

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P(PIL) No. 1325 of 2011

Court On Its Own Motion Petitioner.

---Versus---

State of Jharkhand & Others.. . . Respondents.

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MRS. JUSTICE JAYA ROY**

For the Petitioner : Mr. Indrajit Sinha (Amicus Curiae)
For the State : Mr. R.R.Mishra, G.P.II
For the R.R.D.A. : Mr. A.K.Singh.
For the R.M.C : Mr. R.R.Nath.
For the Pollution Control Board : Mr. A.K.Pandey Advocate
For the Intervenor :M/s Dr. S.N.Pathak,N.K.Pandey.

Order No. 11

Dated 21st June, 2011

This Court takes judicial notice of the fact in extra ordinary circumstances prevailing in the State of Jharkhand, the High Court suo motu registered large number of public interest litigations and public reputed persons also filed several PILs. and several orders have been passed covering several issues of public importance. Because of the pro-active orders passed by the High Court, a large number of encroachments have been removed from the entire State of Jharkhand and this Court also take notice of the fact that if the High Court would not have passed the orders in those public interest litigations, the law abiding persons in the State of Jharkhand would have suffered more. Not only this but large number of cases have been referred to the C.B.I., and ultimately in large number of cases the C.B.I. found that there is prima facie evidence for commission of serious crime committed by the Government officials in connivance with the mighty persons. The large number of persons have already encroached upon the lands of the Public Sector Units and to the extent of more that 35,000 encroachments ins quarters only in four Public Sector Units and encroached thousands of acres of lands and it is difficult for the Public Sector Units to justify their inaction and deliberate omission to the extent of committing serious crime

for which they can be prosecuted.

2. The situation in the State of Jharkhand was extraordinary as not only of the Public Sector Units in the State of Jharkhand but even in Local Bodies several and in large number of the matters the C.B.I. found that there is a clear element of criminality in the action of the Government officers in connivance with the mighty persons and State Electricity Board etc were also not above board and were found fully indulged in giving the losses of crores of rupees to the State Exchequer. In some of the matters or matters were taken to the Hon'ble Supreme Court, but there also the orders passed by this Court in above respect have not been interfered by the Hon'ble Supreme Court. In the extra ordinary situation of the State of Jharkhand where more people are living under the poverty line and are consisting of the member of Scheduled Castes and Scheduled Tribes and where the Governments were not stable after the formation of the State of Jharkhand, those litigations, in fact, gave relief to the public and now it is the right time to review the situation by this Court so as to activate the Government so that the public may get the relief from the Government itself without intervention of the High Court, in hope that the government will respond to public's notice for demand of justice

3. On 15.6.2011, in W.P. (P.L.) No.1325 of 2011, learned counsel for the State had rightly submitted that a large number of public interest litigations are being filed in the High Court, but, without approaching the State Government or the concerned authority/bodies and this has heavily burdened the office of the Government Advocate apart from heavy burden upon the Court with and involvement of the time of the public servant to promptly deal with the public interest litigation matters and implement the Court's orders.

4. It is also clear that in earlier time, the writ petitions could have been filed only after serving the notice for demand of justice, but that practice is no more prevalent

and it was not because of no reason but practice of dispensing with from serving of notice of demand of justice upon the Government or Government Bodies developed because of the reason that normally those notices were never responded and in the same way, the notices under Section 80 of the C.P.C. were never responded by the State Government, much less to giving relief in legitimate claims of even retiral and pensionary benefits to government's own employees.

5. Now, the public is more legally aware and in view of the several orders passed by this Court in public interest litigations as well as taking serious view in the matter by the High Court, and even to the extent of sending the matters to the Central Bureau of Investigation (C.B.I.) resulting into arrest of a large number of the officials and others. We hope that every petition/ notice of demand of justice and notice under Section 80 of the C.P.C. will be considered by the State Government and the Local Bodies without any delay and in legitimate claims relief will be granted to the aggrieved persons by taking a decision instead of adopting policy "why to take risk" and asking "go to court for the relief "

6. At this juncture, we may point out that there is specific provision made in the Right To Information Act and the rules framed there under to furnish the information within 15 days from the date of receipt of the application and in case, of even non -supply of the information, the appeals are provided and those appeals are required to be decided within a period of 30 days. Therefore, such notice for demand of justice / representations and notice under Section 80 of the C.P.C. can be well considered within the stipulated period of one month even when there is no limitation prescribed by any law for deciding these representations.

7. At the initiative of the Central Government, the Central Litigation Policy has been framed at the level of the Union, whereas all the States in India were directed to frame the Litigation Policy before the 31st March, 2011, and to avail

benefits under the 13th Finance Commission recommendations litigation policy by the State was made mandatory and the funds have been released to the State Governments, including to the State of Jharkhand by the Central Government, which also has reached to the State Government and the State Government has come out with the State Litigation Policy published on 25th March, 2011.

8. It appears from the said Litigation Policy of 2011 that the Government has accepted what is known to all, that is predominant litigants in Courts in the State. However, in Clause-1 Sub-para-2, it has been mentioned that the "purpose underlying this Policy is to reduce Government Litigations in Courts and Tribunals so that valuable Court Time would be spent in resolving other pending cases so as to achieve the goal in the National Legal Mission to reduce average pendency time from 15 years preferable to 3 years". But, if we look into the entire Litigation Policy, then the public interest litigation have been covered under the heading of Miscellaneous provisions under Clause-IX. Clause-IX is as under :

"PILs challenging public contracts must be seriously defended. If interim orders are passed stopping such projects, then appropriate condition must be insisted upon for the petitioner to pay compensation if the PIL is ultimately rejected. In cases involving virus of statutes or rules and regulations proper affidavits should be filed.

In litigations inter se between PSUs and Government Public Sector Undertakings, every effort must be made to prevent such litigations. Before initiating any litigation the matter must be placed before the Highest authority of the Public Sector, such as C.M.D. or M.D. It will be his responsibility to endeavour to see whether the litigation can be

avoided. If litigations can not be avoided then A.D.R. methods like mediations and conciliations must be considered. Section 89 of the C.P.C. must be restored to extensively.

9. A bare perusal of above clause reveals that it addresses firstly, the public interest litigations only challenging the public contracts for which it has been provided that those litigations must be seriously defended and secondly, Para-II of the provision has been made for litigation inter se between the Public Sector Units and the Government Public Sector Undertakings only. In this Para also there is a reference of mediations and conciliations and about Section 89 of the C.P.C.

10. We are of the view that some more guidelines are required to be given by the Government itself to the officers of Local Bodies and Public Sector Units when the public interest litigation is not in relation to the public contracts and disputes between the Public Sector Units and Government Public Sector Undertakings.

11. As per the Litigation Policy, the State is required to appoint Nodal Officers and the Nodal Officers are required to have a legal background and expertise, not below the rank of Deputy Secretary, who shall be designated by the Head of the Department/ competent authority of the concerned Department /Agency in consultation with the Chief Secretary of the State. Therefore, if the State has not appointed the Nodal Officers, shall now appoint the Nodal Officers to give effect to its own Litigation Policy and it goes without saying that as per the Policy decision itself, there shall be a Nodal Agency at the level of High Court consisting of high ranking Officers having law background and sufficient experience of attending the Court matters and further they are required to be assisted by sufficient number of Assistants being Law Graduates.

12. The Nodal Officer as per the Policy decision itself

can accept the notices, summons and copies of the petitions, therefore, his task will be more important in the matter of avoiding unnecessary litigations by promptly taking action on any representation submitted to the Government or Local Bodies through the Nodal Officers.

13. The State Government is also required to form the State Empowered Committee to monitor the State Litigation and to fix the accountability. The State Empowered Committee will be chaired by the Advocate General of the State wherein the Director, Prosecution will be the Vice-Chairman with other Members not exceeding five in number to be nominated by the Department of Law which shall include in Additional Legal Remembrancer / Joint Secretary/ Deputy Legal Remembrancer of the Law Department as the Member Secretary of the State Empowered Committee. Such Committee will be formed by the State Government, if not formed, then it should be forthwith.

14. The District Empowered Committee required to be formed, which may also be formed forthwith.

15. The formation of Screening Committee is very important, which is required to be formed immediately and made functional.

16. For conducting litigations at the level of Supreme Court of India, the policy may be implemented without any delay as more than one year of the formation of the State Litigation Policy has already been passed.

17. The policy with respect to the conduct of Government Litigation in the District as Sub-Divisional Courts may also be implemented without any delay.

18. In fact, in this Litigation Policy, there is no specific provision in respect of receiving of the representation and notice for demand of justice by the Government. The Government may take an appropriate decision providing for mechanism for redressal the grievances of the litigants from the Government and authorities concerned themselves within

a period of one month from the date of receipt of the copy of the representation/petition or the notice for demand of justice.

19. The Government may also upon receipt of the summons and notices from the Court consider the case of such persons and can grant the relief and can without waiting for the date fixed in the case and can submit the application before the Court intimating that the relief has been granted to such person and to bring end of such litigation by the State Government and the Local Bodies and other Departments.

20. The State Government Officers may also be made aware that granting of relief as prayed in the litigation to the petitioner is not a process of the Court, but in fact, is a serious effort in aid to functioning of the Court.

21. In view of the above reasons, and to see how the effect is given to the Jharkhand State Litigation Policy, 2001, we are resisting this Public Interest Litigation so that the State Government may inform this Court that appropriate authorities have been appointed and the Committees have been constituted and they are made functional and adequate infrastructures have been provided to them.

22. A copy of this order be given to the learned counsel for the State, who may respond and submit the submissions of the State 1st August, 2011.

23. We expect from the Government to intimate the public by giving advertisement in News papers and by adopting other modes indicating the competent authority for a particular authority of the Government or Body(s) to public should approach before filing any petition in the High Court or in Subordinate court what matters are not of urgent nature. A Nodal Officer be appointed in every Body even to the level of small place of offices as per the decision taken by the State Government in State Litigation Policy, 2011.

24. In case, a complete mechanism is established by the State Government for entertaining and considering the

representations and notice for demand of justice, then the Court may proceed to ask the litigants to approach the said authority first before approaching the courts.

25. Since we appreciate the assistance given by the learned counsel for the State, we request the State Government to make a formal order for appointment of Mr. R.R.Mishra, G.P.-II in this case as a Special counsel for the State on Special remuneration.

26. Office is directed to register a Public Interest Litigation in pursuance of this order whereby the Court may for short time, monitor the effective implementation of State Litigation Policy for which Government may need help from Judiciary. Copy of the order may be given to Mr. R.R.Mishra, G.P.-II, who is representing the State in W.P.(PIL.) No.1325 of 2011.

27. Put up on 1st August, 2011.

Order No.12

Dated 21st June, 2011

It has been pointed out by the learned Amicus Curiae that the reports have been submitted by the State for taking action against the encroachment in the river bed area.

02. We have perused the said report as well as we also perused the Minutes of the Meeting dated 25.3.2011, convened in pursuance of the order passed by this Court in the present writ petition being W.P.(PIL) No. 1325 of 2011 submitted by the State Government. As per the Minutes of the said meeting, the State Government was supposed to undertake the Short-term and Long-term Plan for improvement in the water position in the State of Jharkhand by taking

measures for preventing the encroachment in the river area as well as by making provisions for water conservation and obviously it includes taking care of the action which are taken to reduce the water supply in the rivers. However, in the Report dated 25.3.2011, we are shocked to know that even it has been reported that even one industrial unit namely M/s Tata Steel Company is dumping Slag in the river known as "Swarnrekha" by which, the Bed width of the said river "Swarnrekha" has narrowed already. The committee was of the view that the matter may be reported to the District Administration as well as to the Pollution Control Board about the dumping of the Slag in the river by the said Tata Steel Company.

03. Learned counsel for the Pollution Control Board, Mr. A.K.Pandey, submitted that as pr the report, which they have already obtained from the National Environment Engineering Research Institute of India (NEERI), Nagpur and from the report of the said NEERI dated 15.6.2004 the dumping of Slag by the said Tata Steel Company is not falling in the category of creating pollution in the water. We would like to quote the portion of the report, which is quoted in the affidavit filed on behalf of the Pollution Control Board dated 27.4.2011, which is quoted as under :

"The NEERI has opined in its report dated 15.06.2004 which is as follows : " In view of the poor leachability of BF slag and LD slag and marginally high concentration of alkalinity, lead and aluminum also in referernce(control) upstream samples, it was concluded that there is no impact of slag dumping on the water quality of river subarnrekha and river Kharkai. The high alkalinity, lead and aluminum may be attributed to general geology of the area as well as discharge of domestic effluents and other

domestic activities (bathing, washing of cloths, cleaning of vehicles etc."

04. We will examine whether the poor leachability of BF slag and LD slag and marginally high concentration of alkalinity, lead and aluminium can create pollution in water or not. But, at present, we are shocked to know that the said company is dumping the Slag in the river since years and even report was obtained by the Pollution Control Board as back as on 15.6.2004 seven years before from today and this activity is going on the fact recorded in the Minutes of the meeting dated 25.3.2011. The volume of the Slag dumped in the river narrowed down, even the width of the river. Even if it is not the pollution that it is clear encroachment over the part of the river by putting it to the use of the company.

05. Learned counsel for the State submitted that the Tata Steel Company has also undertaken some good work for the public benefit.

06. Be that as it may, we are of the considered opinion that no one has right to stop or obstruct the flow of the natural stream of the rivers. Therefore, we deem it to be proper to issue notice to M/s Tata Steel Company, a copy of which may be supplied to the learned counsel for the intervenor and a copy of this order may also be annexed with the copies of the Tata Steel Company so that they may respond to this notice without any further delay. The notice is made returnable on 29.6.2011.

07. So far other actions are required in the light of the decision taken by the State itself in its meeting referred above, the State is required to act upon the decision taken by itself in the meeting whereby they have prepared the Short-term and Long-term Plan. Here we may also observe that the removal of the encroachment from the relevant area is also not satisfactory as in some of the places virtually only the notices have been issued for which the State may take appropriate action.

08. The State is also directed to take steps immediately for making arrangement for utilization of the water as far as possible. If the State would have taken a decision for utilization of the water, a large quantity of water would have gone waste as the rains have already been started and with this heavy rain, the State would have benefited. However, now a policy may be implemented for water harvesting by the State for which a report may be submitted to the Court in respect of the efforts, which the State will take as well as covering of the issue, which have been already dealt with by this Court in various order passed.

09. Put up this case on **29.6.2011**. This date has been fixed only for response of the Tata Steel Company and for rest of the report, the matter will be taken up on 1st August, 2011.

(Prakash Tatia, A.C.J.)

(Jaya Roy, J.)