

(2018) 12 DEL CK 0115

In the Delhi High Court

Case No : Latter Patent Appeals No. 507 Of 2018

Arcelormittal India Pvt Ltd & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 13-12-2018

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2, 2(iii), 2(A)
National Green Tribunal Act, 2010 — Section 16, 16(e)

Citation : (2018) 12 DEL CK 0115

Hon'ble Judges : Rajendra Menon, CJ;V. Kameswar Rao, J

Advocate : Krishnan Venugopal, Ashish Rana, Shivendra, Surekh Baxy, Sahil, Amit Mahajan, Chandra Bhushan Prasad

Final Decision : Division Bench

Judgement

V. Kameswar Rao, J

1. The challenge in this appeal is to the order dated 17th July, 2018 of the learned Single Judge in W.P.(C) 1376/2017 whereby the learned Single Judge has dismissed the petition giving liberty to the appellants to seek such remedy as available in law. This is primarily because of an objection of availability of alternative remedy under Section 2 (A) of the Forest (Conservation) Act, 1980 taken by the learned counsel appearing for the respondent nos. 1 and 2.

2. Mr. Krishnan Venugopal, learned Sr. Counsel appearing for the appellants has drawn our attention to Section 2 and Section 2(A) of the Forest (Conservation) Act, 1980 to contend that the said remedy of appeal is only available to a party aggrieved, other than the applicant like the appellants herein, that too against an order passed by the State Government directing any one of the following:

(i) That any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall ceased to be reserved;

(ii) That any forest land, or any portion thereof may be used for any non-forest

purpose;

(iii) That any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government,

(iv) That any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

3. He submits that the challenge in the writ petition was primarily to a communication dated 11th January, 2017, whereby the application of the appellants seeking approval of respondent no.2 under Section 2 (iii) of the Forest (Conservation) Act, 1980 was not granted by the Central Government. He also submits that it is the case of the State Government in Para 6 of the affidavit filed today before this Court that an order under Section 2 of the Forest (Conservation) Act, 1980 can be passed by the State Government only with the prior approval of the Central Government. In other words, an order under Section 2 of the Act is for direction for one of the four eventualities contemplated therein. Since there is no approval, there was no occasion for the State Government to pass an order. Hence, the remedy of appeal not being available, the appellants could not have been relegated to the said remedy by the Learned Single Judge. He also relied upon two judgements of the NGT in support of his contentions namely, Vimal Bhai and Anr. V. Union of India and Ors. Appeal NO. 7 /2012 decided on 7th November, 2012 and Hira Singh Markam and Ors. v. Union of India and Ors. Appeal No. 83/2014 decided on 23rd December, 2016.

4. On the other hand, Mr. Amit Mahajan, learned CGSC appearing for the respondents submits that the remedy of appeal under Section 2(A) is available to the appellants herein. According to him, pursuant to the communication of the Central Government dated 11th January, 2017, the State Government is required to pass an order, which they have not done. Merely because the State Government has not passed an order against which the appellants could have filed an appeal before the National Green Tribunal, the writ petition could not have been entertained and was rightly dismissed by the learned Single Judge.

5. We are unable to accept this submission made by Mr. Mahajan. Section 2 and 2 (A) of the Forest (Conservation) Act, 1980 read as under:

"2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,-

(i) That any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall ceased to be reserved;

(ii) That any forest land, or any portion thereof may be used for any non-forest

purpose;

(iii) That any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government,

(iv) That any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation.- For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for -

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

2A. Appeal to National Green Tribunal - Any person aggrieved, by an order or decision of the State Government or other authority made under Section 2, and or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act."

6. From the perusal of the aforesaid sections, it is clear that the substantive provision of appeal is available to a person aggrieved by an order or decision of the State Government or other authority, made under Section 2. Section 2 contemplates no State Government or any other authority shall make, except with the prior approval of the Central Government, an order directing the following:

(i) That any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall ceased to be reserved;

(ii) That any forest land, or any portion thereof may be used for any non-forest purpose;

(iii) That any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government,

(iv) That any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

7. So, it is clear that in terms of Section 2, it is the State Government that

directs any of the four above. In other words, the State Government will pass an order on one of the above four after taking approval of the Central Government. It is such order of the State Government, which can be taken in an appeal under Section 2(A) by any person aggrieved therefrom. This is not a case where the State Government has passed an order directing one of the four above. Hence the remedy of appeal is not available to the appellants herein.

8. That apart the issue can be seen from another perspective, i.e., whether NGT would have the jurisdiction to entertain the appeal filed by the appellants. The finding is to be in the negative in view of Section 16 of the NGT Act, 2010 which reads as under:

16. Tribunal to have appellate jurisdiction.-Any person aggrieved by,-

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(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010 by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);

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may within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal;

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.

9. Mr. Venugopal is justified in relying upon the judgments as referred to above. The relevant part of the same are reproduced as under:

In Vimal Bhai and Anr. (supra) it is held as under:

21. Section 2(A) of the FC Act as well as Section 16(e) of the NGT Act clearly stipulates that an order or decision made by the State Government or other authority passed under Section 2 of the FC Act 1980 can be assailed by filing an Appeal before this Tribunal.

Section 2 of the FC Act, 1980 deals with restrictions or de- reservation of forest or use of forest land for non-forestry purpose.

The said section starts with a non-obstante clause and stipulates that notwithstanding anything contained in any other law no State Government or other authority shall pass, except with the prior approval of the Central Government, any order directing dereservation of any forest land for any non

forest purpose, lease out any forest land to a person or authority, corporation, agency etc. and/or permit deforestation of any forest land for the purpose of using it for cultivation of tea, coffee, spices, rubber etc. or for any other purpose other than reafforestation. The said Section therefore curtails the power of the State Government from leasing out or otherwise permitting use of forest land for non forest purpose, without obtaining prior permission of the Central Government.

22. The questions now arises as to whether the approval granted by the Central Government under Section 2 of the FC Act granting in-principle sanction can be assailed by filing an Appeal, the said order not being the final allotment order. The language of the Section stipulates that before permitting user of forest land for non-forest purposes, the State Government has to obtained prior approval of the Central Government, thus there is no ambiguity that the State Government is the authority to grant permission for use of forest land for non-forest purpose, but then such permission can be granted only after the Central Government accords approval. Further a right to use the forest land for non- forest purpose accrues only after the State Government passes the order, and not from the date of granting Stage - I or Stage - II Clearance.

There is no ambiguity in the proposition that a person aggrieved by any action of the instrumentalities of the State or Central Government should have a right to assail the same before competent forum.

23. It is no more res-integra that an Appeal is a creation of a Statute and it cannot be created by acquiescence of the parties or by the order of the Court. The findings of a Court or a Tribunal becomes irrelevant and unforceable/inexecutable once the Forum is found to have no jurisdiction, as doctrine of nullity will come into operation (see *State of Gujrata v. Rajesh Chiman Kal Barat* (1996) 5 SCC 477. Further, there is also no quarrel to the legal proposition that right to Appeal is neither an absolute nor an ingredient of natural justice and the Legislature can put conditions for maintaining the same. In the case of *Vijay Prakash D. Mehta & Jawahar D. Mehta vs. Collector of Customs (Preventive)*, Bombay, AIR 1988 SC 2010, the Apex Court held as under:-

"Right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial or quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.....The purpose of the Section is to act in terrorem to make the people comply with the provisions of law".

24. In the case of *Nand Lal v. State of Haryana and Ors.* AIR 1980 SC 2097, it was held that "right of appeal is a creature of Statute and there is no reason why the Legislature, while granting the right, cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory".

25. It is well settled principle in law that the Court cannot read anything into a

statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See *Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr.* (AIR 1998 SC 74)) The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner* (1846 (6) Moore PC 1), Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See *The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr.* (JT 1998 (2) SC 253)).

28. "Appeal", is defined in the Oxford Dictionary, volume I, page 398, as the transference of a case from an inferior to a higher Court or tribunal in the hope of reversing or modifying the decision of the former. In the Law Dictionary by Sweet, the term "appeal" is defined as a proceeding taken to rectify an erroneous decision of a Court by submitting the question to a higher Court or Court of appeal, and it is added that the term, therefore, includes, in addition to the proceedings specifically so called, the cases stated for the opinion of the Queen's Bench Division and the Court of Crown Cases reserved, and proceedings in error. In the Law Dictionary by Bouvier an appeal is defined as the removal of a case from a Court of inferior to one of superior jurisdiction for the purpose of obtaining a review and re-trial, and it is explained that in its technical sense it differs from a writ of error in this, that it subjects both the law and the facts to a review and re- trial, while the latter is a Common Law process which involves matter of law only for re-examination; it is added, however, that the term "appeal" is used in a comprehensive sense so as to include both what is described technically as an appeal and also the common law writ of error.(See - *Shiv Shakti Coop. Housing Society v. M/s Swaraj Developers & Others* (2003) 6 SCC - 659).

The discussions made above leaves no doubt in our mind that an Appeal flows from a Statute and if the Statute does not provide an Appeal against a specific order, no Appeal can be entertained.

29. Cumulative reading of Section 2 (A) of the FC Act and 16(e) of the NGT Act, leads to an irresistible conclusion that under the said Sections an Appeal is provided for only against an order passed by the State Government or other authorities. In other words, the Legislature in its wisdom has kept the order of approval/clearance passed by the Central Government under FC Act beyond the scope of Appeal.

In Hira Singh Markam and Ors. (supra) it is held as under:

25. Admittedly, the first stage of forest clearance granted by MoEF is on 16th April, 2010 based on which the State Government of Chhattisgarh has granted forest clearance for conversion of 83.12 ha. of land for non-forest purpose for the project of respondent No. 3. The appeal would lie only under Section 16 (e) as extracted above which spells out that orders passed under Section 2 of Forest Clearance by the State Government or any other authority is amiable to appeal before this Tribunal. There is no reference to Central Government or any other authority, therefore, in clear terms and the language of Section 16(e) render orders passed by the respondent No. 1 beyond the challenge in appeal under Section 16 (e) of the NGT Act. We are, therefore, satisfied that the appeal in the present form would be maintainable only against the order passed by respondent No. 2- State Government of Chhattisgarh dated 23rd May, 2014 and not independently to question the order of the Central Government dated 16th April, 2010 granting first stage forest clearance for the project but we need to answer as to whether, while questioning order passed by State Government granting forest clearance, could this Tribunal examine the legality, justification or propriety of the order passed by the Central Government as the impugned order relate to the same project. This issue had come up for consideration before this Tribunal in Appeal No. 7 of 2012 in the case of Vimal Bhai & Ors. v. Union of India and Ors. On serious context on this issue this Tribunal has recorded a firm and clear finding. To avoid further conflict on this issue, we would refer to the said finding which is quoted herein:

[Extracted from paragraph Nos. 9, 29 and 30]

9. The par-materia provision to Section 2 (A) of FC Act is Section 16 (e) of the NGT Act. The said section stipulates that any person aggrieved by an order or decision, made, on or after the commencement of NGT Act, 2010 by the State Government or other authorities under Section 2 of the FC Act, 1980, may within a period of 30 days from the date on which the order or decision or direction or determination is communicated to him prefer an appeal to the Tribunal.....

29. Cumulative reading of Section 2 (A) of the FC Act and 16(e) of the NGT Act, leads to an irresistible conclusion that under the said Sections an Appeal is provided for only against an order passed by the State Government or other authorities. In other words, the Legislature in its wisdom has kept the order of approval/clearance passed by the Central Government under FC Act beyond the scope of Appeal.

30. However, a party cannot be remediless, a person who is aggrieved by the Approval/Clearance granted by the Central Government has to avail an opportunity to assail the same. In the aforesaid scenario it can safely be concluded that after receiving a Stage - I and/or Stage - II Clearance, thereby granting a consent to permit use of forest land for non-forest purposes, from the Central Government, it is incumbent upon the State Government to pass a

reasoned order transferring and/or allowing the land in question for being used for non forest purpose. It is needless to be said that bereft of such order no forest lands can be put to use for non-forest purpose. Further, all activities done without such orders would be ab initio void. An Appeal can be filed against the said order of the State Government under Section 2 (A) of FC Act and/or under Section 16 (e) of the NGT Act. In the event such an Appeal is filed it would be open for the person aggrieved, to assail the order/Clearances granted by the Central Government under Section 2 of the Act which forms an integral part and sole basis of the order passed by the State Government.

[emphasis supplied by us]

10. In view of our discussion above, we set aside the impugned order dated 17th July, 2018 of the learned Single Judge in W.P.(C) 1376/2017 and remand the matter back to the learned Single Judge for a decision on merit. We clarify that we have not expressed ourselves on the merit of the dispute in question. The petition stands disposed of.

CM No. 35803/2018 (for stay)

Dismissed as infructuous.