

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Public Interest Litigation No.164 of 2016

Nirmala D/o Panka Angulwar and another
Versus
Union of India and others

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri H.M. Bobde, Advocate for Petitioners.
Shri S.A. Chaudhari, Advocate for Respondent Nos.1 to 3.
Shri Subodh Dharmadhikari, Senior Advocate (appearing as Special Counsel), assisted by Ms T.H. Khan, Assistant Government Pleader for Respondent Nos.4 to 8.
Shri Chinmay S. Dharmadhikari, Advocate for Respondent Nos.9 and 10.
Shri D.C. Daga, Advocate for Respondent No.11.
Shri Sunil Manohar, Senior Advocate, assisted by Shri Akshay Naik, Advocate for Respondent No.12.

Coram : R.K. Deshpande & Vinay Joshi, JJ.
Date : 27th June, 2019

1. Heard the learned counsels appearing for the parties.
2. This Public Interest Litigation claims the reliefs as under :

“(i) Direct the Respondent to hold an enquiry about the grant of lease to the respondent No.9 to 12 with respect to grant of mining lease of Surajagarh (Wooria Hills) Bhamaragarh Range, Forest Compartment No.197, 198, 199, 227 and 228 at Tahsil Etapalli, District-Gadchiroli;

(ii) Direct the Respondent to hold an enquiry about the violation of lease condition and non setting up of Project by respondent no.9 to 12 with respect to Surajagarh (Wooria Hills) Bhamaragarh Range, Forest Compartment No.197, 198, 199, 227 and 228 at Tahsil Etapalli, District-Gadchiroli;

(iii) Direct the Respondent to hold an enquiry about the violation of forest rights of the local people with respect to grant of mining lease of Surajagarh (Wooria Hills) Bhamaragarh Range, Forest Compartment No.197, 198, 199, 227 and 228 at Tahsil Etapalli, Dist-Gadchiroli;

(iv) Direct the Respondent to hold an enquiry about the cutting of trees, killing of wild animals like serpents while constructing the approached road for the purpose of carrying out mining activities at Surajgargh (Wooria Hills) Bhamragarh Range, Forest Compartment No.197, 198, 199, 227 and 228 at Tahsil Etapalli, District-Gadchiroli;

(v) Direct the respondent to hold the inquiry about the violation of Panchayat (Extension to Schedule Areas) Act, 1996 while carrying out mining activities at Surajragh (Wooria Hills) Bhamragarh Range, Forest Compartment No.197, 198, 199, 227 and 228 at Tahsil Etapalli, Dist-Gadchiroli;

(vi) Direct the respondent to hold an inquiry about violation of the provision of the Indian Forest (Maharashtra) (Regulation

of Assignment Management and Cancellation of Village Forest Rules, 2014 and Schedule Tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008.

(vii) Direct the respondent to hold an inquiry about the illegal excavation carried out by the respondents No.9 to 12 at Surajagarh (Wooria Hills) Bhamaragarh Range, Forest Compartment No.197, 198, 199, 227 and 228 at Tahsil Etapalli, Dist.-Gadchiroli;

(viii) Direct the respondent to hold an inquiry about illegal excavation, loss of royalty, Loss of Forest resource like and bamboo and Tendu, issuance of TP to the overloaded trucks of the respondent no.9 to 12 who are carrying the mineral from Surajagarh (Wooria Hills) Bhamaragarh Range, Forest Compartment No.197, 198, 199, 227 and 228 at Tahsil Etapalli, Dist. Gadchiroli;

(ix) By way of interim order, direct the respondent no.9 to 12 to stop the mining activities, Transportation of Mineral, issuance of TP at Surajagarh (Wooria Hills) Bhamaragarh Range, Forest Compartment No.197, 198, 199, 227 and 228 at Tahsil Etapalli, Dist. Gadchiroli;

(x) Direct the respondents to stop the further degradation of forest situated at Surajagarh (Wooria Hills) Bhamaragarh Range, Forest Compartment No.197, 198, 199, 227 and 228 at Tahsil Etapalli, Dist. Gadchiroli;

(xi) Direct the respondents No.9 to 12 to set up project at Etapalli or Aheri Tahsil and provide the employment to local people at Surajagarh Iron Ore Project carried out by the respondent No.9 to 12 at Surajagarh (Wooria Hills) Bhamaragarh Range, Forest Compartment No.197, 198, 199, 227 and 228 at Tahsil Etapalli, Dist. Gadchiroli.

(xii) Grant any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case."

3. The reliefs claimed in prayer clauses (i), (iii), (v), (vi) and (vii) are covered by the decision, rendered by us in Public Interest Litigation No.56 of 2017. Except the arguments which are dealt with, no other point is urged in support of the claim.

4. Shri Bobde, the learned counsel appearing for the petitioners, submitted that the objection raised in this petition is not in respect of grant of lease for mining purposes, but it is in respect of violation of the terms of the lease. According to him, the Steel Industry, for which the mining lease has been granted for the captive purposes, is required to be established in Gadchiroli District so as to provide employment to the residents of the local area and the respondents have failed to establish such Industry, which results in violation of the condition of the lease.

5. Relying upon the amendment incorporated as per the letter dated 11-9-2003 by the State Government asking the petitioners to establish the Steel Industry in Gadchiroli District, it is urged that no

steps are taken and the Industry is not established and, therefore, the local residents are deprived of the employment opportunity. It is also urged that the mining lease is granted for the use of iron ore extracted therefrom in the Plant which was required to be established in Gadchiroli District, but the supply of iron ore is done to the Steel Industry established by the respondent No.9 in Chandrapur District.

6. The question is, whether the establishment of the Steel Industry in Gadchiroli District was a condition incorporated under the lease agreement dated 3-5-2007? There is no dispute that such condition was not incorporated in the said agreement and the learned counsel for the petitioners is also unable to point the condition, if any, which exists in the agreement.

7. Though in the communication dated 11-9-2003 issued by the Department of Industries, Energy and Labour, it was expressed that the iron ore required to be utilized in Gadchiroli District itself, such condition was not incorporated in the lease agreement dated 3-5-2007. The stand of the Government in Para 31(i) and (ii) is reproduced below :

“(i) It is most respectfully submitted that the Letter of Intent for mining was granted to the respondent no.9 herein (LY), vide communication dated 11.1.1995. The original Letter of Intent dated 11.1.1995 is annexed herewith as Annexure-R-9. The condition of establishment of a plant/project at Gadchiroli District was incorporated vide amendment dated 11.9.2003. A copy of the amendment dated 11.9.2003 is annexed herewith as Annexure-R-10. It is pertinent to point out here that though the

condition was inserted for establishing a plant at Gadchiroli District, the said condition was never incorporated in the mining lease executed between the Collector on behalf of the State Government and the respondent Company. Be that as it may, the mining activities started after the permission was granted by the executing mining lease by the Collector on 3.5.2007. A copy of the mining lease dated 3.5.2007 is already annexed to the petition as Annexure-4 page 43. A perusal of the said mining lease clause 1 M page 80 would show that the ore in excess captive use will exclusively be made available to the indigenous Steel Industries in Maharashtra and preferably to the industries in Vidarbha Region of Maharashtra.”

“(ii) It is most respectfully submitted that the mining lease does not mandate that the companies shall establish a plant/project only in Gadchiroli District, however, the answering respondent has initiated steps, for identification of the suitable land so as to establish a plant at Etapalli or Aheri Tahsil or in other places in Gadchiroli District. The communication mentioned above to the Tahsildar Etapalli, clearly shows that the serious efforts are being made by the Administration so as to look at the grievances of the present petitioner/local resident so as to redress the grievances of the employment of the Tribal Community belonging to Gadchiroli District. The answering respondent is ready to consider any suggestion and opinions that may be given by the present petitioner or their association in respect of identification of a suitable land so as to establish a plant/project at Gadchiroli District.”

The State Government has come forward with a definite stand that the mining lease does not mandate that the Company shall establish a Plant/Project only in Gadchiroli District, though it was expected, but the steps have been taken.

8. Shri Subodh Dharmadhikari, the learned Senior Advocate, assisted by Shri Chinmay Dharmadhikari, Advocate, appearing for the respondent Nos.9 and 10, has pointed out to us that the land is made available in Village Chamorshi, District Gadchiroli, by the M.I.D.C. for establishment of the Steel Plant by the respondent No.9 and the possession is also taken on 24-8-2018. It is the statement made that within a period of 2 – 3 years, the Plant is likely to be established so that the employment opportunities can be provided to the local residents.

9. Our attention is invited to Clauses (K) and (M), incorporated in the lease agreement, which are reproduced as under :

“(K) At this stage, only the Captive use of Iron Ore is allowed and orders on excess ore sale will be given only after Government of India's approval.”

“(M) After approval of the proposal by Government of India, (Reference : Letter of Industries, Energy & Labour, Department Mantralaya, Mumbai vide No.MMN-1004/CR-683/IND-9, Date 13/4/2007) the ore in excess of captive use will exclusively be made available to the indigenous Steel Industries in

Maharashtra & preferably to the Industries in Vidarbha region of Maharashtra.”

We do not find any prohibition under these Clauses, relied upon by the petitioners to use the iron ore extracted in the plant owned by the respondent no.9 running in Chandrapur District.

10. It is the statement made on behalf of the State Government before this Court that iron ore extracted from the mining area in question is not being sold in open market and as per Condition (K), reproduced above, if it is required to be sold, it can only be with the prior approval of the Government of India. We expect the State Government to have a strict vigil on the activities of sale of iron ore in open market, or in violation of Clause (K) above, to frustrate the object and purpose.

11. In respect of the other reliefs claimed in this Public Interest Litigation, we find that the averment made in this PIL are totally vague, the same are general in nature, and unless the specific instances are brought to our notice, it is not possible for us to go into the said aspects covered by the said relief claimed in this PIL.

12. In view of the aforesaid observations, this Public Interest Litigation is dismissed.

13. At this stage, Shri Sunil Manohar, the learned Senior Advocate, assisted by Shri Akshay Naik, Advocate, appearing for the respondent No.12, pointed out that no case is made out against the respondent No.12 for violation of any of the conditions of the lease.

The learned counsel for the petitioners concedes to this aspect of the matter and submits that he is not pressing any relief against the respondent No.12. The same is the case of the respondent No.11.

(Vinay Joshi, J.)

(R.K. Deshpande, J.)