) no establishment of new wood based industry shall be permitted within the limits of Eco-sensitive Zone.

4. As regards quarrying and mining, the said notification provided as follows:- "(a) No mining activity except for bona fide domestic use of the local residents shall be allowed within the Eco-sensitive Zone. (b) No crushing activity shall be allowed within the Eco-sensitive Zone." 5. It is not in dispute that all the appellants herein were running their brick kilns within the Eco-sensitive Zone and as per Annexure-3 to the notification, the activities relating to commercial mining, setting up industries causing pollution (water, air, soil, noise etc.), commercial use of firewood, discharge of effluents and solid waste in natural water bodies or terrestrial area, were completely prohibited. Air and vehicular pollution was to be regulated.

6. Pursuant to the issuance of the notification, the appellants were informed by letter dated 20.02.2014 as contained in Annexure-5 to L.P.A. No.391 of 2014, and the similar letters issued to the other appellants, whereby the appellants were prohibited by the respondent No.4, the Deputy Conservator of Forests, Jamshedpur, from carrying out brick kiln activities. It was informed in the said letter that they were being prohibited in view of the decision taken by the Monitoring Committee on 12.11.2013. The minutes of the Monitoring Committee have also been brought on record in the L.P.As.

7. Aggrieved by the aforesaid letter and decision of the Monitoring Committee prohibiting the appellants from carrying out the brick kiln activities, the petitioners appellants moved this Court in different writ applications, which were heard together and by the common Judgement dated 16.09.2014, all the writ

applications were dismissed by the learned Single Judge. Aggrieved by the said Judgement, the appellants have preferred these Letters Patent Appeals.

8. From the discussions made in the Judgement, under appeal, it is apparent that the notification dated 29.03.2012 issued by the Ministry of 4 Environment and Forests, Government of India, was not under challenge. To the contrary, the appellants relied on the said notification and their argument was that according to the notification, pending the preparation of the Zonal Master Plan for Dalma Eco-sensitive Zone and its approval by the Central Government, only all new activities were either to be allowed only after the proposals were scrutinised and approved by the Monitoring Committee, or no new polluting industries were to be allowed to be set up. The case of the appellants is that they were already running their units before coming into force of the notification, and their units were already existing from before and not the new units and as such, they were not covered by the notification, as there was no prohibition in the notification for the units already in existence. The appellants' further stand was that the notification was not retrospective in nature. As such, there was no occasion for prohibiting the appellants from running their brick kiln units, and the impugned decision was absolutely illegal and in teeth of the notification.

9. The learned Single Judge came to the conclusion that though in notification dated 29.3.2012 it is specifically not mentioned that all existing industries falling within the Eco-sensitive zone must be closed down, but it did not appeal to the reason that an existing industry, even if polluting one, can be continued within the area up to five kilometers from the boundary of the Dalma Wildlife Sanctuary, which had already been declared as Eco-sensitive zone. Learned Single Judge also held that though it is true that the notification which has not been expressly made retrospective cannot be given a retrospective operation, but the activities, which had been categorized as prohibited activity, in the notification dated 29.3.2012, even though operating prior to 29.3.2012, could not be permitted to continue. Learned Single Judge found from the records that in most of the cases, mining lease of the appellants had already expired and none of the units had obtained mandatory environment clearance under the Environment (Protection) Act, 1986. With these findings, the writ applications of the petitioners appellants

were dismissed. However, the appellants were given the liberty to approach the State Government, which was directed to explore the possibility of re-location of the units of the appellants. It is the case of the appellants that they moved the State Government in the year 2014 itself, but no action has been taken on their representations so far.

10. In the Judgement under appeal, it finds mentioned that the respondent State has objected the very maintainability of the writ applications on the ground that in view of the specific direction of the Hon'ble Apex Court in the case of Bhopal Gas Peedith Mahila Udyog Sangathan & Ors. Vs. Union of 5 India & Ors., reported in (2012) 8 SCC326 the writ applications were not maintainable in the High Court and the petitioners ought to have approached the National Green Tribunal. However, no finding was given by the learned Single Judge on this point.

11. The direction of the Supreme Court of India in Bhopal Gas Peedith Mahila Udyog Sangathan case (supra), is quoted herein below:-

"0. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the NGT Act) particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the en- vironmental issues and matters covered under the NGT Act, Sched- ule I should be instituted and litigated before the National Green Tribunal (for short NGT). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters in- stituted after coming into force of the NGT Act and which are cov- ered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for considera- tion of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving ques- tions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such

cases to NGT in its discretion, as it will be in the fitness of administration of justice." (Emphasis supplied.) 12. Learned counsel for the appellants has vehemently argued that in spite of the aforesaid direction of the Apex Court, the writ applications were still maintainable in the High Courts in the matters relating to environmental issues. It is submitted that the aforesaid direction of the Apex Court, in Bhopal Gas Peedith Mahila Udyog Sangathan case (supra), was stayed by the Hon'ble Supreme Court of India by order dated 10.03.2014, in S.L.P.(C) No.27327 of 2013 (Adarsh Co-operative Housing Society Ltd. Vrs. Union of India & Ors.). However, subsequently, Adarsh Co-operative Housing Society Ltd. case was withdrawn by those petitioners and the matter again went back to the Bombay High Court. It is submitted by learned counsel for the appellants that even after the said decision, writ applications involving environmental issues have been entertained by the Gujrat High Court, as also by the Supreme Court of India. As such the writ applications of the petitioners were quite maintainable. 6 13. Learned counsel for the appellants has also cited the decisions on the point that the notification could not be given the retrospective effect. It is submitted that in view of the fact that in the notification dated 29.3.2012, there was no prohibition for already existing units, the impugned decision of the respondent-authorities is absolutely illegal and cannot be allowed to continue. Learned counsel for the appellants has also pointed out from the notification dated 29.3.2012 that the Monitoring Committee of fourteen members was to be constituted under the said notification, but the meeting dated 12.11.2013 of the Monitoring Committee, pursuant to which, the appellants have been prohibited from running their brick kiln units, was attended only by three Members and as such, the prohibition order issued to the appellants on 20.2.2014 and the decision of the Monitoring Committee dated 12.11.2013, are fit to be quashed on that score also.

14. Learned counsel for the State, on the other hand, has placed reliance upon the decision of the Supreme Court of India, in the case of Bhopal Gas Peedith Mahila Udyog Sangathan (supra) and placing paragraphs-40 and 41, it is submitted that there is a clear direction that all the matters instituted after coming into force of the National Green Tribunal Act, the matters covered under the NGT Act, Schedule I, should be instituted and litigated before the National Green Tribunal. It is also pointed by learned counsel for the State that Schedule-1 of the National Green

Tribunal Act contains Environment (Protection) Act, 1986, and the notification dated 29.3.2012 declaring the area up to five kilometers from the boundary of the protected Dalma Wildlife Sanctuary as Eco-sensitive Zone, has been issued under the Environment (Protection) Act. Learned counsel has also pointed out from the said notification that the mining activities, except for bona fide domestic use of the local residents, has been prohibited under the said notification and the brick kiln units essentially required the mining of the earthen soil, which admittedly is minor mineral. It is also pointed out by learned counsel for the State that the activities of the units of the appellants shall also be polluting air in the terrestrial area and there may be commercial use of firewood, at the place of coal, for ignition in the brick kiln, which activities are completely prohibited under the notification. Learned counsel for the State has also pointed out that all these activities came within the definition of the 'substantial questions relating to environment', as defined in section 2(m) of the National Green Tribunal Act, 2010, which fall within the jurisdiction of the National Green Tribunal to adjudicate the matter. It is further pointed out that the composition of the National Green Tribunal, as prescribed 7 under Section 4 of the National Green Tribunal Act, consists of Chairman, Judicial Members and several Expert Members, and it is for the Expert Members to see whether brick kilns run by the appellants, ought to have been permitted within the Dalma Eco-sensitive Zone or not. Learned counsel, accordingly, submitted that in view of the decisions of the Apex Court in Bhopal Gas Peedith Mahila Udyog Sangathan (supra), all the writ applications ought to have been dismissed in limine, directing the petitioners to move before the National Green Tribunal for redressal of their grievances. It is further submitted by learned counsel for the State that even otherwise, the activities pointed out above, are absolutely prohibited under the notification dated 29.3.2013 and accordingly, the writ applications have been rightly dismissed by the learned Single Judge.

15. Having heard learned counsels for both the sides and upon going through the record, we find that paragraph 3 of the notification dated 29.3.2012, dealing with the industrial units quoted above, clearly states that on or after publication of the notification in the official gazette, no new polluting industry shall be allowed to be set up within the Eco-sensitive zone. However, the notification also states that any non-polluting, non-hazardous, small-scale and service industry, agriculture,

floriculture, horticulture or agro-based industry producing products from indigenous goods from the Eco-sensitive Zone, and which do cause any adverse impact on environment, may be permitted in the Eco-sensitive Zone. This clearly shows that the intent of the notification is that any industry / activity causing pollution is not to be permitted within the Dalma Eco-sensitive Zone. We find no illegality in the finding given by the learned Single Judge and though in the notification dated 29.3.2012, specially it is not mentioned that all the existing industries falling within the Eco-sensitive Zone must be closed down, it does not appear to reason that an existing industry even, even if a polluting one, can be continued within the Eco-sensitive Zone. Some of the activities, namely, mining activities, industries causing pollution, etc., are completely prohibited under the notification.

16. Learned counsel for the appellants while arguing the case submitted that the brick kiln may be allowed to operate and the appellants shall mine / bring the earthen soil from outside from the area of the Eco-sensitive Zone to their respective units, for running their units. This submission of learned counsel for the appellants cannot be accepted.

17. Though we do not find any fault in the findings given by the learned Single Judge, while dismissing the writ applications on merits, but we are of the considered view that in view of the specific direction of the Apex 8 Court in Bhopal Gas Peedith Mahila Udyog Sangathan (supra), the writ applications were not even maintainable in the High Court and the appellants ought to have approached the National Green Tribunal, particularly, in view of the issues involved in the writ applications, which required adjudication by the Expert Members of the National Green Tribunal. Whether the magnitude of the pollution created by the units of the appellants was permissible within Dalma Eco-sensitive Zone, is also a question which can be adjudicated by the Expert Members of the National Green Tribunal.

18. In view of the aforesaid discussions, we are of the considered view that since the cases of the appellants were required to be decided by the National Green Tribunal, the appellants be given the liberty to move the National Green Tribunal for adjudication of their cases afresh. If the appellants move the National Green Tribunal, the impugned judgment dated 16.9.2014 passed in W.P. (C) No. 2761 of

2014 and analogous cases, shall not come in the way of the National Green Tribunal in giving its independent decision in the matters. Upon adjudication of the matters by the National Green Tribunal, if made, the decision of the National Green Tribunal shall prevail.

19. All these appeals, accordingly, stand dismissed, with the observation / liberty as above.

20. We find from the record that by order dated 26.7.2016 passed in these appeals, an interim order was passed directing the appellants not to operate their brick kilns and further directing the respondent State that the brick kiln units of the appellants shall not be demolished in the meantime. We extend the interim order only for a period of four weeks from today, during which, the appellants may chose to move the National Green Tribunal. (H. C. Mishra, J.) (Dr. S.N. Pathak, J.)
Jharkhand High Court, Ranchi Dated the 16th November, 2016 NAFR/R.Kr.

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