

(2005) 07 JH CK 0044
In the Jharkhand High Court
Case No : Writ Petition (C) No. 2004 of 2004

Annapurna Saw Mill

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-07-2005

Acts Referred:

Bihar Saw Mills (Regulation) Act, 1990 — Section 7, 7(5)
Bihar Saw Mills (Regulation) Rules, 1993 — Rule 3, 4, 6
Constitution of India, 1950 — Article 166, 19(1), 48A, 51A

Citation : (2005) 2 BLJR 1660 : (2005) 3 JCR 377

Hon'ble Judges : Altamas Kabir, C.J; R.K. Merathia, J

Bench : Division Bench

Advocate : Biren Poddar, Ajay Poddar, Sanjeev Kumar Mishra and Mukul Kumar Banka, for the Appellant; R.N. Sahay, Sr. SC-II, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition was referred to the Division Bench by the learned Single Judge by order dated 30th June, 2004, having regard to the issues involved.
2. The writ petitioner is a partnership firm which was engaged in the business of operating a saw mill, established in the year, 1972, situated in Ward No. VI, Holding No. 26/A. Old Hazaribag Road, which comes under the Ranchi Municipal Corporation.
3. The petitioner was granted a licence under the Bihar Factories Rules, 1950 and the Factories Act, 1948 and is also registered under the Bihar Rules for the Establishment of Saw Mills and Establishment and Regulation of Depots, 1983. The business of operating saw mills is regulated at present by the Bihar Saw Mills (Regulation) 1990, which requires the person who is desirous of operating a saw mill to obtain a licence for the same. Section 7 of the said Act makes a provision regarding grant, renewal, revocation or suspension of such licence. Rule 3 of the Bihar Saw Mills (Regulation) Rules, 1993 provides for obtaining such licence and Rule 4 provides for grant of the same. Rule 6 provides for renewal of licences

already granted.

4. In keeping with the provisions of the aforesaid Regulation and the Rules, the petitioner applied for and was granted a licence under the aforesaid Act for the calendar year, 1995 and the same was renewed each year upto the year, 2002. In compliance with the provisions of the aforesaid Act and, in particular, Rule 6 of the Bihar Saw Mills (Regulation) Rules, 1993, the petitioner applied to the Licensing Officer for renewal of its licence for the year, 2003 by its application dated 25th November, 2002. In response to its said application, the petitioner was served with a notice to show-cause dated 11th March, 2003 issued by the Licensing Authority-cum-Divisional Forest Officer, Ranchi East Forest Division, Ranchi, respondent No. 5 herein, informing the petitioner that the petitioner's saw mill had not been functioning as per the required monthly capacity and that the petitioner's saw mill was found closed during the inspection visit by respondent No. 5. The petitioner duly filed its reply to the show-cause notice denying the charges contained in the said notice and stating that the saw mill had not ceased to operate and may have been closed on a particular date for some reason or other which could not be the basis for an assumption that the saw mill had been permanently closed down. However, on 22nd December, 2003, the respondent No. 5 passed an order cancelling the licence of the petitioner's saw mill and refusing to renew the same for the calendar year, 2003. Aggrieved by the said refusal order of the concerned authority in renewing its licence to run the saw mill and/or revoking the same, the writ petitioner has moved the instant writ petition.

5. Appearing in support of the writ application, Mr. Biren Poddar firstly contended that the decision not to renew the licence granted to the writ petitioner to run its saw mill was highly arbitrary and not in consonance with the provisions of Section 7(5)(a) of the Bihar Saw Mills (Regulation) Act, 1990, which provides that the Licensing Officer if satisfied that the licensee has parted, in whole or in part with his control over the saw mill or saw pit or has otherwise ceased to operate or own such mill or saw pit, then without prejudice to any other penalty to which the licensee may be liable under the Act, the licensing officer may, after giving the licensee an opportunity of showing cause, revoke or suspend the licence and forfeit the sum, if any, or any portion thereof, deposited as security for the performance of the conditions, subject to which, the licence has been granted.

6. Mr. Poddar submitted that from the order of the licensing authority itself, it will be seen that the allegation that the petitioner's saw mill had "ceased to operate" was unfounded, since the order itself contains the production data of the petitioner's saw mill for the years 2000, 2001, and 2002, from which it will be seen that some work had been undertaken, although not to the capacity for which the saw mill was intended. Mr. Poddar urged that since it cannot be said that the petitioner's saw mill had ceased to operate, which would indicate that it had since been completely closed, the very foundation for refusing to renew the

petitioner's licence was not available to the authorities.

7. Aggrieved by the decision of the Licensing Authority not to renew the petitioner's licence, for the year, 2003, the petitioner preferred an appeal before the Appellate Authority-cum-Conservator of Forests Ranchi Territorial Circle, Ranchi, being respondent No. 4 herein, and such appeal was numbered as Appeal. No. 2 of 2004. Mr. Poddar submitted that the Appellate Authority passed a final order dated 28th February, 2004, in the appeal, confirming the order passed by the Licensing Authority on 22nd December, 2003 after recording that the functioning of the petitioner's saw mill was negligible and minimal. Apart from the above, Mr. Poddar also questioned the orders, both of the Licensing Authority and the Appellate Authority on the ground that the same were not in conformity with any policy decision of either the State of Bihar or the State of Jharkhand. According to Mr. Poddar, on a consideration of the provisions of the Forest (Conservation) Act, 1980, the Hon'ble Supreme Court had in the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, directed the Central Government and the various State Governments to appoint Expert Committees for the purpose of regulating the cutting of timber in the different States so as to protect the environment. Mr. Poddar submitted that the Expert Committee had been formed by the State of Bihar prior to bifurcation and such committee is said to have submitted its report which, however, was not in consonance with the provisions of Article 166 of the Constitution, not having been passed in the name of the Governor.

8. Mr. Poddar submitted that having regard to the above, no reliance could be placed on the recommendation contained in the letter written by the Secretary, Department of Forests and Environment, Government of Bihar, dated 28th October, 2000, which has been made Annexure-8 to the writ petition. Mr. Poddar urged that apart from the above, the recommendation contained in the said letter was not fully approved by the Hon'ble Supreme Court and, subsequently, a Centrally Empowered Committee was constituted, to which the State Governments had to apply for the purpose of approval of the recommendations made by each State Government. According to Mr. Poddar, the recommendation of such Centrally Empowered Committee was ultimately accepted by the State of Bihar with certain modifications. Subsequently, such recommendations made by the Centrally Empowered Committee were also accepted by the Hon'ble Supreme Court. Mr. Poddar contended that having regard to the above, it could not be contended on behalf of the State of Jharkhand that it had ever adopted or acted on the aforesaid communication dated 28th October, 2000, which had not been accepted by the Hon'ble Supreme Court in its totality.

9. Apart from the above, it was also urged that since the State of Jharkhand had not issued any guidelines in terms of the direction given by the Hon'ble Supreme Court in T.N. Godavarman's case, (supra), the Licensing Authority could not take a decision not to renew the licence granted to the petitioner to run its saw mill except in accordance with the provisions of the Bihar Saw Mills (Regulation) Act,

1990 and the Rules framed thereunder.

10. Mr. Poddar urged that the decisions taken both by the Licensing Authority and that of the Appellate Authority were contrary to the provisions of the aforesaid Regulation which, in fact, had been considered by the learned Single Judge in the case of *L.B.R. Industries and Ors. v. State of Jharkhand and Ors.* 2003 (4) JCR 202, wherein it was observed that the Government of Jharkhand had not yet taken a final decision or framed any guidelines by issuing any notification with regard to the procedure to be adopted by reducing the number of saw mills situated particularly within the forest area. Mr. Poddar urged that the impugned orders were liable to be quashed and a mandamus should issue to the Licensing Authority to renew the license of the petitioner's saw mill.

11. Opposing the writ petition, Mr. R.N. Sahay, learned Senior Standing Counsel No. II, appearing for the respondents-State of Jharkhand, contended that the so-called production in the petitioner's saw mill for the years 2000, 2001 and 2002 was so negligible so as to warrant a decision by the Licensing Authority to discontinue the licence granted to the petitioner for operating its saw mill. From the order passed by the Licensing Authority as also the appellate authority, Mr. Sahay pointed out that the production in the petitioner's saw mill over the said three years was for below the total capacity. Mr. Sahay urged that in keeping with the policy which has been adopted by the State of Jharkhand which had been taken in keeping with the directions given by the Supreme Court in *T.N. Godavarman's case*, (supra), it had been decided to reduce the number of saw mills in the State. Mr. Sahay urged that a policy decision had been taken on the basis of the report of the Expert Committee which had been constituted by State of Bihar. Mr. Sahay urged that the report submitted was also taken into consideration by the State of Jharkhand and, in terms of the directions contained in the aforementioned judgment of the Supreme Court, the report of the Expert Committee was to be placed before the Supreme Court and was not required to be in the form of an order within the meaning of Article 166 of the Constitution. Mr. Sahay urged that the said submission had been made on behalf of the petitioner on a mistaken interpretation of the directions of the Hon'ble Supreme Court in *T.N. Godavarman's case*, (supra).

12. Mr. Sahay also relied on a Division Bench decision of the Patna High Court in the case of *Basudeo Yadav and Ors. v. The State of Bihar and Ors.* 2002 (1) PLJR 551, wherein the decision to limit the number of saw mills was being considered in the light of Article 19(1)(g) read with Articles 48-A and 51-A of the Constitution. Upon interpretation of the said provision, the Division Bench came to the conclusion that though it was not possible for the Court to interfere with in the order, it was not understood as to how the State Government proposed to identify the number of saw mills, or one saw mill in ratio to the population of fifty thousand, as the case may be. In dealing with the said problem, the Division Bench observed that it is one thing to fix the number on the basis of sustainable capacity of forests, but another thing to identify the sustainable saw mills, which

are to be allowed renewal. Considering that a large number of saw mills have been running under valid licences, which one of them should be allowed and which one should be closed within a span of three years, would require due care and caution. Obviously, this could not be done on a pick and choose basis and some norms had to be laid down. The Division Bench, thereafter, went to indicate that in cases where the licences had already expired, the same could be allowed to die natural deaths, provided that if some of them were identified as viable/sustainable saw mills they could be allowed to run. Mr. Sahay submitted that it was left to the State Government to identify such viable Units and thereafter to take steps either to renew or not to renew their respective licences.

13. According to Mr. Sahay, in the Instant case, a decision had been taken on the basis of the performance of the petitioner's saw mill for three consecutive years and in keeping with the same, it was found that it was not a viable or sustainable saw mill which could be allowed renewal of its licence.

14. We have carefully considered the submissions made on behalf of the respective parties having regard to the directions given by the Hon"ble Supreme Court and the various provisions of the Bihar Saw Mills (Regulation) Act, 1990 and the rules framed thereunder and we are inclined to agree with Mr. Sahay's submission that the question as to whether the saw mill licence of the petitioner was to be renewed or not, had been left to the discretion of the Government in keeping with the directions contained not only in T.N. Godavarman's case, (supra), but also in the case decided by the Division Bench of the Patna High Court in Basudeo Yadav, (supra). It is quite clear that the intention of the Hon"ble Supreme Court was that wood-based industries were to be curtailed/minimised in order to protect the forests and environment and in keeping with such policy, a direction was given to the Central Government and State Governments to appoint Expert Committees to go into the matter. Whether the report of one committee was accepted or not or whether the same was an order within the meaning of Article 166 of the Constitution or not, is, in our view, not very material for the purpose of the present writ application. The Hon"ble Supreme Court has clearly directed that the Expert Committee was to submit its report to the Hon"ble Supreme Court which appears to have been done. The decision was taken by the State Government to curtail and phase out saw-mills and timber-based industries, in the manner as indicated in the communication of 28th November, 2000 and the decision not to renew the petitioner's licence appears to have been taken, pursuant to such a policy.

15. We are not, therefore, inclined to interfere with the policy decision of the State Government, which we are convinced is in keeping with the directions of the Hon"ble Supreme Court.

16. The writ petition, accordingly, fails and is dismissed. There will, however, be no order as to costs.