
(2005) 11 UK CK 0018
In the Uttarakhand High Court
Case No : Writ Petition No. 1082 of 2005

Mohd. Hazi Rafeeq

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 24-11-2005

Acts Referred:

Constitution of India, 1950 — Article 48A, 51A

Uttaranchal Establishment and Regulation of Saw Mills Rules, 2004 — Rule 5

Citation : AIR 2006 Utt 18 : (2006) 2 UC 780 : (2006) 1 UD 14

Hon'ble Judges : Cyriac Joseph, C.J;P.C. Pant, J

Bench : Division Bench

Advocate : S. Dhulia assisted by Vipul Sharma, for the Appellant; B.D. Kandpal, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—The petitioner is holder of a licence issued under the U. P. Establishment and Regulation of Saw Mills Rules, 1978. The licence was originally issued in the name of Sri Abdul Rashid s/o Sri Abdul Hakim, r/o Bhawaniganj, Ram Nagar, District Nainital. As per Annexure 5 order dated 22-2-2000 of the Principal Chief Conservator of Forest, Uttar Pradesh, permission was granted to transfer the licence in the name of the petitioner and to relocate the saw mill at Lakri Mandi, Amritpur, District Udham Singh Nagar. On the basis of the said permission, the petitioner has been operating the saw mill at Lakri Mandi, Amritpur in Udham Singh Nagar. Suddenly, the petitioner received Annexure-I letter dated 16-9-2005 from the Principal Chief Conservator of Forest, Uttaranchal stating that the petitioner's saw mill is located within 10 Kms. at an approximate aerial distance of 4 Kms. from the boundary of the forest and that such location of the saw mill is against the order dated 5-5-1998 passed by the Hon'ble Supreme Court in Interim Application No. 385/1997 in. Writ Petition No. 202/95 and also against the terms and conditions regarding relocation of saw mill in the order dated 22 2-2000 of the Principal Chief Conservator of Forest. The petitioner was also directed to relocate his saw mill beyond an aerial

distance of 10 Kms. from the boundary of the forest within 10 days failing which the permission granted in the order dated 22-2-2000 would be cancelled. The petitioner did not comply with the above direction to relocate the saw mill beyond an aerial distance of 10 Kms. from the boundary of the forest. Therefore, by Annexure 10 order dated 29-9-2005, the Principal Chief Conservator of Forest cancelled the permission granted to the petitioner as per his earlier order dated 22-2-2000. Challenging the said Annexure 10 order dated 29-9-2005, the petitioner has filed this writ petition.

2. The first contention raised by the learned Counsel for the petitioner is that the competent authority to issue or cancel the licence under the Uttaranchal Establishment and Regulation of Saw Mills Rules, 2004 is the Divisional Forest Officer and a person aggrieved by the order or decision of the Divisional Forest Officer has a right of appeal to the Conservator of Forest. As a result of Annexure 10 order passed by the Principal Chief Conservator of Forest, the petitioner has been denied the right of appeal to the appellate authority. It is pointed out that the Principal Chief Conservator of Forest is an authority superior to the Conservator of Forest. We do not find any merit in this contention. The petitioner has not produced any licence issued to him by the Divisional Forest Officer or any order cancelling the licence by the Divisional Forest Officer. He has also not challenged any order passed by the Divisional Forest Officer cancelling the licence issued to him. What is challenged in the writ petition is Annexure 10 order passed by the Principal Chief Conservator of Forest. As per Annexure 10 Order, the Principal Chief Conservator of Forest only cancelled his own order passed on 22-2-2000 (Annexure 5). It cannot be disputed that an authority which issued the order is competent to cancel the said order for valid and sufficient reasons and in accordance with the principles of natural justice. The impugned order (Annexure 10) was passed by the Principal Chief Conservator of Forest after issuing Annexure 1 notice dated 16-9-2005 by which the petitioner was given 10 days for relocating the saw mill beyond an aerial distance of 10 Kms. from the boundary of the Forest. The reasons for such a direction were stated in the notice dated 16-9-2005. If the petitioner had any valid objection to the said direction, he had the opportunity to raise it before the Principal Chief Conservator of Forest and if such an objection was raised, he would have considered such objection before passing the final order (Annexure 10). There is nothing to indicate that the petitioner had filed any objection to Annexure 1 notice before the Principal Chief Conservator of Forest. In such circumstances, it cannot be held that Annexure 10 order was issued by the Principal Chief Conservator of Forest without competence or in violation of the principles of natural justice. It cannot also be said that by cancelling his own order, the Principal Chief Conservator of Forest deprived the petitioner of the right of filing appeal against any cancellation of the licence.

3. The second contention raised by the learned Counsel for the petitioner is that the Principal Chief Conservator of Forest has erred in taking the view that, as per the order dated 5-5-1998 of the Hon'ble Supreme Court in Writ Petition No.

202/95, the distance of 10 Kms. from the boundary of the forest should be aerial distance. According to the learned Counsel, what the Hon"ble Supreme Court intended is "road distance" and not "aerial distance". In Writ Petition No. 202/95, the Hon"ble Supreme Court had passed the following order on 8-5-1997 (vide T.N. Godavarman Thirumulkpad v. Union of India and others, (1997) 7 SCC 440):

4. After hearing the learned amicus curiae, the learned Attorney General and the other learned Counsel, we direct as under:

A. In the State of Uttar Pradesh the following is permitted:

1. Principal Chief Conservator of Forest (PCCF) may, on a case-to-case basis, consider grant of permission to an existing licensed sawmill to relocate itself, provided that the relocated site is not within 10 Kms. of any existing forest.

2. To alleviate the unintended hardship which may be caused to the ordinary populace in the hill areas who need forest produce for their survival, it is clarified as under:

(a) Nothing contained in the orders passed by this Court would prevent the U.P. Forest Corporation from directly undertaking the exercise of collecting forest produce including fallen wood (but not any felling or cutting of trees or timber) to the extent strictly necessary, and distributing the same ex-depot to the people living in the hill areas.

(b) The Forest Corporation may, with the prior permission of the PCCF, remove dead or dry trees for supply in the same manner ex-depot to people residing in those areas. The Forest Corporation shall (i) undertake such activity itself without engaging any outside agencies, and (ii) keep an account of the dead and dry trees felled and removed by them, and shall by way of an affidavit file the same in this Court.

The State of U.P. filed Interim Application No. 385 of 1997 before the Hon"ble Supreme Court seeking certain directions and modifications of the above-mentioned order dated 8-5-1997. Disposing of the said application, the Hon"ble Supreme Court passed the following order on 5-5-1998 (vide (1998) SCC 192:

10. On 8-5-1997, this Court permitted the Principal Chief Conservator of Forest of the State of U.P., on case-to-case basis, to consider grant of permission to an existing licensee of a sawmill to relocate itself, provided that the relocated site is not within 10 Km. of any existing forest. Mr. Goel, learned Counsel for the State of U.P. submits that a clarification is necessary to be made that the area of 10 Km. would not include trees standing on either or both sides of the road and the railways. We clarify that the direction dated 8-5-1997 not to relocate the sawmill within 10 Km. of any existing forest, would mean and imply 10 Km. of any existing forest, excluding the trees on either side of the roads and the railways outside the existing forests and the 10 Km. can be considered in that light.

11. Mr. Goel further submits that the State Government has examined the Rules on the subject and is of the opinion that the Rules require to be amended and a Cabinet decision has been taken to amend the Rules but before notifying the same to bring it to the notice of this Court, and seek permission.

12. We allow the State Government to amend the relevant rules in accordance with the law keeping in view various orders and directions issued by this Court from time to time on the subject. It is, however, made clear that the permission hereby granted is not in dilution of any order passed by this Court on this subject. We also clarify that by the grant of this permission, we should not be taken to have pronounced as the validity or otherwise of the Rules nor expressed any opinion on the correctness or otherwise of the proposed amendments.

13. In case any other clarification or modification is required of the earlier orders of this Court, the State of U.P. shall be at liberty to file an appropriate application in that behalf.

14. Application (IA No. 385) is disposed of.

4. The State of U.P. was bifurcated and the State of Uttaranchal was created w.e.f. 9-11-2000. The Government of Uttaranchal framed the Uttaranchal Establishment and Regulation of Saw Mills Rules, 2004. In the U. P. Establishment and Regulation of Saw Mills Rules, 1978, Rule 3 had provided that within the limits of any reserved or protected forest and within a radius of 80 Kms. of such limits, no person shall establish, erect or operate any existing saw mill or machinery for converting or cutting timber or wood without obtaining the licence from the Divisional Forest Officer concerned. A corresponding provision is not seen incorporated in the Uttaranchal Establishment and Regulation of Saw Mills Rules, 2004. However, from the Second Proviso to Rule 5 of the Uttaranchal Rules, it is clear that a saw mill cannot be located within 10 Kms. from an existing forest. It is also clear from the conditions of licence contained in the form of application. In addition to the above provisions in the Rules, there is a specific direction issued by the Hon"ble Supreme Court on 8-5-1997 that permission cannot be granted to relocate an existing licensed saw mill within 10 Kms. of any existing forest. It is in clear violation of the said direction of the Supreme Court that the Principal Chief Conservator of Forest granted permission to relocate the petitioner's saw mill as per his order dated 22-2-2000. When the mistake came to his notice, he has rightly taken the action to cancel the said permission granted on 22-2-2000. The said action of the Principal Chief Conservator of Forest cannot be said to be illegal or arbitrary.

5. However, the contention of the learned Counsel for the petitioner is that the distance of 10 Kms. should not be taken as aerial distance, but as road distance. We do not find any valid reason or justification for giving such an interpretation to the order of the Hon"ble Supreme Court. The object of prohibiting relocation of saw mills within 10 Kms. from any existing forest is to preserve and protect forests and to prevent illicit felling of trees and destruction of forests and also to

avoid the adverse impact of pollution, if any, caused by saw mills, on the forests. Considering the above object, it is necessary and proper to understand the distance of 10 Kms. specified by the Hon'ble Supreme Court as aerial distance and not road distance. If it is understood as road distance, there are various possibilities of circumventing the restriction and frustrating the object of the restriction and locating saw mills near the forests. The roads need not always be straight and short and very often in a Hill State like Uttaranchal, roads are zig-zag and circular. Bearing in mind the public interest and the national interest, this Court cannot accept an interpretation which will dilute the rigour of the restriction imposed by the Hon'ble Supreme Court. Therefore, we are of the view that the Principal Chief Conservator of Forest was right and justified in understanding the order of the Hon'ble Supreme Court as one which prohibits relocation of saw mills within an aerial distance of 10 Kms. from an existing forest. The petitioner has no case that if the aerial distance is taken into account, the petitioner's saw mill is not located within 10 Kms. Hence, the challenge against Annexures 1 and 10 orders to bound to fail and the writ petition is liable to be rejected. 6. Learned counsel for the petitioner submitted that the above view taken by this Court will make it impossible for persons like the petitioner to operate their saw mills in the State of Uttaranchal. It is contended that if an aerial distance of 10 Kms. from the boundary of a forest is taken as the prohibited distance, practically no saw mill can be established in most parts of the State of Uttaranchal. The contention may be or may not be factually correct. However, the question is what is more important -- the existence of saw mills or the preservation of forests? In our view, what is more important is the preservation of forests and not the existence of saw mills. The Principal Chief Conservator of Forest has only acted in accordance with Article 48A of the Constitution of India which is extracted hereunder:

48A. Protection and improvement of environment and safeguarding of forests and wild life.-- The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Further, Article 51A(g) of the Constitution of India casts a duty on every citizen "to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures". Hence, forests have to be preserved and protected even at the cost of the business interest of the petitioner.

7. In this context, it is also to be mentioned that, as per the decisions taken by the Central Empowered Committee constituted by the Hon'ble Supreme Court of India in Writ Petition No. 202/95 and 171/96 which is produced as Annexure 9 to the writ petition, presently two locations namely Integrated Industrial Estate, Pant Nagar (Udham Singh Nagar) and Raipur Industrial Estate (Tehsil Roorkee) will be considered for setting up wood-based industries. The Central Empowered Committee did not agree with the suggestion of the State Government of Uttaranchal to permit the Integrated Industrial Estate at Haridwar and the

Growth Center at Kotdwar because they are not only very near the Rajaji National Park but also fall in the Rajaji Corbett Elephant Corridor. The Central Empowered Committee has reiterated the direction of the Hon'ble Supreme Court that permission to shift a saw mill from one location to another location can be granted only when the new site is more than 10 Kms. away from the boundary of the forest. According to the Central Empowered Committee, the identified Industrial Estate at Pant Nagar falls within the 10 Kms. range from the boundary of the forest. The above decision of the Central Empowered Committee as produced by the petitioner is extracted hereunder:

8. Since a major portion of Uttaranchal is mountainous and under forest, the wood-based industries can only be located in two districts namely, Haridwar and Udham Singh Nagar. But in these two districts also some of the areas are extremely sensitive from the point in view of forest and wildlife. A good example is the area adjoining the Rajaji National Park. It is therefore desirable and necessary that these industries are located only within the identified industrial estates with proper checks and balances. After considering the various options suggested by the State government it was decided that presently two locations namely Integrated Industrial Estate Pant Nagar (Udham Singh Nagar) and Raipur Industrial Estate (Tehsil Roorkee) will be considered for setting up wood-based industries. The CEC did not agree with the suggestion of the State Government to permit the Integrated Industrial Estate at Haridwar and the Growth Center at Kotdwar because these are not: only very near the Rajaji National Park and but also fall in the Rajaji Corbett Elephant Corridor. Should the State Government in future identify other suitable locations the CEC will give due considerations to them.

9. The Hon'ble Supreme Court has permitted the shifting of saw mill from one location to another location within the State of U.P. provided the new site is more than "10 Kms. away from the boundary of the forest." The identified Industrial Estate at Pant Nagar falls within the 10 Kms. range from the boundary of the forest. In view of the above, it was decided that before granting permission for establishing new units the matter would be placed before the Hon'ble Court for seeking appropriate directions. Subject to above, further follow up action for processing the application received by the CEC may be taken by the State of Uttaranchal.

The above decision of the Central Empowered Committee shows that in Udham Singh Nagar, the only identified location for wood-based industries is the Integrated Industrial Estate, Pant Nagar which itself falls within the 10 Kms. range from the boundary of the forest and the Central Empowered Committee agreed to process the application for relocation of saw mills subject to appropriate directions from the Hon'ble Supreme Court. The petitioner's saw mill is located in Udham Singh Nagar but it is not in the Integrated Industrial Estate, Pant Nagar. Hence, in the light of the decision of the Central Empowered Committee, the stand taken by the Principal Chief Conservator of Forest is fully

justified.

8. However, we find some force in the contention of the learned Counsel for the petitioner that in the peculiar geographical features of the State of Uttaranchal and the existence of forests all over the State, a rigid implementation of the restriction of an aerial distance of 10 Kms. will make it impossible to establish and operate saw mills in most parts of the State and that it will also cause hardship to those who earn their livelihood from the wood-based industries. But, the above aspect can be considered only by the Hon"ble Supreme Court and this Court is bound by the orders already passed by the Hon"ble Supreme Court.

9. For the reasons stated above, the writ petition is dismissed.