

(1995) 07 OHC CK 0038

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5722 of 1994

J.K. Corp. Ltd. and Another

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 12-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Forest (Conservation) Act, 1980 — Section 2

Citation : (1995) 2 OLR 187

Hon'ble Judges : S. Chatterji, J;B.N. Dash, J

Bench : Division Bench

Advocate : Gangadhar Rath and Sanjeev Udgata, for the Appellant; P.K. Ray, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Chatterji, J.—The present writ petition is at the instance of J. K. Corporation Ltd., a company established under the Companies Act, with one of its shareholders praying, inter alia, for-

(i) declaring that the opposite parties are bound by their commitment with regard to rate of royalty and the quantum of hardwood for calculating the measurement of a Metric ton for a period of twenty years as contained in the order dated 16-5-1986 of the State Government (Annexure-3);

(ii) quashing the impugned order of opp. party No. 1 communicated to the petitioners under memo No. 20412 dated 2-9-1993 (Annexure-10) and memo No. 20706 dated 7-9-1993 (Annexure-11) enhancing the rate of royalty and altering the size and weightment of stack of hardwood for the purpose of calculation of royalty with effect from 1-4-1988;

(iii) directing the opposite parties to fulfil their promises, commitments and declaration contained in the order dated 16-5-1986 of the Government of Orissa in the Forest, Fisheries and Animal Husbandry Department (Annexure-3) with

regard to rate of royalty and the size and weightment of stack for the purpose of calculation of royalty and enter into an agreement with the petitioners for a period of 20 years in terms of the said order dated 16-5-1986.

2. It is stated in detail that the Government of Orissa in the proceeding of the meeting held on 18-5-1984 in the Conference Room of the Chief Minister, Orissa, assured, inter alia, that-

"Orissa Forest Corporation should ensure delivery of the assured quantity of 38,000 Metric Ton of hardwood and if possible more as per requirement of the Company according to the Technical Committee Report."

This observation was, however, based on the commitment of the Chief Conservator of Forests that he had already requested the paper mills to take up preliminaries for raising plantation in identified blocks inside the forests from the region Pursuant to the aforesaid decision of the aforesaid meeting, the Government of Orissa addressed a letter to the Chief Conservator of Forests on 16-5-1986, copy whereof is annexed as Annexure-3 to the present writ petition. In sub-para 3 of the said letter, it is recorded :

"(iii) The rate of royalty of one metric tonne of hardwood will be Rs. 159.37. For the purpose of calculation of royalty a stack of hardwood measuring 30"x6"x3" or 540 sft, may be taken as 7.3 metric tonnes. The royalty will have an annual increase of 6.5% every year to accommodate the general rise in the price of timber."

3. The petitioners now challenge the order passed by the State Government in 1993, copy whereof is annexed as Annexure-10 to the present writ petition, which runs counter to the assurance as indicated above and it is highlighted that the State Government by virtue of the commitments of 1984 and 1986 are estopped from changing the rate of royalty of one metric tonne of hardwood or the measurement of stack. The petitioners further submit that on the assurance of the State Government, petitioner No. 1 company has already undertaken the expansion programme investing huge, amount by way of additional civil construction and installation of additional plants and machinery and by procuring appropriate licence for expansion from the Government of India. It is contended that since the petitioner-company has been acting on the assurance of the State-Government, it would be detrimental to the petitioners to use huge, sum and the Government are estopped from going back from their assurance and thereby frustrate the expansion programme undertaken by the petitioners. On this cause of action; the present writ petition has been filed seeking the reliefs as already indicated above.

4. The writ petition is opposed very seriously by filing counter on behalf of opp. party No. 1, namely, State of Orissa, and No. 2, the Principal Chief Conservator of Forests, Orissa. It is stated in the first counter that as per the terms and conditions under sub-para 3 of the letter dated 16-5-1986, the Government of Orissa, Forest and Environment Department, refixed the rate of royalty taking

into consideration the general rise in the price of timber. Further, as per sub-para 11 the State Government have the powers to determine the conditions of licence. In the second counter, it is asserted that the aforesaid opposite party has tried to justify the orders made in 1993.

5. At the time of final hearing of the matter, our attention has been drawn to a decision made on 16-5-1995 in disposing of OJC No.7341 of 1993 (Mangalam Timber Products Ltd. v. The state of Orissa and Ors.). In the aforesaid case, the legality of issuance of the letter dated 2-9-1993 enhancing the rate of royalty as well as changing the weighment norms and stack measurement under Annexure 10 was under challenge on the ground that the same was arbitrary, irrational and the State was bound by the unequivocal promise held out to the petitioners for setting up the industry as per the doctrine of Promissory estoppel, By discussing in depth and giving detailed reason, the Division Bench concluded that even so far as measurement of stack was concerned, the initial decision to measure wood with a stack of 30"x6"x3" as 7.4 metric tonnes had been altered to 10 Metric Tonnes under Annexure-10, but there was no reason or basis for the same and, on the other hand, the same was arbitrary and irrational. On the facts and in the circumstances of the case as already placed before the Division Bench, it was further found that the principle of promissory estoppel was available and Annexure-10 was hit by the aforesaid principle. Consequently, the Division Bench quashed the communication under Annexure-10 and directed that the opposite parties were bound by the terms held out to the petitioner in their letter dated 16-5-1986 under Annexure-3 and must supply the materials in accordance with the terms and conditions contained therein.

6. It Is argued by Mr. Gangadhar Rath, the learned Senior Advocate appearing for the petitioners, that the facts of present case are almost identical in nature and by applying the ratio of the Judgment in OJC No. 7341 of 1993, as aforesaid, this case can also be disposed of by recording such reasons. This contention is, however, strongly opposed by the learned Additional Government Advocate Mr P. K. Ray he has taken exception thereto.

7. In view of the submissions made on behalf of the respective parties, we find that Mr. Ray has taken serious exception that the order and/or communication and/or decision taken in terms of Annexure 3 dated 16-5-1986 is contrary to and inconsistent with the provisions of the Forest (Conservation) Act, 1980. There is specific embargo to make such promises and if such promises have been made which are contrary to and inconsistent with the provisions of law, there cannot be any estoppel against such promises and this writ Court cannot issue any mandate to direct the State Government to comply with such promises which are not authorised under law. In view of such broad objection taken, we considered the lengthy submissions made by Mr. Gangadhar Rath in support of the contentions of the writ petition. Mr. Rath has taken us in depth and in details to Section 2 of the Forest (Conservation) Act, 1980. It is with regard to the restriction on the de-reservation of forests and use of forest lands for non forest

purpose. Therein, it is provided, inter alia that-

"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 cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purposes;

(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 re-afforestation;

Explanation--For the purpose 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, horticultural crops or medicinal plants;

(b) any purpose other than re-afforestation, 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, pipe lines or other like purposes."

8. He has further developed his argument by referring to a decision reported in AIR 1988 SC 59 (State of Kerala and Anr. v. Nilgiri Tea Estates Ltd.); By means of the aforesaid decision, we find that the Supreme Court, while considering the scope of "private forest" within the meaning of Act 26 of the Kerala Private Forests (Vesting and Assignment), Act, 1971; the scope of "forest land" and/or the meaning of "private "forest" also considered the plantation of the trees by human skill which have the distinguishing features to understand and/or appreciate the meaning of "forest". We appreciate the expression made in Section 2(iv) of the Forest (Conservation) Act, 1980 indicating 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 re-afforestation. Mr. Rath has laid much emphasis on the word "naturally" in the context of appreciating the decision on the Apex Court reported in AIR 1988SC 59(supra).The distinguishing feature must be appreciated by this Court, he argues, as to the land where the trees are grown by human skill for some other purposes quite distinct from the forest land itself as envisaged u/s 2 of the present Forest (Conservation) Act,

1980. He has developed his argument in a greater dimension to clear any confusion in the mind of the Court that the provisions of the Forest (Conservation) Act, 1980 does not stand as an embargo for issuing any letter on 16-5-1986 or any decision to be taken thereby. Besides the order of 1993 which was challenged before this Court, it was not with the right to recall the order but with the right to enhance the royalty as to the rate and to the scope of measurement and to the norm of the land as indicated thereof.

9. Our attention has been drawn to the statutory principle of law inasmuch as nowhere in the pleadings nor in any part of the counter-affidavit filed on behalf of opp. parties 1 and 2, there is any mention of any fact which stands in the way of issuing any communication in the year 1985 and in the year 1993 as to the legal embargo as indicated or argued by Mr. Ray before us. In this regard, Mr. Rath has further drawn our attention to a case reported in AIR 1988 SC 2181(Bharat Singh and Ors. v. State of Haryana and Ors.) In para-13 at page 2185, the Supreme Court has observed that before this Apex Court no particulars and no facts have been given in the special leave petitions or in the writ petition or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application. In the opinion of the Supreme Court, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and If he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or counter-affidavit. While in a pleading that is a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that was raised before the Supreme Court was found to be not maintainable. By drawing inspiration from the observation of the Supreme Court, it is submitted before us that looking at the counter-affidavit filed before this Court, such an anxiety expressed by the learned Additional Government Advocate has no point inasmuch as such an anxiety appears to be remote in nature. Be that as it may, we have considered the matter and within the scope of the writ petition and counter-affidavit, we find that the ratio of the Judgment in the case of Mangalam Timber Products Ltd. (supra), as observed above, is quite applicable. All that we add is, we do not find anything wrong on merit in the decision taken on 16th May, 1986. It is not contrary to and inconsistent with any provision in law. It is true that for granting a licence or to obtain any licence, the parties cannot ask for any inherent right. If there is any anxiety that there is drainage, of Government revenue, it is not within the scope of the present case to make any observation or to enable the Government to handle the case of the petitioners

arbitrarily or create any trouble for the petitioners. Following the ratio of the decision in Mangalam Timber Products Ltd. (supra), we quash the impugned orders Annexures-10 and 11 and direct the opposite parties to take effective step in terms of Annexure-3 which was made in 1986. We, however, clearly observe that this Judgment and/or the decision made in the case of Mangalam Timber Products Ltd., as above-referred to, will not prevent the State authorities, if law permits, to rescind the licence and to proceed thereafter in accordance with law.

10. The writ petition is accordingly allowed. No order as to costs.

B.N. Dash, J.

11. I agree.