
(2019) 09 JH CK 0034

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2269 Of 2019

M/s Patel Timber And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:

Citation : (2019) 09 JH CK 0034

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Vijay Shankar Jha, Atanu Banerjee, Ashwini Bhushan, Pooja Kumari

Final Decision : Disposed Of

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder the decision as contained in letter no. 06-Aa.M/01-2015/2016/2966 dated 08.09.2016 (with regard to petitioner no. 1) and letter no. 06-Aa.M/01-2015/2016/2798 dated 22.08.2016 (with regard to petitioner no. 2), issued by respondent no. 4 in terms of which the petitioners have been directed to shift their saw mills beyond five kilometers from the notified area, failing which the petitioners' saw mill registration would be cancelled; and further for direction upon the respondent-authorities to allow the petitioners to process the stocks and deal with and sell of the finish product in the light of order passed by the Hon'ble Supreme Court in Special Leave to Appeal Nos. 22423-22460/2018 vide order dated 08.04.2019.

2. The brief fact of the case of the petitioner is that licence to run the saw mill was issued to petitioner no. 1 vide registration no. 06/1994 and was renewed up-to 2016 and thereafter, the petitioner no. 1 has filed an application for its renewal on 05.12.2016, which is still pending.

So far petitioner no. 2 is concerned, licence to run the saw mill was issued to him vide registration no. 11/1994, which was renewed up-to the year 2016 and thereafter, the petitioner no. 1 and 2 have filed applications for its renewal on

15.12.2016, which is still pending.

3. Meanwhile, the competent authorities of the State of Jharkhand has come out with a decision dated 08.09.2016 and 22.08.2016, which are impugned in this writ petition, directing the petitioners to shift their saw mills beyond five kilometers from the notified area, in view of the judgment passed by Hon'ble Supreme Court in the case of T.N. Godavarman Thirumulkpad Vs. Union of India reported in (1997) 2 SCC 267, which prompted the petitioner to approach this Court by filing W.P. (C) No. 241 of 2017, in which, the Co-ordinate Bench of this Court while passing order on the Interlocutory Application, being I.A. No. 8900 of 2017 filed in that writ petition, vide order dated 27.11.2017 has modified the order dated 30.01.2017, by which, the co-ordinate Bench has passed the order of status quo as on today with respect to petitioners' saw mill, to the effect that "In the meantime, the petitioners are permitted to operate their saw mills pending adjudication", and the writ petition was posted on 11.12.2017 under the heading "For Orders" and ultimately, the writ petition was disposed of vide order dated 08.03.2018, whereby and whereunder batch of writ petitions, including the writ petition of the petition, was dismissed with liberty to file respective applications before the concerned licensing authorities for consideration of their cases of renewal/grant of licenses which shall be considered by said authorities in accordance with law and appropriate decision shall be taken within a period of 2 (two) months from the date of receipt of respective applications from the petitioners on shifting of their saw mills beyond the distance of 05 kms. from the nearest boundary of the notified forest.

4. Some of the aggrieved has approached to the Hon'ble Apex Court assailing the aforesaid order by filing Special Leave to Appeal Nos. 22423-22460/2018, in which, the Hon'ble Apex Court vide order dated 08.04.2019 has clarified that under the supervision of the State of Jharkhand, whichever factories have stocks, they may be allowed to process the stocks, deal with them and sell of the finish product, pending disposal of the instant appeal. Further, submission made on behalf of learned counsel for the appellants, has been recorded to the effect that there is pending before the Ministry, a proposal that in individual cases, the limit of 5 km may be reduced if so found necessary in public interest. The Ministry is directed to decide whether this should be the policy in future. Such decision will be taken by the Ministry within a period of three months from today.

5. The petitioners thereafter has filed the present writ petition; in which, the first prayer pertains to quashing of the policy decision taken by the State Government, in terms of which the petitioners have been directed to shift their saw mills beyond five kilometers from the notified area, and second one for direction upon the respondent-authorities to allow the petitioners to process the stocks and deal with and sell of the finish product in the light of order passed by the Hon'ble Supreme Court in Special Leave to Appeal Nos. 22423-22460/2018 vide order dated 08.04.2019.

6. Learned counsel for the petitioners has submitted that reason for filing the

present writ petition is seeking similar direction, as has been passed by the Hon'ble Apex Court, and the petitioners may be allowed to process the stocks, deal with them and sell off the finish product.

7. Mr. Atanu Banerjee, learned Sr. S.C. III appearing for the respondents has submitted that writ petition is not maintainable, so far first prayer, with regard to quashing of decision dated 08.09.2016 and 22.08.2016, made in the instant writ petition is concerned as the petitioners have earlier have assailed these decisions by way of filing writ petition, which was dismissed along with other batch of writ petitions, against which, the some of the aggrieved parties approached the Ho'ble Apex Court by filing Special Leave to Appeal under Article 136 of the Constitution of India, which is still pending for its final consideration. However, an observation has been made in the said Special Leave to Appeal allowing the appellants to sell off the finish product and so far decision to shift the saw mills beyond the limit of 5 km is concerned, it is to be decided by the concerned Ministry, upon which, the petitioners are giving more emphasis but the fact herein is that neither in the earlier writ petition nor in the present writ petition, the petitioners have come out with pleadings that the details of stocks, which are lying in the saw mills, from which, the product could be prepared and it would be sold out and as such in absence of any pleadings to that effect, this Court may not pass any order. So far other part of the direction passed by the Hon'ble Apex Court is concerned, if any decision would be taken, it would be universally applicable to all including the petitioners as such no separate direction is required to be passed.

8. This Court, after hearing learned counsel for the parties and going across the pleadings as recorded herein above has found the undisputed fact in this case that the petitioners have approached this Court challenging order dated 08.09.2016 and 22.08.2016, by which, the petitioners have been directed to shift their saw mills beyond five kilometers from the notified area, failing which the petitioners' saw mill registration would be cancelled.

9. The petitioners along with others, being aggrieved with the said decision has approached this Court by filing writ petition under Article 226 of the Constitution of India, which was dismissed, against which, Special Leave to Appeal has been filed, which is now pending for final adjudication. In the said Special Leave to Appeal, the Hon'ble Apex Court vide order dated 08.04.2019 passed one interlocutory order, which reads as under:

"It is made clear that under the supervision of the State of Jharkhand, whichever factories have stocks, they may be allowed to process the stocks, deal with them and sell of the finish product, pending the disposal of the instant appeal.

Ms. Nisha Bagchi, learned counsel appearing for the appellants, points out that, at present, there is pending before the Ministry, a proposal that in individual cases, the limit of 5 km may be reduced if so found necessary in public interest. The Ministry is directed to decide whether this should be the policy in the future.

Such decision will be taken by the Ministry within a period of three months from today."

10. It is evident from the aforesaid order that the Hon'ble Apex Court has taken into consideration the cases of saw mills, who have stocks and are ready to sell off the finish product, pending the disposal of the instant appeal. However, taking into consideration the submission made in the context by learned counsel for the appellants that at present, there is pending before the Ministry, a proposal that in individual cases, the limit of 5 km may be reduced if so found necessary in public interest, the Ministry has been directed to decide whether this should be the policy in the future and such decision will be taken by the Ministry within a period of three months from today.

11. So far contention of learned counsel for the respondents-State that the present writ petition is not maintainable so far prayer with regard to quashing of decision dated 08.09.2016 and 22.08.2016 is concerned, this Court is in agreement with the submission advanced by counsel for the State, as against the decision dated 08.09.2016 and 22.08.2016, the petitioners have earlier filed W.P. (C) No. 241 of 2017, which was dismissed with analogous cases, against which, some of the aggrieved party moved before the Hon'ble Apex Court by filing Special Leave to Appeal, which is still pending for adjudication. In that view of the matter, no direction can be passed by this Court keeping in view the fact that the Hon'ble Apex Court is in sesin of the matter and as such writ petition is not maintainable, so far prayer for quashing decision dated 08.09.2016 and 22.08.2016 is concerned.

12. So far prayer no. 2, which pertains to direction upon the respondent-authorities to allow the petitioners to process the stocks and deal with and sell of the finish product in the light of order passed by the Hon'ble Supreme Court in Special Leave to Appeal Nos. 22423-22460/2018 vide order dated 08.04.2019, no pleading has been made in this regard, as such no direction can be passed in this regard.

13. But, this Court after taking into consideration the observation made by Hon'ble Apex Court in Special Leave to Appeal Nos. 22423-22460/2018 vide interlocutory order dated 08.04.2019, this Court deem it fit and proper to pass such direction by giving liberty to the State authority, in particular respondent no. 4, that in the eventuality, the petitioners approach them within a period of two weeks from the date of receipt of copy of this order, the respondent no. 4-Divisional Forest Officer, Deoghar will visit the saw mill(s) and got its inspection to ascertain the stocks from the returns submitted by the petitioners and take appropriate decision, by allowing the petitioner to deal with the stocks by allowing them to sell off the finish products, within a period of two weeks thereafter.

14. With the aforesaid observations and directions, the writ petition stands disposed of.