

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)
KOHIMA BENCH

P. I .L. No. 4 (K) of 2015

Lotha Hoho & 2 Ors. ... Petitioner
-Vrs-
The State of Nagaland & 6 Ors ... Respondent

P R E S E N T
THE HON'BLE MR. JUSTICE UJJAL BHUYAN
THE HON'BLE MR. JUSTICE MANOJIT BHUYAN

For the Petitioner : Taka Masa
Khrievono
Adv.
For the Respondents : Govt. Adv. N/L

08.10.2015
(Ujjal Bhuyan, J)

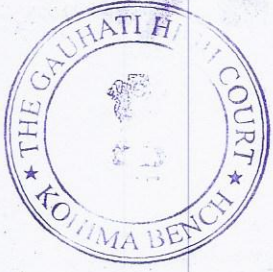
OR D E R

Heard Mr. Taka Masa, learned senior counsel for the petitioners, Mr. T.B. Jamir, learned Additional Advocate General, Nagaland and Mr. S. Dutta, learned senior counsel for the respondent No.7 who has entered appearance by filing caveat.

This is a Public Interest Litigation (PIL) filed by the Lotha Hoho, its Chairman and General Secretary claiming to represent the interest of the Lotha tribe predominantly residing in the district of Wokha in the State of Nagaland.

By filing this PIL, constitutional validity of the Nagaland Petroleum and Natural Gas Regulations, 2012 and Nagaland Petroleum and Natural Gas Rules, 2012 have been challenged. Further challenge has been made to the impugned permit dated 28-02-2014 issued in favour of respondent No. 7 for mixed operations (exploration, production/extraction and refining/bottling) of petroleum and natural gas in respect of Wokha district appearing at Zone No. NL-OG-10W-M.

Learned senior counsel for the petitioners submits that State of Nagaland had enacted the Nagaland (Ownership and Transfer of Land and its Resources) Act, 1990 which governs prospecting or mining operations in the State of Nagaland under licence or lease granted by the State. This is the substantive enactment governing exploration of crude oil and allied activities in the State of Nagaland. He submits that an amendment was brought into the aforesaid Act by the Legislative Assembly of Nagaland in the year 1995 but the amendment Act is yet to receive the assent of the President. Notwithstanding the availability of the aforesaid Act of 1990 which is governing the field, State Legislature has enacted the two impugned Nagaland Petroleum and Natural Gas Regulations, 2012 and





Nagaland Petroleum and Natural Gas Rules, 2012 which provide for exploration of crude oil and allied activities. Referring to the various constitutional provisions relating to conduct of legislative business, learned senior counsel for the petitioners submits that the impugned Regulations and Rules of 2012 do not meet the constitutional requirements. Further contention is that when the 1990 Act is occupying the field governing the particular subject, it was not open to the Nagaland Legislative Assembly to have enacted the impugned Regulations and Rules of 2012. Further contention of the learned senior counsel for the petitioners is that the impugned Regulations and Rules under which the permit has been issued to respondent No. 7 do not provide for requisition and acquisition of land of the affected land holders for the purpose of drilling and other activities relating to oil exploration, thereby seriously jeopardizing their valuable rights over their land and property inasmuch as the provisions that have been enacted only provides for sharing of revenue on discovery of crude oil in a particular ratio. In the event crude oil is not discovered, State has not made any provision for providing compensation to the land owners and to other affected persons for use of the land. He has also referred to the provision of Article 371 A of the Constitution in support of his contention that considering the special status of the State of Nagaland within the Union of India, adequate safeguards are required to be adopted by the State while allowing extraction of mineral resources of the State so as to protect the interest of the indigenous tribals of the State. Referring to the antecedents of respondent No.7, learned senior counsel for the petitioners submits that respondent No. 7 has been incorporated only on 14-09-2012 and has already suffered adverse orders at the hands of Securities and Exchange Board of India (SEBI). Therefore, awarding of permit for exploration of crude oil to such a party is not in the public interest.

Learned Additional Advocate General, Nagaland on the other hand, submits that the impugned Regulations and Rules have been framed to further the interest of the State and to augment revenue mobilization which has assumed emergent proportion. He submits that though issues raised by the petitioners may require further examination of the Court, keeping in view the commercial interest as well as the revenue interest of the State, Court may not pass any interim order at this stage.

Mr. S. Dutta, learned senior counsel appearing for respondent No. 7 at the outset has questioned the bonafides and locus stand of the petitioners to institute this PIL. He has referred to various decisions of the Apex Court to contend that in matters relating commercial transaction, Courts should be circumspect while entertaining such PILs. He further submits that respondent No. 7 has already invested substantial amount of money for mobilization of men and materials to start oil exploration work in terms of the permit granted. Further, at this stage restraining respondent No. 7 from carrying out its lawful activities in terms of the permit granted by the State would not be justified. Mr. S. Dutta, learned senior counsel also submits that the affected land owners have not been made party in the PIL who are necessary parties to the *lis*. In the absence of necessary parties.

no proper and fair adjudication of the dispute can take place. As a matter of fact the land owners are not opposed to oil exploration by respondent No. 7 and in this regard have entered into agreements with respondent No. 7. Therefore, on this count also, PIL should be dismissed.

In his reply, Mr. Taka Masa, learned senior counsel for the petitioners has referred to various documents placed on record to contend that prior to institution of the PIL, there were series of discussions at various level authorizing the Lotha Hoho to file PIL. Lotha Hoho is the apex body of the Lotha tribals. Earlier the Kohima Union of Lotha Hoho had filed a writ petition on the same subject but the same was withdrawn with liberty granted by the Court to file a fresh writ petition. Consequently, the present PIL has been filed. He submits that when the vires of a statute is put under challenge, it is not necessary to implead all persons who may be affected in view of operation of the impugned statute. In any case, the affected party in this case is respondent No.7 who is already on record in the present proceeding.

Submissions made by the learned counsel for the parties have received the due consideration of the Court.

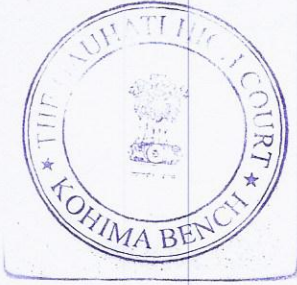
Issues raised in this PIL may require further deliberations of the Court.

In view of above, let this PIL be admitted for regular hearing.

Respondent Nos. 1, 2, 3, 4, 5 and 6 are represented by Mr. T.B. Jamir, learned Additional Advocate General, Nagaland whereas respondent No. 7 is represented by Mr. S. Dutta, learned senior counsel. On due consideration, we are of the view that Union of India represented by the Secretary to the Government of India, Ministry of Petroleum and Natural Gas is also a necessary party to the present proceeding and accordingly, Union of India be added as respondent No. 8 in this PIL. Office to make necessary correction in the cause title. Notice on behalf of respondent No. 8 be served on Mr. Yangerwati, learned C.G.C whose name may be reflected in the cause list when the case is next listed.

Article 246 of the Constitution of India deals with subject matters of laws to be made by Parliament and by the Legislatures of States. In terms of Article 246, Seventh Schedule to the Constitution envisages three lists enumerating different subjects covered by the three lists. List 1 is the Union List, List-II is the State List and List -III is the Concurrent List. Subjects enumerated under List 1 are within the exclusive domain and legislative competence of the Union Parliament. Entry 53 of List 1 deals with regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable. Thus, *prima facie*, we are of the view that exploration of oil and natural gas is a subject which is covered by Entry 53 of Union List which means that it is the Parliament which has the legislative competence to enact laws on this subject.

Article 371A of the Constitution deals with special provisions with respect to the State of Nagaland. Clause (1) (a) of Article 371A provides that no Act of Parliament in



respect of (i) religious or social practices of the Nagas, (ii) Naga customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Naga customary law, (iv) ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.

A careful reading of the aforesaid provision would show that no central legislation in respect of the aforesaid subjects shall apply to the State of Nagaland unless the same is adopted and made applicable to the State of Nagaland by the Legislative Assembly of Nagaland. This constitutional provision which has been heavily relied upon by Mr. Taka Masa, learned senior counsel for the petitioners, in our opinion, is meant to ensure protection of various aspects of Naga way of life and social practices as well as ownership and transfer of land and resources. It does not in our tentative view confer further competence on the Legislative Assembly of Nagaland to legislate on a subject which is within the exclusive domain of Indian Parliament. This is an aspect which may require further deliberation of the Court.

Since the very source of power for issuance of the impugned permit in favour of respondent No. 7 is highly questionable, both legally and constitutionally, we are of the view that it would be in the interest of justice, if the effect and operation of the said permit is kept in abeyance till the case is finally decided. This is more so, because we have noticed that the impugned Regulations and Rules are not only legally questionable but those do not provide for any safeguards and provision for compensation to the land owners in the process of oil exploration until and unless oil is discovered. Moreover, respondent No. 7 has failed to show any activity since issuance of the impugned permit. Respondent No. 7 has also not placed any materials before the Court to show any investment allegedly made by it.

Accordingly, the impugned permit dated 28-02-2014 issued in favour of respondent No.7 is hereby stayed until further orders.

List this PIL for hearing before the next available Division Bench. Meanwhile, respondents may file their respective affidavit (s).

Sd/- JUDGE

Sd/-JUDGE

TRUE COPY

[Handwritten Signature]
15/10/24

Administrative Officer (Judicial)
Gauhati High Court
Kohima Bench

