

CRIMINAL PROSECTUTION OF TAINTED BUSINESS

: A STRATEGIC LITIGATION AGAINST MAHANADI COALFIELDS LIMITED

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END CORPORATE ABUSE

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Executive Summary

Mahanadi Coalfields Limited, a government (India) owned subsidiary of Coal India Limited, faces criminal prosecution against its denial, deprivation and torture of affected people of Lakhanpur Area of Jharsuguda District, Odisha. Chairman and Managing Director B.N. Shukla, General Manager A.K. Singh and other staff are booked for criminal conspiracy, destroying properties of affected people and other serious crimes under Indian Penal Code (45of 1860), Indian Arms Act -1989 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act -1989. They face the serious offences which are punishable with imprisonment for life and with fine. This prosecution process has been initiated by the affected families of coal mining project in IB Valey, Odisha.

Context, Issues and Legal Framework

Mahanadi Coalfields Limited (herein after referred to as MCL), one of the subsidiaries of Coal India Limited, is the biggest coal producing organization in the country and one of the 'Navratnas' among India's public sector undertakings. For the coal mining, MCL has acquired under the Coal Bearing Areas (Acquisition and Development) Act, 1957. Though the land from the Scheduled Castes, Scheduled Tribes and other forest dwellers has been acquired in 1985, no due process has been followed, and no proper relief, rehabilitation and resettlement have been done for the affected families. The affected families have been experiencing insurmountable hardships at the hands of the State machinery and company. The affected families maintain a vagrant life though entitled to receive a genuine and dignified amount towards land acquisition compensation as a matter of their constitutional right under Article 21 of the Indian Constitution, and on this, they can access to the right to an adequate standard of living which is also protected by Article 11 in the International Covenant on Economic, Social and Cultural Rights and Article 25 in the Universal Declaration of Human Rights; and India as a State party has obligations to them.

Though the land plots and houses were acquired by the MCL which were the main source of their livelihood, survival, sustenance and living, no rehabilitation and resettlement has been done or any compensation was ever paid to the affected families. They were made to suffer a bundle of times and have been humiliated for receiving their lawful entitlements and the said apathy is still not meted out. It is grief and pity, and one of the classic cases of deprivation and denial wherein the MCL and State Authorities have taken callous approach towards the victims and poor under privileged scheduled caste persons.

The affected families are entitled to relief, employment, rehabilitation and resettlement under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which ensures, "in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status and for matters connected therewith or incidental thereto."

MCL and the Government of Odisha have retained the due compensation money and property of the affected families is contrary to fair process of justice which impact huge loss to poor and underprivileged.

It is well settled in law that the retention of money or property of another is against the fundamental principles of justice or equity and good conscience as per the judgement of the Hon'ble Apex court in Indian Council for Enviro-Legal Action Vs. Union of India (UOI) and Ors. (2011) 8 SCC 161.

Further, it is to say that MCL and the Government of Odisha have remained silent themselves over the payment and/or rehabilitation and resettlement of the affected families for long years since 1985 is malafide, and the instant case is a case of fraud of power that lies with the executives. Thus, the full and substantial relief is required to be granted. In case of Rameshwar V. State of Haryana (2018) 6 SCC 215, the Supreme Court of India viewed such malafide as 'the greater victim in the matter was the public interest'. When a property is acquired, and law provides for payment of compensation to be determined in the manner specified, ordinarily compensation shall have to be paid at the time of taking possession in pursuance of acquisition. By applying equitable principles, the courts have always awarded interest on the delayed payment of compensation in regard to acquisition of any property as has been held in Union of India (UOI) Vs. Parmal Singh and Ors. (2009)1 SCC 618.

The Supreme Court of India in case of C.E.S.C Ltd v. Sandhya Rani Barik (2008)17 SCC 436 held that rate of interest as statutorily fixed shall be applicable. Section 80 of the under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 clearly prescribes, "When amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate

of nine per cent. per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent. per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry”.

Deprivation and Denial of Affected Families

Despite of persisting statutes, provisions and guidelines from the Supreme Court of India, the MCL as of now do not make any compliance. It is engaged in denial and torture of affected people, mostly are from Scheduled Castes(dalit), and Scheduled Tribes(advasis) and other forest dwellers. They are subjected to criminal conspiracy, criminal intimidation with life, humiliation in public and insulted by their caste names and faces serious discrimination. Further, their houses, dwelling and place of worship is destroyed by explosive substances and illegal blasting. The women and girl children suffer due to continuous sexual crimes against them by the staff, contractors and agents of MCL. It is a common and increasing phenomena, and the offenders are habitual.

The Resistance and Retaliation

When the affected families and communities resisted, they are booked under criminal offences falsely and sent to jails several times. At the behest of the MCL, the protesters were mercilessly beaten by police and their mercenaries. Women and girls were harassed; and many cases of rape and other sexual assault were not reported or registered. Police refused to register their complaints.

New beginning and challenges

Experiencing the above states situation and circumstances, in a participatory approach having collective leadership, End Corporate Abuse team led by Dr Subash Mohapatra intervened. At the first phase, the move was meant to rescue the people from jails who were falsely charged. Gained Confidence. 35 petitions filed in High Court for seeking relief and rehabilitation. The matter does not stop there. In a collective organization, it was decided to fight back the MCL for their crimes; and prosecuting criminally. The affected communities were provided basic legal documentation skill and strategic litigation began. To counter police's refusal of the incident as First Information Report, the victims approached the Odisha High Court vide CRLMP Petition/Criminal Prosecution Application; and CRLMP 1508/2019, 1509/2019 and 1540/2019 filed. The judgements came in favour of the communities and police had no other option to register and initiate criminal prosecution. As of now five cases have been registered.

Arguments for Criminal Prosecution

Though the protection measures for the underprivileged sections, in the instant case at hand for Scheduled Castes and Scheduled Tribes, persist, but the affected persons do not get justice. The instant case explains the denial- how the underprivileged communities were subjected to various offences, indignities, humiliation and harassments. Most unfortunately, the law enforcement agency did not heed to his request.

The Authorities of Lakhanpur Police Station is duty bound to register the First Information Report received from the aggrieved party(ies) or informant (s) , who is/are a person(s) from Scheduled Caste or Scheduled Tribes; and it is mandatory for police to register the First Information Report, and the duty of the registration of the First Information Report is conferred upon Station House Officer statutorily under section 18A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act -1989, which reads, "(1) For the purpose of this Act, (a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or (b) the investigating officer shall not require approval for the arrest, if necessary, of any person against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply". Further, Rule 5(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 prescribes, "Every information relating to the commission of an offence under the Act, if given orally to an officer in-charge of a police station shall be reduced to writing by him or under his direction. and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the persons giving it, and the substance thereof shall be entered in a book to be maintained by that police station"; and Officer-in-charge/Station House Officer cannot escape his duty under 5(2) of the said Rules 1995 to provide a copy of the information recorded under Rule 5(1) of the said Rules 1995 which reads, "(2) A copy of the information as so recorded under sub-rule (1) above shall be given forthwith, free of cost, to the informant".

The Superintendent of Police, Jharsuguda is statutorily duty bound to take action for the registration of the First Information Report received from the Petitioner, who is a Schedule Caste Person. Rule 12(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 conferred duty upon him to take action for the registration of the First Information Report; and the said Rule states, "Superintendent of Police shall ensure that the First Information Report registered in the book of the concerned police station and effective measure for apprehending the accused are taken". Further, Rule 5(3) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 prescribes the duty upon the Superintendent of Police, Jharsuguda to investigate either by himself or

by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer in-charge of the concerned police station to enter the substance of that information to be entered in the book to be maintained by the police station.

The OIC Lakhanpur Police Station and the The Superintendent of Police, Jharsuguda have committed negligence for which the affected persons were denied justice and suffered. The said negligence is contrary to the law, and attracts punishment Under Section (4)(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of the Atrocities) Act -1989 as prescribed, "Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year".

The OIC Lakhanpur Police Station and the The Superintendent of Police, Jharsuguda have committed negligence of duties as defined under 4(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act -1989 which includes, "(a) to read out to an informant the information given orally, and reduced to writing by the officer-in-charge of the police station, before taking signature of the informant; (b) to register a complaint or a First information Report under this Act and other relevant provisions and to register it under appropriate section of this Act; (c) to furnish a copy of the information so recorded forthwith to the informant; (d) to record the statement of the victims or witnesses; (e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing; (f) to correctly prepare, frame and translate any document or electronic record; and (g) to perform any other duty specified in this Act or rules made thereunder".

The OIC Lakhanpur Police Station has deselected his duty by not recoding the information relating to commission of cognizable offences and not supplying a copy of recorded information to the Petitioner/informant; and he failed to supply as he did not perform his duty under subsection (1) of 154 of CrPC. The duty of the OIC of the Lakhanpur Police Station is crystal clear. He is lawfully duty bound to record every information relating to commission of cognizable offences. He has committed his dereliction of his public duty by acting contrary to the law under Section 154(1) of CrPC, which confreres the duty, which reads, "Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government

may prescribe in this behalf". Further, under section 154(2) of the said CrPC requires the OIC of the Lakhanpur Police Station to provide a copy of the information as recorded under sub-section 154(1) of CRPC at free of cost to the informant.

It is well settled by a five-judge bench of the Supreme Court of India in the case of Lalita Kumari Vs. State of Uttar Pradesh and Others (WP CRL 68 of 2008) decided on dated 12-11-2013 reported in AIR 2014 S.C.187 that "(a) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation". Further it is also settled in said Lalita Kumari (Supra) that "(d) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence"; and "(e) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence". Hence, the OIC of the Lakhanpur Police is liable to be punished for his erring.

The Superintendent of Police, Jharsuguda cannot escape from his public and lawful duty as he was informed about the matter under section 154(3) of the CrPc. The complaint under section 154(3) of the CrPc from the Petitioner is duly received in his office. The present petitioner, being aggrieved by a refusal on the part of an officer in charge of Lakhanpur Police Station to record the information referred to in subsection (1) of 154 of the CrPc, has sent the substance of such information, in writing and by post, to the Superintendent of Police of Jharsuguda who is duty bound, being satisfied that such information discloses the commission of a cognizable offence, to either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by the Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence allegedly committed.

The requirement of Section 154 of the CrPC/Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action. In Section 154(1) of the Code, the Legislature in its collective wisdom has carefully and cautiously used the expression 'information' without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, 'reasonable complaint' and 'credible information' are used. Evidently, the non-qualification of the word 'information' in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the Police Officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other

words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. [Lalita Kumari]

TABLE 1: List of cases filed in Odisha High Court against the Chairman cum Managing Director and other Staff of Mahanadi Coal Fields Limited (MCL) by affected families from Lakhanpur -Jharsuguda for criminal prosecution under Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act -1989 and the Rules made thereunder.

Sl.No.	Name of the petitioner	Case Number	Offences
01	Jumerlal Singh (SC)	CRLMP/1392/2019	120(B)/294/323/341/506/34 of IPC, 5 of Indian Explosives Act and Section 3(1)(r), 3(1)(s), 3(2)(iv) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-1989 and as amended thereto This is withdrawn and filed a fresh CRLMP 1540 of 2019, and subsequently FIR 0139/2019 in Lakahpur Police Station registered.
02	Santoshini Balara (ST)	CRLMP/1509/2019	294/323/341/354/506/34 of IPC, 5 of Indian Explosives Act and Section 3(1)(r), 3(1)(s), 3(2)(iv) and 3(2) (va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-1989 and as amended thereto.
03	Mamata Singha (ST)	CRLMP/1508/2019	294/323/341/354/506/34 of IPC, 5 of Indian Explosives Act and Section 3(1)(r), 3(1)(s), 3(2)(iv) and 3(2) (va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-1989 and as amended thereto.

Details of Registration of First Information Report

FIR 139 of 2019/Jumerlal Singh Criminal case registered in Lakhanpur Police Station vide P.S. Case First Information Report No. 139 of 2019 invoking the Section 294, 341, 506 and 34 of Indian Penal Code and 3(1)(r), 3(1)(s), 3(2)(iv) and 3(2)(va) of Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act -1989 and as amended thereof.

FIR 141 of 2019/Mamata Singh Criminal case registered in Lakhanpur Police Station vide P.S. Case First Information Report No. 141 of 2019 invoking the Section 120(B), 294, 341 and 506 of Indian Penal Code and 3(1)(r), 3(1)(s), 3(2)(iv) and 3(2) (va) of Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act -1989 and as amended thereof.

FIR 142 of 2019/Santoshini Barla Criminal case registered in Lakhanpur Police Station vide P.S. Case First Information Report No. 142 of 2019 invoking the Section 120(B), 294, 341, 354, and 506 of Indian Penal Code and 3(1)(r), 3(1)(s), 3(2)(iv) and 3(2)(va) of Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act -1989 and as amended thereof

In compliance to CRLMP the FIR vide 139/2019, 141/2019 and 142, the Lakahnpur Police filed the FIRs.

FIR 145 of 2019/Suru Banchhor 120B, 294, 341, 354-A and 506 of IPC and 3(1)(r) and 3(1)(s) of Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act -1989 and amended thereof

FIR 146 of 2019/Pratima Singh 294, 323, 354, 506, 120B of IPC, 3(1)(r), 3(1)(s), 3(2)(iv) and 3(2) (va) of Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act -1989 and amended thereof and Section 25 of Indian Arms Act -1969

Another two complaints filed from affected families, and the Lakhanpur police was compelled to received and register the FIRs vide 145/2019 and 146/2019

OFFENCES AND PUNISHMENTS

Table 2: Prosecution under Indian Penal Code

Indian Penal Code	Offences	Punishment
34	Common Intention/Criminal act done by several persons	Each Persons liable for that criminal act in the same manner as if it were done by him alone
120B	Criminal Conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards	Same as for abetment of the offence which is the object of the conspiracy
294	Obscene Songs	Imprisonment for three months, or fine or both
323	Voluntarily causing hurt	Imprisonment for one year or fine of one thousand rupees or both
341	Wrongfully restraining any person	Simple imprisonment for one month or fine of five hundred rupees or both
354	Assault or use of criminal force to woman with intent to outrage her modesty	Imprisonment of 1 year which may extend to 5 years, and with fine
506	Criminal Intimidation	Imprisonment for two years, or fine, or both

Table 3: Prosecution under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act -1989

SC/ST (POA) Act-1989	Offences	Punishment
3(1)(r)	Intentionally insults or intimidates with intent to humiliate any member of a Scheduled Castes or a Scheduled Tribe in any place within public view	Imprisonment for a term which shall not be less than six months but which may extend to five years and with fine
3(1)(s)	Abuses any member of a Scheduled Castes or a Scheduled Tribe by caste name in any place within public view	Imprisonment for a term which shall not be less than six months but which may extend to five years and with fine
3(2)(iv)	Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,- commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place of human dwelling or as a place for custody of the property by a member of a Scheduled Caste or Schedule Tribe, shall be punishable	Imprisonment for life and with fine
3(2) (va)	Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,- commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of Scheduled Caste or a Scheduled Tribe or such property belong to such punishment as specified under the Indian Penal Code	According to punishment specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine

	(45 of 1860) for such offences and shall also be liable to fine	
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Table 4: Prosecution under Indian Arms At 1969

Indian Arms Act 1969	Offences	Punishment
25	bring into, or takes out of, India, any arms or ammunition of any class or description illegally	Imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine

Strategic Litigation for Ousting the Corrupt Authority of MCL from Affected Area

The team found certain authorities are involved in crimes against the affected communities, and they need to be ousted from the area. Thus, it is decided to move criminal prosecution for ousting these persons (authorities of MCL), and next plan is to examine the said possibility, and initiative is started recently. □

End Corporate Abuse is a joint platform of civil society organizations, lawyers, journalists, researchers and affected rural -tribal communities due to industrialization and corrupt business practices; which origins from National Campaign for Ending Corporate Abuse in India, led by Global Human Rights Communications, for campaigning to end corporate abuse in India. The basic objective is to ensure corporate accountability while Implementing the United Nations 'Protect, Respect and Remedy' Framework", which is derived from guiding principles on business and human rights. The said guiding principles have been endorsed by the United Nations Human Rights Council in its resolution 17/4 of 16 June 2011.

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