

Peeyush Sharma Vs. State of M.P. and others

30/04/2014

Shri Vivek Jain, Advocate for the petitioner.

Shri Vivek Khedkar, Dy.Advocate General for the respondents No.1 and 2/State.

Shri Kunal Suryavanshi, Advocate for respondent No.3..

Heard.

2. The petitioner, who is a practicing advocate at Shivpuri, has challenged the order dt.11.6.2013 (Annexure P/1) written by the Chief Conservator of Forest and Director of Madhav National Park, Shivpuri to the Chief Municipal Officer, Municipal Council, Shivpuri. By the aforesaid order, the permission granted earlier in regard to laying the pipe line to Shivpuri city for providing drinking water has been cancelled.

3. Shivpuri is a district headquarter. Population of the town is near about 2 lac. There is scarcity of drinking water at Shivpuri town, the persons used to carry water from a distance of 2-3 kms. The situation used to get worst during summer. Municipal Council spent near about 6 crores in a year towards electricity charges and maintenance on 432 borewells installed by the Municipal Council for supply of drinking water. In addition to this, the Council also spent Rs.77.18 lacs on tankers for supply of drinking water. Looking to the aforesaid acute shortage of drinking water at Shivpuri,

a scheme was formulated to supply drinking water to the city from a dam named as Mohini Sagar (Madikheda) Dam. It is at a distance of 30 km. from Shivpuri. Cost of the project was Rs.59.64 crores. The Central Government agreed to bear 80% of the cost and 10% by the State Government. Rest of the 10% was required to be shared by the Municipal Council, Shivpuri. The Council was not able to bear 10% amount. Hence, it was decided to implement the project under Public Private Partnership ((PPP)mode.

4. In accordance with the scheme, some portion of the pipe line passes through Madhav National Park, Shivpuri. There was no other alternative available. Total area of the pipe line, which comes within the territory of Madhav National Park was 9.5 km. in length and 1.3 km. in width. For the aforesaid purpose, possession of 1.241 hectare forest land was required. A proposal was sent to the Chief Conservator of Forest for grant of permission for the purpose of laying the pipe line. Thereafter it was sent to the government of India, Ministry of Environment and Forest by the Chief Wildlife Warden. The Committee accepted the proposal on the following conditions :-

“After deliberation and in view of the fact that the proposal was for survey & investigation for laying drinking water pipeline, the Committee decided to recommend the proposal subject to the following conditions :

- i. 5% of the project cost of the area falling within the National Park would be paid by the user agency for the development of the Madhav National Park.
- ii. Water would not be drawn from the dam (waived of).
- iii. No sewage water would be drained into the dam.
- iv. The overall width of the trench dug for laying the pipeline should not exceed 1.30 mt. and should be within the right of way of the Agra-Mumbai National Highway no.3 and Narwar-Satanwara Road.
- v. The depth of the trench should not exceed 1 mt. (waived of).
- vi. No material including earth should be used from the National Park area as it will affect flora as well as fauna particularly the micro fauna.
- vii. The agency should ensure that no damage to any flora or fauna is caused during the course of the execution of the work.
- viii. All construction materials should be brought from outside the National park area, including earth.
- ix. There should not be any labour camps permanent or temporary in the national park area during the construction of the road. Collection of firewood shall be prohibited.
- x. No tree shall be felled by the user agency. All the trees along the roads shall be protected by the user agency.
- xi. All quarry for sand/moorum shall be informed by user agency and previous sanction of Revenue Department (mining) Collector is mandatory. If any

Private party found to violate rules or involved in illegal mining during construction, than user agency will be made responsible for it.

- xii. NPV and Compensatory afforestation Funds will be paid by the user agency to the Chief Wildlife Warden as per norms.
- xiii. The user agency should also abide by any other condition that may be prescribed by the Chief Wildlife Warden.
- xiv. The Chief Wildlife Warden would submit a compliance report on the implementation of the conditions specified before the Standing Committee of NBWL after completion of the project.

5. Thereafter, an application was filed before the Hon'ble Supreme Court. Hon'ble Supreme Court granted permission for laying the underground pipe line for supply of drinking water at Shivpuri town and passed the following order :-

Item No.314

“Learned counsel appearing for the Municipal Council referred to Annexure A-5 letter dated 26.10.2010 of the Ministry of Environment & Forest, (Wildlife Division) additional to the Chief Wildlife Warden and submitted that the counsel has some objection with regard to sub-paragraphs (iii) and (v) of paragraph 1 of that letter. If that be so, it is open to the Municipal Council to move the Ministry of Environment and Forest, and in turn, MoEF may vary the conditions, I so warranted.

Perused the report of the CEC dated 20.4.11 and permission is accorded to use of 1.241 hectares of forest land falling in Madhav National Park for laying of the underground pipeline for supply of drinking water to Shivpuri town, Madhya Pradesh subject to the conditions enumerated in paragraph 6 of the report of the CEC.

This IA is disposed of in the above terms."

6. Thereafter, after getting permission from the authority, a contract was awarded to respondent No.6 on PPA basis.

7. As per the petitioner, respondent No.6 had completed major portion of the contract, however, the Forest Department noticed some violations of terms and conditions of the contract because some trees had been cut by the respondent No.6. A show cause notice was issued to the respondent No.6 and the Municipal Council. Thereafter the matter was compounded, then Chief Conservator of Forest and Director, Madhav National Park, Shipvuri vide letter dt.9.4.2013 requested Additional Principal Chief Conservator of Forest, Satpura Bhawan, Bhopal to grant permission for construction for laying the underground pipe line because vide letter 11.6.2013 issued by the Chief Conservator of Forest and Director, the Municipal Council, Shivpuri and respondent No.6 were directed to stop the work of laying the pipe line.

8. The State Government in its return has pleaded that the permission was granted in terms of the earlier order because there was violation of terms and conditions, hence, the work of laying the pipe line was stopped and subsequently the permission can only be granted by the higher authority namely Additional Principal Chief Conservator of Forest, Satpura Bhawan, Bhopal. The Municipal Council submitted that as per the initial proposal certain trees had to be cut for the purpose of laying the pipe line. The fact was mentioned by C.P.Rai, Additional Principal Chief Conservator of Forest (Land-Management and Nodal Officer Forest (Conservation) Adhiniyam, 1980 in his letter dt.22.1.2011 written to Additional Principal Chief Conservator of Forest (Central), Union of India, Environment and Forest Ministry, Bhopal. A copy of the letter has been filed as Annexure R/1. It is mentioned in the letter that total 470 trees are required to be removed for the purpose of laying the underground pipe line.

9. The petitioner is a practicing advocate. He is affected personally also due to shortage of drinking water. It is an important issue because at Shivpuri town there is an acute shortage of drinking water, that's why with the permission of Central Government a drinking water scheme was sanctioned. Total cost of the scheme was about Rs.60 crores. 80% of the

amount was paid by the Central Government. Major part of the laying the underground pipe line has been completed.

10. Hon'ble Supreme Court in **State of Uttaranchal v. Balwant Singh Chaufal and others**, reported in **(2010) 3 SCC 402** has considered the concept of public interest litigation and also considered various earlier judgments and judgment of Apex Courts of other countries in this subject and held as under in regard to maintainability of the public interest litigation :-

"25. Public interest litigation has been defined in *Black's Law Dictionary* (6th Edn.) as under:

"Public interest.—Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."

26. *Advanced Law Lexicon* has defined "public interest litigation" as under:

"... the expression 'PIL' means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected."

27. The Council for Public Interest Law set up by the Ford Foundation in USA defined “public interest litigation” in its Report of Public Interest Law, USA, 1976 as follows:

“10. ... Public interest law is the name that has recently been given to efforts providing legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, *consumers, racial and ethnic minorities and others.*” (*Holicow Pictures (P) Ltd. v. Prem Chandra Mishra (2007) 14 SCC 281 : AIR 2008 SC 913, SCC p.288, para 10 : AIR p.918, para 19.*)(emphasis supplied)

28. This Court in *People’s Union for Democratic Rights v. Union of India (1982) 3 SCC 235 : 1982 SCC (L&S) 275*, defined “public interest litigation” and observed that (SCC p.242, para 2) the public interest litigation is a cooperative or collaborative effort by the petitioner, the State or public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon the poor, downtrodden and vulnerable sections of the society.”

11. After considering its earlier judgments and also judgments of the Apex Courts of other countries, Hon'ble the Supreme Court in the case of **State of Uttaranchal (supra)** has issued the following guide-

lines in regard to Public Interest Litigation :-

“(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entering a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also

ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.”

12. In view of the facts of the case and the principle of law laid down by the Hon'ble Supreme Court, in our opinion, this PIL is maintainable.

13. In the present case, certain trees have been cut in order to laying the underground pipe line. The matter has been compounded by the authorised authority. Officers of the forest department has raised other objections that executing agency had established camp within the forest area for the purpose of supervision of laying the pipeline and the work was also being carried out beyond 5.00 p.m, which was in contravention of terms and conditions of the permission. In our opinion, this problem could be sorted out. The municipal council and respondent No.6 in their letter have clearly stated that they would abide by the terms and conditions of the permission and in future they would not violate any terms and condition. Hon'ble Supreme Court has already granted permission for use of forest land. The project is an important one. It would affect the right to life of the

citizens of Shivpuri city, which is guaranteed under Article 21 of the Constitution. Providing drinking water is an important aspect of right to life. The contract has already been awarded. The huge amount has been spent by the State Government and the Central Government. Chief Conservator of Forest and Director, Madhav National Park has already requested Additional Principal Chief Conservator of Forest (Land-management), Satpura Bhawan, Bhopal (M.P.) for grant of permission to lay down the pipe line and resumption of work vide letter dt.9.4.2013, a copy of which has been filed alongwith reply of the State Government. In such circumstances, in our opinion, the stoppage of work is not proper. Hence, this petition is disposed of with the following directions :-

- (i) The impugned order dt.11.6.2013 (Annexure P/1) is hereby quashed.
- (ii) The Committee of three persons namely ; Chief Municipal Officer, Municipal Council, Shivpuri, Collector Shivpuri and Director, Madhav National Park, Shivpuri being constituted. It shall supervise the laying of underground pipeline and the work which is required to be undertaken for the aforesaid purpose by the respondent No.6. If the Committee find any violation of the terms and conditions, it shall issue necessary instructions to the respondent

No.6 to remedy the same and the respondent No.6 shall abide the instructions which may be issued by the Committee.

- (iii) The Committee shall also ensure that the work of laying the pipeline shall be carried out in accordance with the terms and conditions of the permission granted by the Hon'ble Supreme Court. The authority may also ensure that the work may be completed within the stipulated time so the residents of Shivpuri town could get drinking water.

No order as to costs.

(S.K. Gangele)
Judge

(B.D.Rathi)
Judge

SP