

(2011) 11 UK CK 0030

In the Uttarakhand High Court

Case No : Writ Petition No. 1880 of 2007 (M/S)

M/s Jagdamba Kutir Udhyog and another

APPELLANT

Vs

Conservator of Forests and others

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Uttar Pradesh Establishment and Regulation of Saw Mills Rules, 1978 — Rule 10, 7

Citation : (2011) 11 UK CK 0030

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Tarun Agarwala, J.—Heard Mr. Arvind Vashisth, the learned counsel for the petitioners and Mr. Sudhir Kumar, the learned Brief Holder for the State.

2. The petitioner applied for a saw mill licence. Since the application remained pending, the licence was deemed to have been granted under Rule 7 of the Uttar Pradesh Establishment and Regulations of Saw Mills Rules, 1978 (hereinafter referred to as the Rules of 1978). The Supreme Court in T.N. Godawarman Thirumulkpad v. Union of India, (2002) 9 SCC 502 quashed the amendment made in the Rules of 1978 w.e.f. 26.06.1998 in so far as it exempted the saw mill, which was run by the electricity power upto 3 H.P. from obtaining licence, but also quashed Rule 7 of the Rules of 1978, which relates to the deemed licence. The Supreme Court held :

Our attention has been drawn to the Rules which have been amended by the State of Uttar Pradesh on 26-6-1998 permitting sawmills having engine power of 3 HP not to have a licence. This amendment was made after this Court's order dated 4-3-1997 (T.N. Godavarman Thirumulkpad Vs. Union of India and others,) directing closure of all unlicensed sawmills in the States of Uttar Pradesh and Maharashtra. It is quite obvious that with a view to circumvent this Court's order dated 4-3-1997(1), the State of Uttar Pradesh has used the device

of changing the law.

...

We, therefore, set aside the amendment of the U.P. Establishment and Regulation of Sawmills Rules, 1978, which was effected on 26-6-1998, insofar as it exempted sawmills using mechanical devices with the use of power up to 3 HP from obtaining a licence. As a result of the order passed today, each and every sawmill running in the State of Uttar Pradesh would require a licence, whether the sawmill is running with the aid of power or otherwise. The Rule which provides for deemed licences in the event of the application for the grant of licence not being dealt with contained in the Sawmills Rules, being Rule 7, is also held to be contrary to the letter and spirit of the Indian Forest Act and the orders of this Court and is, accordingly, set aside.

3. On the basis of the aforesaid judgment, the deemed licence of the petitioner was quashed and the petitioner was restrained from running a saw mill.

4. The petitioner consequently applied afresh for grant of a licence. This application was rejected by the Divisional Forest Officer/respondent No. 2, vide order dated 17th January 2005. The petitioner, being aggrieved by the said order, filed an appeal which was rejected, by an order dated 3rd August, 2006 passed by the Conservator of Forests/respondent No. 1, which is provided under Rule 10 of the Rules of 1978. The petitioner, being aggrieved by the said order, has filed the present writ petition.

5. In paragraph 28 of the writ petition, it has been stated that a notice was issued by the appellate authority dated 10th July 2006, which was despatched by the office of the appellate authority on 12th July, 2006 indicating that the appeal would be heard on 15th July, 2006. In the same paragraph, it has been stated that this notice was received by the petitioner on 18th July, 2006 much after the date. Since the petitioner did not appear, an ex-parte order dated 3rd August, 2006 was passed. The contents of paragraph 28 of the writ petition has not been denied by the respondents in paragraph 12 of the counter affidavit.

6. In the light of the aforesaid, the impugned appellate authority's order dated 3rd August, 2006 cannot be sustained since it is violative of the principles of natural justice. It is clear that no opportunity of hearing was provided to the petitioner. The appellate authority's order dated 3rd August, 2006 is accordingly quashed. The writ petition is partly allowed. The matter is remitted to the appellate authority respondent No.1 to reconsider the appeal of the petitioner and decide the matter on merits after hearing the petitioner within six months from the date of production of a certified copy of this order.