

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4228 of 2011

Birat Chandra Dagara. *Petitioners*

versus-

State of Orissa and another *Opposite Parties*

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
23.03.2022

05.

1. This matter is taken up through hybrid mode.

2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 11th August, 2011 passed by the Opposite Party No.2-Collector, Mayurbhanj in Environment (Protection) Case No.01 of 2011 initiated under Section 19 of the Environment (Protection) Act, 1986 as well as the entire criminal proceeding.

3. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Parties.

4. The grievance of the Petitioner in this case for quashment of the order dated 11th August, 2011 passed by the Opposite Party No.2-Collector, Mayurbhanj in Environment (Protection) Case No.01 of 2011, which reads as thus:-

“Received letter No.11727/F&E dated 29.6.2011 of Government of Orissa, Forest & Environment Department. The said letter indicates that while considering the proposal for environmental clearance in favour of the project on expansion of Suleipat Iron Ore Mining Project of Sri B.C. Dagara located in village Suleipat under Rairangpur Tahasil it is came to the notice of Govt. of India, Ministry of Environment Forests that the said mining

project continued to operate from 2005 onwards i.e. after the lease became due for renewal in October, 2005 without obtaining the requisite prior environmental clearance from the Ministry as required under EIA Notification 2006. This amounts to violation of various provisions of Environment (Protection) Act, 1986. The intervening period during which the project was operating without obtaining environmental clearance would be treated as period of violation.

Accordingly Government of India, Ministry of Environment & Forests requested the state Government to take cognizance action against the above unit by invoking powers under section-19 of Environment (Protection) Act, 1986 for the period for which the unit had operated without obtaining environment clearance.

Having taken assessment from the aforesaid letter, I have apparently reason to believe that Sri B.C. Dagara, Proprietor of the Suleipat Iron Ore Mining Project has continued to operate the said mining project from 2005 onwards i.e. after the lease became due for renewal in October, 2005 without obtaining the requisite prior environmental clearance from the Ministry as required under EIA Notification 2006 thereby violating various provisions of Environment (Protection) Act, 1986.

Being empowered by the Central Government in S.O. 394(E) to take cognizance of offence committed within the jurisdiction of this revenue district and taking into the said letter of Government as well as the legal opinion of learned Government Pleader, Mayurbhanj, learned Public Prosecutor, Baripada in his letter communicated by Mining Officer, Baripada in his Memo No.3868 dated 02.08.2011 as complaint on cognizance of offence this court is proceeding U/s 19 of Environment (Protection) Act, 1986 to take legal action against Sri B.C. Dagara, Proprietor of Suleipat Iron Ore Mining Project for contravention of various provisions of Environment (Protection) Act, 1986.

Therefore issue notice to Sri B.C. Dagara, Proprietor, Suleipat Iron Ore Mining Project, At: Suleipat, Rairangpur in the district of Mayurbhanj to appear before the court on the date fixed and to show cause as to why action as provided under Section-15 of Environment (Protection) Act, 1986 should not be taken against him for violation of various provisions of Environment (Protection) Act, 1986.

At the same time ask the Regional Officer, State Pollution Control Board, Balasore to appear before the court along with detailed report on violation of the provisions of Environment (Protection) Act, 1986 by Suleipat Iron Ore Mining Project at Suleipat operated by Sri B.C. Dagara on the date fixed.

Mining Officer, Baripada is directed to appear before the court along with report and relevant records relating to lease of Suleipat Iron Ore Mining Project and violation of terms and condition thereof on the date fixed for the case.

Case Posted to 17.10.2011 for appearance and show cause by the O.P.”

5. Needless to say that Section 19 of the Environment (Protection) Act, 1986 reads as thus:-

“19. Cognizance of offences.-No court shall take cognizance of any offence under this Act except on a complaint made by-

- (a) the Central Government or any authority or officer authorised in this behalf by that Government; or
- (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.”

6. However, from the impugned order, it appears that the Opposite Party No.2-Collector, Mayurbhanj has misconstruing the authorization to lodge complaint by virtue of the aforesaid notification to proceed against the persons violating the provision of the Environment (Protection) Act, arrogated itself to be court to try the offence.

7. Section 19 of the Environment (Protection) Act, 1986 mandates the court competent to try a case and for violation of the offence committed under the act, not to take cognizance of offence committed unless it is filed by a duly constituted complaint by the Central Government or person authorized by the Central Government or public on conditions precedent mentioned, the District Magistrate-cum-Collector is such a person authorized to lodge the complaint, it is not a court competent to take cognizance and try the accused alleged to have committed the offence.

8. Since the aforesaid order of the Opposite Party No.2-Collector, Mayurbhanj is without jurisdiction and as he is incompetent to take cognizance, this Court in exercise of the power under Section 482 of Cr.P.C. quash the criminal proceeding initiated against the Petitioner vide Environment (Protection) Case No.01 of 2011 pending in the file of Opposite Party No.2-Collector, Mayurbhanj. The Opposite Party No.2-Collector, Mayurbhanj shall on receipt of the copy of this order/production of the copy of this order, do the needful in this regard.

9. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

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