

(1992) 03 BOM CK 0072

In the Bombay High Court

Case No : Writ Petition No. 2910 of 1990

Dharmaraj Joharapurkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 42(6), 53A

Citation : (1993) 1 BomCR 132

Hon'ble Judges : K. Sukumaran, J;G.D. Patil, J

Bench : Division Bench

Advocate : Ram Lambat, for the Appellant; Khamborkar, A.G.P. for Respondent No. 1 and M.B. Badar, SG.P. for Respondent Nos. 2, 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

K. Sukumaran, J.—The petitioner made an application for running a Saw-mill, way back in 1981. The authorities took the view that he had not complied with all the conditions requisite for installation of the saw-mill unit. The application was accordingly rejected. The rejection of permission was appealed against. The appeal was also unsuccessful. The final order was passed in the year 1985.

2. The respondents have given detailed reasons in support of their views. The respondents have taken a definite and firm stand in para 3 of the return, the extract of which is :

"It is submitted that it is a policy of the State Government to discourage more establishment of the new Saw Mills as the situation with regard to the forest protection is a greatest concern of all. The forest area has already been reduced."

In a situation where chloroform carbon has eroded not only the immediate environment about but even beyond, and when the existence of humanity itself is in grave peril, the necessity for environmental endeavour, not restricted to protection but linked with significant improvement, cannot be over emphasised. (See "Ecological Damage in Public International Law" by Alfred Rest. 1992 EPL

31.

Trees had their relevance recognised in Indian traditions, very many centuries before Stockholm Conference of 1970. The supreme creative force, Shakti or Parvathy-as presented in Indian epics, is the grand daughter of tree! A sanskrit stanza occurring in section 4, Sloka No. 9 of "Narayaneeyam", refers to that dazzling damsel as a gift of trees : "Dhrunaisch Dattaam Thanayaamavaphyatham". "Varkshy", mother of Daksha (who is the father of Parvathy) is so named as he is reputedly getting sustenance from the Tree. Absolute liberation from the cycles of Life, is assured to one who plants the number and variety of trees as indicated in the sloka : "Aswathamekam Narakam No Yaati" And see the concept of the Supreme Power. "Bhaje Bhajanyarana Pada Pankajam Bhava Bhaavameeswaram". He who has Forest as his foot is the concept of Diversity.

3. There is no use blinking eyes, when the greenery of the forest disappears, by slow degrees, by more and more, leaving around a wide extent of hopeless sterility, as Johnson would put it.

4. Emerson observed : "Within these plantations of God, a decorum and a sanctity reign, a perennial festival is dressed, and the guest sees not how he should tire of them in a thousand years". Thoreau deprecated the logger's attitude to great trees :

"The Anglo-American can indeed cut down, and grub up all this waving forest but he cannot converse with the spirit of the tree he fells, he cannot read the poetry and mythology which retire as he advances".

It is no longer necessary to search for philosophical considerations expressive of strong views for conservation of forest. The Constitution of India has done it, in effective enough, and expressive language, reflected in Articles 42(6) and 53A of the Constitution. One is a command to the State and the other a reminder to the citizen, to be serious about the protection of the forest and environment.

Even in the State of Maharashtra, particularly along the forest are as of Amravati and the like, questions concerning the forest had arisen in the past when vigilant and zealous forest officials had taken diligent steps for the protection of the forest. One such case which arose in this area and dealt with by the Nagpur Court in Secretary of State v. Nagorao Tanko Deshmukh, AIR 1938 Nag 415. Grille, J., in the concluding portion of the judgment referred to "a laudable attempt to protect the forest".

Only very recently, the Aurangabad Bench of this Court had occasion to deal with distressing facts about dangerous operations of Saw Mills functioning in close proximity of forest areas. Vide Dewaji Shivaji Patel v. State of Maharashtra and others, in Writ Petition No. 3079 of 1989, decided on 16th November, 1991. The organisational clout of the Saw Mill owners had been referred to and discussed thereunder in great detail. The facts disclosed in the judgment, would clearly

make out the sense and soundness of the policy which the State has now put forward in its return in the words as extracted above. No person conscious of the Constitutional provisions of important developments, in the legal and environmental fields, can decry the policy statement, as reflected in paragraph 3 of the return. We accept it as a commendable perception on the part of the State. The decision of the authorities not to sanction a Saw-mill is fully justified in the circumstances and calls for no interference from the Constitutional Court.

5. A grievance has been made by the petitioner about grant of permission to three others. If despite a policy decision taken by the State, there has been a deviation on the part of the State or its officials in any individual case that would certainly call for serious scrutiny by the Government itself. However, no equality can be claimed by projecting such an irregularity in other areas and pleading for an extension of the irregularity to other persons as well. There can be no equality in illegality. The legal position is now firmly settled by authoritative pronouncements of the apex courts. In that view of the matter, what we can do at the present juncture is to alert the Government about the necessity to have a look at the grant of licences in respect of the persons referred to in paragraph 6 of the petition, and to cancel them, if found to be opposed to the policy or other legal provisions.

6. There is another serious factor disentitling the petitioner to relief in this petition. The return shows that petitioner had a try for getting a licence in 1985. It was rejected by D.F.O., Amravati. The appeal to the Chief Conservator of Forests failed in view of order dated 20-12-1985, which contained strong supportive reasons for the view. A writ petition against an order of 1985 will be highly belated when filed in 1990. With a final and binding adverse order, the petitioner cannot, with any legal force or moral grace, seek the same relief by digging up another application filed in 1981.

7. The writ petition is wholly misconceived and is accordingly dismissed.