

(2007) 09 JH CK 0041

In the Jharkhand High Court

Case No : Writ Petition (C) No. 550 of 2004

Maa Bhawani Timber

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Bihar Saw Mills (Regulation) Act, 1990 — Section 5, 6, 7, 7(5)
Bihar Saw Mills (Regulation) Rules, 1993 — Rule 3, 4, 6, 6(4)
Constitution of India, 1950 — Article 14, 166, 19(1), 300A, 48A
Forest (Conservation) Act, 1980 — Section 2

Citation : (2008) 1 JCR 346

Hon'ble Judges : M. Karpaga Vinayagam, C.J; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : V. Shivnath, for the Appellant; R.N. Sahay, Senior Standing CounselII., for the Respondent

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—The writ petitioner, in this case, has mainly, challenged the State Government's policy decision for regulating the number of saw-mills in the State and particularly the directions issued regarding grant of fresh licence and renewal of licence for running saw-mills in the state. He has also challenged the order of rejection of his application for renewal of licence/suspension of licence and the order, asking the petitioner to shift his saw-mill at a minimum distance of 5 K.Ms. from the Notified Forest Area in view of the policy decision.

2. The said decision of the Government was circulated by Letter No. 343 dated 28th October, 2000 (Annexure-3) issued under the signature of the Secretary, Government of Bihar (as then was) to the Principal Chief Conservator of Forest, whereby a direction had been issued, prohibiting running of saw-mills, veneer mills, plywood mills and other timber based industries within 5 K.Ms. from the Notified Forest Area. And further, to direct the saw-mills running within the area to shift at a minimum distance of 5 K.Ms. from the Notified Forest Area. The said letter had been issued on the basis of the recommendation of the Expert

Committee, constituted by the then Government of Bihar pursuant to the direction issued by the Hon''ble Supreme Court in the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, .

3. The Principal Chief Conservator of Forest, Jharkhand, Ranchi vide Letter No. 1802 dated 16th May, 2001 directed its subordinate authorities to direct all such saw-mills situated within 5 K.Ms. from the Notified Forest Area to move 5 K.Ms. away from the Notified Forest Area within two years.

4. The State of Jharkhand was created with effect from 15th November, 2000 under the provisions of Bihar Reorganisation Act, 2000.

5. The Commissioner and Secretary, Department of Forest & Environment, Government of Jharkhand, by his Letter No. 3730 dated 22nd July, 2003 (Annexure-11) adopted and approved the said policy decision of the Government of the predecessor State of Bihar dated 28th October, 2000 and directed all concerned to implement the said directions and the decisions.

6. The petitioner has challenged the said decisions, contained in Annexures-3 and 11.

7. The petitioner has also challenged the order of the Licensing Authority-cum-Divisional Forest Officer, Gumla Forest Division, issued by Letter No. 1445 dated 20th May, 2003 whereby validity period of petitioner's saw-mill Licence No. 15 dated 18th December, 1989 was reduced from 31st December, 2003 to 10th July, 2003 (the time was earlier valid up to 31st December, 2003). According to the petitioner, the said letter is violative of Rule 6(4) of the Bihar Saw Mills (Regulation) Rules, 1993 as also Article 19(1)(g) of the Constitution of India.

8. The petitioner has sought to further assail the Letter No. 2669 dated 30th July, 2003 (Annexure-6) issued by the Licensing Authority whereby the petitioner's saw-mill licence was suspended with immediate effect on the ground that the petitioner has not shifted his saw-mill till 10th July, 2003 and has also prayed for quashing the Letter No. 84 dated 10th January, 2004 (Annexure-13), whereby the petitioner was asked to show cause as to why the application dated 9th December, 2003 for renewal of licence of saw-mill for the Calendar year 2004 be not rejected on the ground that the petitioner has not shifted his saw-mill, which according to the petitioner virtually amounts to refusal of renewal of the petitioner's saw-mill licence on an extraneous ground.

9. According to the petitioner, it has been doing the business of saw-mill at Bano, District Simdega, since the year 1989 after obtaining the licence, being No. 15 dated 18th December, 1989.

10. The said licence was granted to the petitioner u/s 5 of the Bihar Saw Mills (Regulation) Act, 1990 read with Rule 3 of the Bihar Saw Mills (Regulation) Rules, 1993 (hereinafter to be referred as the "said Act/said Rules")

11. The licence granted to the petitioner was renewed yearly and lastly it was

renewed up to 31st December, 2003 by the Licensing Authority-cum-Divisional Forest Officer, Gumla Forest Division, Gumla.

12. In the meantime, the policy decision was taken in view of the direction of the Supreme Court in T.N. Godavarman Thirumulkpad's case (Supra) and the Secretary, Department of Forest & Environment Government of erstwhile State of Bihar issued the directions by Letter No. 343 dated 28.10.2000, whereby it was, inter alia, directed that saw-mills, veneer mills, plywood mills and other timber based industries should not be allowed to function within 5 K.Ms. from the Notified Forest Area and licensed saw-mills are to be shifted to a minimum distance of 5 K.Ms. from the Notified Forest Area.

13. The Hon'ble Supreme Court in T.N. Godavarman Thirumulkpad's case (Supra), inter alia, directed the State Governments to constitute an Expert Committee to assess minimum distance from the forest for running saw-mills, veneer mills and other timber based industries etc. The Expert Committee, so constituted, recommended that the location of saw-mills from the Notified Forest Area should be at a minimum distance of 5 K.Ms. The said decision dated 28th October, 2000 was taken in compliance of the said direction of the Apex Court.

14. The Principal Chief Conservator of Forest by Letter No. 1802 dated 16th May, 2001, however, directed the subordinate authorities to allow two years' time for shifting the saw-mills, which were located within 5 K.Ms. from the Notified Forest Area.

15. In view of the said letter, the Licensing Authority- cum-Divisional Forest Officer, Gumla by his letter dated 12th July, 2001 issued direction to the petitioner to shift his saw-mill by 10th July, 2003.

16. Again by Letter No. 1414 dated 20th May, 2003 issued by the Divisional Forest Officer, Gumla the petitioner was reminded and asked to shift its saw-mill by 10th July, 2003.

17. The Licensing Authority-cum-Divisional Forest Officer, Gumla, thereafter, issued Letter No. 2669 dated 20th July, 2003, whereby the petitioner's saw-mill licence was suspended for the alleged violation of the provision of Section 7(5) (b) of the said Act.

18. The Prescribed Authority-cum-Observer of Forest, Ranchi Territorial Circle, Ranchi asked the petitioner to apply before the Licensing Authority-cum-Divisional Forest Officer for extension of time, but the petitioner did not do so.

19. On the ground that the petitioner did not shift its saw-mill as directed by Letter No. 1921 dated 12th July, 2001 by July 10th, 2003 further renewal of the licence was refused by the concerned authority.

20. The petitioner assailed the said action/orders/letters of the respondents on the following grounds:

(i) Once the licence is granted under the said Act for a particular period that

cannot be reduced.

(ii) The forest, in question, was not notified in any official gazette of the State Government, as required u/s 6 of the said Act.

(iii) impugned Letter No. 343 dated 28th October, 2000 (Annexure-3) and Letter No. 3730 dated 22nd July, 2003 (Annexure-11) i.e. the decisions taken by the Government of erstwhile State of Bihar and subsequently by the Government of Jharkhand said to be issued on the basis of the recommendation of the Expert Committee, constituted on the direction issued by the Hon''ble Supreme Court, have not been approved by the Hon''ble Supreme Court and no final order was passed so far.

(iv) The authorities have misinterpreted the order passed by the Hon''ble Supreme Court in T.N. Godavarman Thirumulkpad's case (Supra). Hon''ble Supreme Court has not directed to shift the saw-mills 5 K.Ms. away from the Notified Forest Area or to close down all saw-mills or to stop grant of licence or renewal of licence for saw-mills.

(v) The Supreme Court's direction is confined only for closing the unlicensed saw-mills of the State of Maharashtra and State of Uttar Pradesh.

(vi) On the basis of the said decision, the period of petitioner's saw-mill licence, which was valid up to 31st December, 2003, cannot be reduced to 10th July, 2003 without giving any show cause notice to the petitioner.

(vii) The said action of the respondents is violative of Articles 14, 19(1)(g) and 300A of the Constitution of India.

21. The respondents replied and submitted as follows:

(i) Petitioner's Saw Mill was established in 1989 under the provisions of the said Act and was being renewed year to year under the provisions of Section 7 of the Act read with Rules 3, 4 and 6 of the said Rules.

(ii) Hon''ble Supreme Court in T.N. Godavarman Thirumulkpad's case (Supra) by order dated 12th December, 1996 directed all the State Government to constitute an Expert Committee within one month, inter alia, to assess the optimum distance from the forest where the saw-mill should be located.

(iii) The Expert Committee constituted by the erstwhile State of Bihar, inter alia, fixed the distance of 5 K.Ms. from the Notified Forest Area as an optimum distance for running saw-mills.

(iv) The petitioner was informed about the said decision and asked to shift his saw-mill at a minimum distance of 5 K.Ms. from the Notified Forest Area.

(v) The petitioner was given two years'' time to finally shift his saw-mill by 10th July, 2003.

(vi) By Memo No. 1414 dated 20th May, 2003, the petitioner was informed that

he will be allowed to run his saw-mill at the present place only up to 10th July, 2003 and the period of renewal shall be limited up to the said date. The petitioner did not agree to comply with the said direction, which led to suspension of his licence and refusal of further renewal of the licence.

(vii) The policy decision was taken by the State Government in view of the direction of the Hon''ble Supreme Court in T.N. Godavarman Thirumulkpad's case (Supra).

(viii) Petitioner's saw-mill now falls within the protected forest area and he cannot be allowed to run the same unless he shifts his saw-mill at a minimum distance of 5 K.Ms. from the Notified Forest Area.

(ix) The said policy decision is neither contrary to law nor the same violates any provision of the Constitution of India, as contended by the petitioner.

(x) The writ petitioner is not entitled to any relief.

22. Before we proceed further, the relevant directions of the Hon''ble Supreme Court in T.N. Godavarman Thirumulkpad's case (Supra) is required to be noticed. The relevant passages and paragraphs of the said decision of the Apex Court are reproduced hereinbelow:

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 statutory recognized 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 XX XX XX 5. We further direct as under:

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. ...

3. ...

4. ...

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

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

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

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

(i) 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) (sic)

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

(Emphasis supplied)

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 report.

23. On plain reading of the said decision of the Hon"ble Supreme Court, it is evident that the directions issued were of very wide amplitude including constitution of the Expert Committee, infer alia, to assess the optimum distance from the forest qua that State, at which the saw-mills should be located. The direction was also for regulating the number of saw-mills, veneer and plywood mills, depending on the extent of forest which could sustain saw-mills. The clear object of the directions was conservation of forest and protection of environment and for sustainable existence.

24. Erstwhile State of Bihar following the said directions of the Hon"ble Supreme Court had constituted the Expert Committee, which, infer alia, prescribed for

location of saw-mills at a minimum distance of 5 K.Ms. from the Notified Forest Area, except for those operating in municipal area or urban area.

25. To carry on the business of saw-mill one has to obtain the licence under the provisions of the said Act. Issuance of licence of saw-mills is subject to the terms and conditions, as prescribed under the provisions of the said Act read with the provisions of the said Rules. The object behind the said legislation was to make provision for regulating in the public interest its establishment and operation of saw-mills and sawpits and trade of sawing for the protection and conservation of forest and the environment.

26. According to Section 5 of the said Act, on and from the (sic) granted a licence in that behalf under the Act on an application made by said person within a period of 30 days from the appointed date.

27. Section 6 of the said Act empowers the Government to declare any area to be prohibited area for 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 sawpit in that area; (b) no licence is to be renewed during that period; and (c) any saw-mill or sawpit situated in that area ceases to operate and has to keep its sawing operation closed.

28. It is evident from the provisions of the said Act that not only renewal of licence can be refused by the authorities, but the saw-mill business can also be stopped from operating and sawing operation can be closed.

29. In view of the said provisions, nobody can claim an absolute right to carry on business of running saw-mills and the persons also can be refused renewal of licence or grant of fresh licence.

30. The said provisions have been made in law in the public interest for maintaining proper ecology and environment in accordance with the directives of the State Policy in Part IV of the Constitution of India, which, inter alia, provides for protecting/improving the environment and to safeguard the forest and wild life. Article 48A of the Constitution provides in clear terms:

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

31. It is now well settled that private interest has to give way to the public interest.

32. In view of the mass felling and destruction of forest leading to the threat to the environmental imbalance, the Supreme (sic)

33. In view thereof, the petitioner cannot claim absolute right to run the business of saw-mill contrary to the directions and the policy decision. He cannot claim fundamental right to run its saw-mill contrary to the legal provisions.

34. In that view, the impugned order, restricting the petitioner's period of licence

from 31st December, 2003 to 10th July, 2003, also cannot be said to be arbitrary inasmuch as clear notice was given to the petitioner giving him a period of two years to shift his saw-mill at a minimum distance of 5 K.Ms. from the Notified Forest Area.

35. In the case of Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, , the Apex Court, though in a slightly different context, held as follows:

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....

36. In the case of Annapurna Saw Mill Vs. State of Jharkhand and Others, , the Division Bench of this Court had occasion to deal with the case with similar grievance. The Division Bench considered the provisions of the said Act/Rules in the light of the decision of the Supreme Court in T.N. Godavarma Thirumulkpad's case (Supra) and other decisions and concluded as follows:

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. (sic) that wood based industries were to be curtailed/minimized 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.

37. We fully subscribe the said view of the Division Bench to answer the points raised in this writ petition.

38. In view of the discussions made above, we find no ground to interfere with the impugned orders/circulars/letters of the Government and grant the reliefs prayed for by the petitioner.

39. This writ petition is, accordingly, dismissed. No order as to cost.