

(2002) 01 PAT CK 0118

In the Patna High Court

Case No : Letters Patent Appeal Nos. 1458, 1480 to 1482 and 1484 to 1486 of 2000

Basudeo Yadav and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-01-2002

Acts Referred:

Citation : (2002) 01 PAT CK 0118

Final Decision : Dismissed

Judgement

S.N. Jha, J.—In this batch of letters patent appeals the dispute, in substance, relates to the validity of Instructions issued by the Principal Chief Conservator of Forests in the matter of renewal and grant of fresh licence for running saw mills in the State of Bihar.

2. The appellants are aggrieved by rejection or non-disposal of their application for renewal of licence or cancellation/suspension of licence under the Bihar Saw Mills (Regulations) Act, 1990 (in short "the Act"). The case of the appellants shorn of details which it is not necessary to notice, is that the saw mills established by them are source of their livelihood and the impugned action of the authorities is violative of their fundamental right to carry on trade and business under Article 19(1)(g) of the Constitution of India. The impugned direction in the matter of grant/renewal of licence has professedly been issued pursuant to the direction of the Supreme Court dated 12-12-1996 in the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, , but the said direction does not prohibit doing business of running saw mills in a non-forest area i.e. outside forest, and, therefore, not only the impugned direction but also the consequential action cancelling or refusing to renew the licence, in some cases keeping the renewal application pending, is arbitrary and illegal.

3. According to the State of Bihar, in view of the direction of the Supreme Court in T. N. Godavarman Thirumulkpad v. Union of India (supra), contained in sub-paragraphs 7, 8 and 9 of paragraph 5 of the order dated 12-12-1996, the State

Government constituted an Expert Committee which submitted report to the effect, inter alia, that out of existing 3991 saw mills only 1110 saw mills are sustainable and the remaining saw mills should be closed in a phased manner over a period of three years. The said report of the Expert Committee was accepted by the Principal Chief Conservator of Forests, Bihar. In his opinion, apart from the said number of saw mills, 90 plywood mills and 100 veneer mills out of existing 109 and 265 plywood and veneer mills, respectively, could be safely operated in the State. The Department of Forests and Environment, however, proposed to allow 1950 saw mills to run, besides all the existing plywood and veneer mills, and to close the remaining saw mills in a phased manner over a period of three years. In the counter-affidavit the Department further stated that as the Supreme Court has put a complete ban on movement of cut trees and timber, with certain exceptions, no new licence could be granted to saw mills in view of the fact that number of saw mills sustainable in State of Bihar is much less than already existing.

4. The learned single Judge repelling the contentions raised on behalf of the appellants observed that though direction of the Apex Court does not relate to running of saw mills in a town or in an area which is admittedly a non-forest area, the direction to constitute Expert Committee to assess the sustainable capacity of the forest of the State qua saw mills which can safely be sustained in the State and the optimum distance from the forest qua the State at which the saw mill should be located, was intended to decide the number of saw mills and the timber based industry which should be allowed to operate and as to the order which should be made with respect to the further grant of licence to them. Thus, if even after the report of the Expert Committee the State authorities are allowed to continue granting renewal/fresh licence with respect to the saw mills and timber based industry, the very object for constituting the Expert Committee etc. will stand frustrated particularly when the report of the Expert Committee is to the effect that number of the existing saw mills and other timber based Industry exceeds the optimum which can be said to be sustainable according to the capacity of the forest of the State.

5. It may be mentioned here that soon after the disposal of the writ petitions, by judgment under appeal dated 29-9-2000 (reported in Basudeo Yadav Vs. The State of Bihar and Others the State Government vide memo No. 343E dated 28-10-2000 of the Forest and Environment Department communicated Its decision on the report of the Expert Committee referred to above. It may be recalled that the report of the Expert Committee was pending consideration at the Government level when the counter-affidavit was filed in the writ petitions. Before I refer to the salient features of the said decision/communication dated 28-10-2000 it would be appropriate to notice the relevant parts of the order of the Supreme Court dated 12-12-1996 in the case of State of Punjab and others Vs. Surjit Singh Conductor, as under:--

"4. The Forest Conservation Act, 1980 was enacted with a view to check further

deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The terms "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act."

xx xxx

5. We further direct as under :

I. GENERAL

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

2 to 4.

5. Each State Government should constitute within one month an Expert Committee to:

(1) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

(ii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

6. Each State Government should within two months, file a report regarding:

(1) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;

(ii) the licensed and actual capacity of these mills for stock and sawing;

(iii) their proximity to the nearest forest;

(iv) their source of timber.

7. Each State Government should constitute within one month, an Expert Committee to assess;

(i) the sustainable capacity of the forests of the State qua saw mills and timber-based industry;

(ii) the number of existing saw mills which can safely be sustained in the State;

(iii) the optimum distance from the forest, qua that State, at which the saw mills should be located.

8. The Expert Committee so constituted should be requested to give its report within one month of being constituted.

9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another Senior Officer to oversee the compliance of this order and file status reports."

6. It is worth mentioning here that the Supreme Court gave a number of supplementary directions in the case of T. N. Godavarman Thirumulkpad AIR 1997 SC 1128 (supra) from time to time on 4-3-97, 16-12-97, 7-1-98, 13-1-98, 15-1-98, 23-1-98, 23-2-98, 15-4-98, 29-7-98, 10-9-98, 19-9-98, 10-12-98, 16-4-99 and 1-5-2000. The orders and directions made by it are reported, respectively, in T.N. Godavarman Thirumulkpad Vs. Union of India and others, ; T.N. Godavarman Thirumulkpad Vs. Union of India (UOI) and Others, ; Environment Awareness Forum Vs. State of Jammu & Kashmir and Others, ; T.N. Godavarman Thirumulkpad Vs. Union of India and Ors, ; T.N. Godavarman Thirumulkpad Vs. Union of India (UOI) and Others, ; . The said orders/directions relate to individual matters having no bearing on the dispute in hand and, therefore, it is not necessary to notice them in this judgment. It may, however, be mentioned out that the case is still pending in the Supreme Court in which the State of Bihar has submitted a compliance report and filed application, as stated in the counter-affidavit filed in the present proceedings seeking direction on which no order, perhaps, has been passed.

7. From a bare reading of the aforequoted portion of the order of the Supreme Court it is evident that directions issued thereby are of very wide amplitude, and it is not correct to say that they are not applicable to saw mills etc. situated in a non-forest area. It is true that the ban imposed by direction No. 1 prohibiting any non-forest activity within the area of any "forest", or all on-going activity within any forest, in any State throughout the country without the prior approval of the Central Government, applies to forest areas, as understood by its dictionary meaning but there is clear nexus between the "activities" inside the forest and running of saw mills etc. outside it. The raw material i.e. timber for running saw mills comes from the forest and that is why while putting a blanket ban on non-forest activity. Indeed all on-going activity inside forest, the Supreme Court also gave further direction for regulating the number of saw mills, veneer and

plywood mills, depending on the extent of forest which could sustain saw mills. It is clear that if saw mills or veneer and plywood mills are allowed mushroom growth it will inevitably encourage, nay, necessitate illicit cutting and felling of trees in the forest. Therefore, the object of preservation of forest and environment cannot be achieved without regulating the number of saw mills. That is why, to begin with, the Supreme Court directed the State Government to constitute an Expert Committee to Identify the "forest", ascertain the sustainable capacity of the forest qua the saw mills, veneer and plywood mills etc. and, further, ascertain the number of existing saw mills which could "safely be sustained" in the State, their optimum distance from the forest qua that State, at which the saw mills should be located by constituting Expert Committees.

8. As seen above, pursuant to above direction of the Supreme Court the State Government constituted Expert Committee which came to the conclusion that the forests in the State of Bihar could sustain only 1110 saw mills out of existing 3991 saw mills, besides 90 plywood mills and 100 veneer mills out of existing 109 plywood mills and 265 veneer mills respectively. The report of the Expert Committee as summarised in paragraph 5 of the counter-affidavit filed before the learned single Judge may usefully be quoted as under :--

"I. Based on the estimate that aggregate annual supply of timber from all sources in the State is about five lakh cubic meters, the number of saw mills out of existing 3991 such mills that can be sustained in the State has been assessed at 1110.

II. The recommendation have been made that the saw mills in excess of the above mentioned number i.e. 1110, should be closed in a phased manner over a period of three years.

III. Location of saw mills from the forests should be located at a minimum distance of five kilometers from the forests but this restriction should not be applicable in case of saw mills operating in Urban locality under a Municipal body."

The Department, however, taking a somewhat different view, as regards the number of the mills, proposed to allow all the existing 109 plywood mills and 265 veneer mills; and as regards saw mills also, proposed to allow 1950 mills to continue, as against 1110 recommended by the Expert Committee. The remaining mills were to be closed in a phased manner over next three years.

9. From the communication dated 28-10-2000, annexed as Annexure-B to the counter-affidavit filed in these proceedings, it appears that in partial modification of the earlier decision to allow two saw mills in every Community Development (C.D.) Block, the State Government has now decided to allow saw mills on the basis of population. Thus, in every Community Development Block there will be one saw mill for population of 50000, fraction of half or more will be treated as whole. The same basis shall be applied in urban areas comprising municipal corporation or municipality or notified area committee situated outside the geographical limits of the C. D. Blocks. Though, thus, it appears that ceiling of

1950 has been done away with inasmuch as the number of saw mills is now to depend on the local population, in paragraph 10 of the counter-affidavit filed in the present proceedings it has been stated, "By said memo the State Government has taken decision to allow running of 1950 saw mills, 265 veneer mills and 109 plywood mills and the saw mills in excess of the above sanctioned number shall be closed.". There is an apparent conflict between the communication dated 28-10-2000, vide paragraph 4 thereof, and the affidavit which authorities of the State Government should look into and resolve.

10. Adverting to the grievance of the appellants they cannot claim any vested right to carry on saw milling business. It may be mentioned here that prior to 1990 there was no requirement of taking any licence for doing saw milling business. The restriction came for the first time when the Bihar Saw Mills (Regulation) Ordinance, 1987 (Bihar Ordinance 3/1990) was promulgated which was later replaced by Bihar Saw Mills (Regulation) Act, 1990 "to make provision for regulating in the public Interest the establishment and operation of saw mills and saw pits and trade of sawing for the protection and conservation of forest and the environ-ment". Section 5 of the said Act provides that on and from the appointed day (a) no person shall establish a saw mill or saw pit except under any authority and subject to the conditions of a licence granted in that behalf under the Act, and (b) no person shall operate a saw mill or a saw pit in existence on the said day unless he is granted a licence in that behalf under the Act on an application made by said person within a period of 30 days from such date. Section 6 of the Act empowers the Government to declare any area to be prohibited area for such period not exceeding three years at a time. Upon such declaration (a) No licence is to be granted for establishment of a saw mill or saw-pit in that area, (b) no licence is to be renewed during that period; (c) any saw mill or saw-pit situated in that area ceases to operate and has to keep its sawing operation closed. The said consequences ensue without any corresponding right in the person to claim damage on account of closure. It is, thus, evident that regulatory provisions of the said Act contemplate not only refusal to grant or renew licence but also cessation of the saw mill business even during the currency of licence without having to pay compensation by the State Government -- in the interest of the conservation of forests and environment. No person thus can claim an absolute right to carry on business in saw milling. It is to be kept in mind that in none of the cases in hand the appellants have been stopped from carrying on business during the currency of the licence, they are aggrieved by refusal to renew the licence, or to grant a fresh licence, or cancellation of licence but on different ground.

11. The need to preserve the forests and environment for maintaining proper ecology is the need of the day. Considering the manner, and the scale, in which trees are being illegally cut and felled, which if not checked may in the long run become a threat to existence of mankind on the earth. It was for this reason that Article 48A was Inserted by the 42nd Amendment in Chapter IV of the Constitution as a directive principle of State Policy to protect and improve the

environment and safeguard forests, and wild life, in the following terms :--

"The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."

The 42nd Amendment also made protection of forests etc. one of the fundamental duties under Article 51A of the Constitution. The said Article so far as relevant is as follows :--

"It shall be duty of every citizen of India--

(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife."

In AIR 1991 420 (SC) , though in a different context the Supreme Court observed that the provisions of Articles 14, 21 and 51A(g) of the Constitution have to be read together. In my opinion, the fundamental right of trade and business under Article 19(1)(g) also must be read together with the provisions of Articles 48A and 51A(g) of the Constitution.

12. As already observed above, the directions issued by the Supreme Court by order dated 12-12-96 and subsequent orders referred to above are intended to protect and safeguard the forests and environment, and those directions cannot be fully implemented nor the forests and environment can be effectively safeguarded without regulating the business in saw mills and other timber-related industry, such as, plywood and veneer mills. As the impugned communication of the Principal Chief Conservator of Forests was issued in the light of the directions of the Supreme Court it is not possible to make any Interference so as to permit unregulated and unchecked running of business in saw mills. It appears from the counter-affidavit filed in the present proceedings that an affidavit was filed on behalf of the State Government in the Supreme Court on 9-12-97 undertaking to reduce the number of saw mills from 3991 to a sustainable number. Another affidavit was filed on 9-9-99 stating that assessment of Expert Committee has been reviewed at the Government level and out of existing 3991 saw mills only 1950 saw mills have been found to be sustainable. An application has been filed seeking direction on which no order appears to have been passed. The decision of the State Government fixing the number of saw mills has been taken on the basis of the opinion of the experts, and it would not be correct exercise of jurisdiction under Article 226 of the Constitution to sit over the Judgment and finding of the experts without any basis. No material has been produced before this Court on the basis of which it could be said that the decision of the State Government allowing only 1950 saw mills, or one saw mill for the population of 50000, as the case may be, is an incorrect or arbitrary decision to warrant interference in writ jurisdiction. No mala fide is alleged. In Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, , though in a somewhat different context, the Apex Court had occasion to deal with the question of interference by Courts in matters having bearing on environment. It may be useful to extract the observations in para 4 of

the judgment as under :--

"Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48A of the Constitution, Directive Principle which enjoins that "The State shall endeavour to protect and Improve the environment and to safeguard the forests and wild life of the country", and Article 51A(g) which proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures." When the Court is called upon to give effect to the Directive Principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the Court may feel Justified in resigning it- self to acceptance of the decision of the concerned authority."

The dispute being a fall-out of the directions of the Supreme Court and the matter being subjudice there, it would be difficult for this Court to make any Interference. It is open to the appellants, if so advised, to intervene in the Supreme Court and seek necessary direction/clarification.

13. Though, thus it is not possible for this Court to interfere in the matter I am not able to appreciate as to how the State Government proposes to Identify 1950 saw mills, or, one saw mill for population of 50000, as the case may be. It is one thing to fix the number or 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 cannot be done on a pick and choose basis, some norms have to be laid down. The communication dated 28-10-2000 lays down some norms which may not be sufficient. In any case this exercise will take time. The question is how pending identification of such mills which are to be allowed to run, the existing mills are to be dealt with. In my opinion, while such of the mills the licence for which has already expired, may be allowed to die natural death, provided some of them are Identified as viable/sustainable saw mills to be allowed to run, all the saw mills running under valid licence must be allowed to continue till expiry of the term of the licence. The question of their renewal will abide by the result of the identification undertaken by concerned authorities of the State, as indicated above. The State Government would do well to appoint committee of experts/officers to identify the saw mills.

14. In the result, these appeals are dismissed, but subject to observations and

directions mentioned in paragraphs 9 and 13 above. There will be no order as to costs.

Chandramauli Kr. Prasad, J.

13. I agree.