

HIGH COURT OF CHHATTISGARH, BILASPUR

WPIL No. 101 of 2020

- Thakur Ram Sahu S/o Shri Biselal Sahu Aged About 29 Years R/o Village Kapalphodi, Tahsil Magarload, District Dhamtari Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Water Resources Department, Indravati Bhawan, Nawa Raipur, Atal Nagar, Raipur District Raipur Chhattisgarh
2. The Collector District Dhamtari Chhattisgarh.
3. The Superintendent of Police District Dhamtari Chhattisgarh.
4. Executive Engineer Water Resource Division Dhamtari (Code No. 90) , District Dhamtari Chhattisgarh.
5. The Sub Divisional Magistrate Magarload , District Dhamtari Chhattisgarh.
6. The Station House Officer Police Station Magarload, District Dhamtari Chhattisgarh.
7. Tikam Chand Sahu R/o Village Seldeep, Tahsil Kurud District Dhamtari Chhattisgarh.

---- Respondents

For Petitioner : Shri Prateek Sharma, Advocate.

For Respondents/State : Shri Sudeep Agrawal, Deputy Advocate General.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per, P. R. Ramachandra Menon, Chief Justice

20.10.2020

1. The Petitioner, a public spirited citizen, has moved this Court by way of the present writ petition styled as a 'Public Interest Litigation', seeking for the following reliefs :

“10.1. That, this Hon'ble Court may kindly be pleased to direct the respondents to immediately stop transportation of heavy vehicles over Kapalphodi pier, Khatti Anicut and canal routes and further be pleased to direct the respondent State to take action against the responsible persons, officers and also direct the respondents to make the damage good of Kapalphodi pier, Khatti Anicut and canal routes, in the interest of justice.

10.2. That, any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the costs of the petition may be given.”

2. The grievance projected in the writ petition is as to the illegal sand mining and transportation of the sand through heavy vehicles in the area, which is stated as virtually prohibited by the authorities, but not properly implemented. The place in question i.e. Kapalphodi pier (tatbandh) is stated as a prohibited area for transportation according to directions of the Water Resources Department of Respondent State, in view of the possible danger involved with the Kapalphodi pier. Similarly, Khatti Anicut is stated as designed only for plying of light motor vehicles. Movement of heavy vehicles stands prohibited for the reason that Anicut can be damaged on movement of heavy vehicles. Same is stated as the situation in respect of the Canal on the left side of Pairi river from village Hathbandh to Parsabuda turning and because of the illegal transportation of sand, the Bank and Canal are getting damaged, which could lead to huge loss of lives of people and animals at any time. Though the Petitioner has preferred several representations before the various authorities, as borne by Annexure-A/2, no proper action has been taken by the Respondents concerned; which only shows the callous approach and attitude in dealing with the public cause. Specific reference is made to Annexure-A/4 letter dated 14.09.2020 of the 4th Respondent/Executive Engineer, Water Resource Division, Dhamtari, bringing the facts and figures to the notice of the 2nd Respondent/Collector and also as to the illegal exercise and the possible danger to the lives and property of the general public. Reference is also made to the news published on 13.09.2020 in the

Mass Media, pointing out the necessity for immediate action to prevent huge casualty. The total inaction on the part of the Respondents made the Petitioner to move this Court by filing the writ petition as aforesaid.

3. When the matter came up for consideration on 14.10.2020, the following order was passed :

“Shri Prateek Sharma, Advocate for the Petitioner.

Shri Chandresh Shrivastava, Deputy Advocate General for the State.

Shri Prateek Sharma, the learned counsel for the Petitioner in this petition filed as a 'Public Interest Litigation' points to the grave consequences which may be resulted because of the inaction on the part of the Respondents concerned in not prohibiting the transportation of the heavy vehicles over Kapalphodi pier, canal routes and Khatti Anicut. The learned counsel submits that large scale illegal sand mining is going on from the river concerned and that the heavy vehicles are being operated by such persons with vested interests which is being done with the silent concurrence of the authorities. The learned counsel makes a reference to Annexure A/2 communication issued by the Executive Engineer to the Sub Divisional Officer as to necessity to stop the illegal transportation of the heavy vehicles and despite approaching the Police authorities, no positive action has been taken so far. Reference is also made to Annexure A/4 dated 14.09.2020 sent by the Executive Engineer, which has also not evoked any positive result and hence the writ petition.

Shri Chandresh Shrivastava, the learned Deputy Advocate General representing the State submits that instructions would be obtained on war footing and breathing time is sought for in this regard.

Post the matter on 16.10.2020.”

4. On 16.10.2020, it was submitted from the part of the Respondents that the grievance projected by the Petitioner had been looked into, in the

light of the relevant materials including the various communications issued by the departmental authorities and that the Respondents had decided to prohibit the transportation of heavy vehicles as mentioned therein, also by placing necessary signboards. It was also asserted that consequential steps also would be taken to ensure that the prohibitory orders are honoured by all concerned. Breathing time was sought for to file a statement.

5. Pursuant to the above proceeding, a status report has been filed on behalf of the Respondents/State along with an affidavit dated 17.10.2020. Paragraphs 2, 3 and 4 of the said affidavit are relevant and hence they are extracted below for easy reference :

“2. It is submitted that finding the complaints regarding movement of heavy vehicles being operated from the Kapalpodi flood protection tatbandh the State authorities have given their concern and issued directives to the concerned officers and presently there is no movement of heavy vehicles from the canal routes and Khatti anicut.

3. It is submitted that since a passage has been allowed for the villagers from the kapalpodi flood protection tatbandh which was specifically prohibited for heavy vehicles however some persons without any permission were utilizing the said passage for mining purposes as there is a sanctioned sand mine moving heavy vehicles as such again an Iron Board giving specific notice of prohibited area for heavy vehicles has been erected in middle of the passage warning for violators to face legal action. Copy of photograph of Notice board is filed here as **ANNEXURE D-1.**

4. That even specific directions have also been issued by the respondent no.2 (Collector, Dhamtari) to various authorities for making check completely prohibiting the movement of heavy vehicles from the Kapalpodi Flood Protection Tatbandh. Copy of the order filed here as **ANNEXURE D-2.**

6. After hearing Mr. Prateek Sharma, the learned counsel appearing for the Petitioner and Mr. Sudeep Agrawal, the learned Deputy Advocate General appearing on behalf of the Respondents/State, we do not find it necessary to go into the merits as to the correctness or otherwise of the allegations levelled against the 7th Respondent, who is stated as effecting illegal sand mining exercise. Since effective steps are stated as being taken by the Respondents concerned to prevent the illegal sand mining and transportation of sand through heavy vehicles, we record the stand taken by the departmental authorities as put forth in the statement dated 17.10.2020 supported by an affidavit, including the fact that directions have been issued by the 2nd Respondent/District Collector, Dhamtari to various authorities for making check completely prohibiting the movement of heavy vehicles in the area as borne by Annexure-D/2. It shall be for the Respondents concerned to give effect to the prohibitory orders as above.
7. In the above circumstance, we do not find it necessary to pass any further direction and make it clear that it shall be for the 2nd and 3rd Respondents to ensure that the orders issued in this regard are honoured by all concerned and no illegal sand mining or transportation of sand through heavy vehicles is done or pursued by anybody.

Writ petition stands disposed of.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge