
(2016) 06 UK CK 0004

In the Uttarakhand High Court

Case No : Writ Petition No. 1425 of 2016 (M/S)

M/s Vishwanath Paper and Boards Ltd.

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 02-06-2016

Acts Referred:

Citation : (2016) AIR(Uttaranchal) 87

Hon'ble Judges : U.C. Dhyani, J.

Bench : Single Bench

Advocate : Mr. Pankaj Kumar Singh with Mr. Prem Prakash Singh Phartiyal, Advocates, for the Appellant; Mr. P.C. Bisht, Standing Counsel Present, Mr. Manoj Tiwari, Sr. Advocate assisted by Mr. Alok Mahra, Advocate, Mr. Pooran Singh Bisht, Standing Counsel, for the Re

Final Decision : Disposed Off

Judgement

U.C. Dhyani, J.(Oral)—Since the factual matrix of the above noted writ petitions and the law governing the field is the same, therefore, all the writ petitions are being decided together for the sake of brevity and convenience.

2. By means of present writ petitions, the petitioners seek following reliefs, among others:

"(a) Issue a writ of declaration coupled with writ of certiorari or any other appropriate writ, order or direction declaring that the Guidelines on Access to Biological Resources and Associated Knowledge and Benefit Sharing Regulations, 2014 are applicable only to transactions involving non-Indian entities and do not apply to Indian entities who are not trading any biological resources with non-Indian entities or applying for intellectual property rights.

(b) Issue a writ of declaration or any other appropriate writ, order or direction, declaring that the activities undertaken by the petitioner company under the definition of "commercial utilization" as contained in Section 2(f) of the Act.

(c) Issue a writ of declaration or any other appropriate writ, order or direction, declaring that waste paper is not covered under the definition of "biological resources" as contained in Section 2(c) of the Act but is covered under the definition of "value added products" as contained in Section 2(p) of the Act.

(d) Issue a writ of declaration coupled with writ of certiorari or any other appropriate writ, order or direction declaring the attempt of the respondent no.2 to usurp the jurisdiction vested in State Biodiversity Board of other States into itself pursuant to Section 7 and 24 of the Act, 2002 to be unconstitutional.

(e) Issue a writ of declaration coupled with writ of certiorari or any other appropriate writ, order or direction declaring that Section 24(1) of the Act cannot be enforced by respondent no.2 in the absence of the Rules framed by respondent no.1 in terms of Section 63 of the Act and Section 2(k) of the Act.

(f) Issue a writ of declaration coupled with writ of certiorari or any other appropriate writ, order or direction declaring the present notices dated 25.02.2016, 18.04.2016 and 05.05.2016 issued pursuant to Section 7 and 24(1) of the Biological Diversity Act, 2002, which contains Form-I of the Biological Diversity Rules, 2004 and Form A of Guide-liens on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014 to be unconstitutional and accordingly quash the same.

(g) To issue a writ of declaration coupled with writ of certiorari of any other appropriate writ, order or direction, declaring the notices dated 25.02.2016, 18.04.2016 and 05.05.2016 as wholly without jurisdiction for the reasons stated in the writ petition and quash the same as well as any other future notices of similar nature.

(h) Issue a writ of prohibition or any other appropriate writ, order or any penal action in terms of notices dated 25.02.2016, 18.04.2016 and 05.05.2016 under the provisions of Section 55(2) of the Act, including any future notices of similar nature or from taking any coercive action in the said regard.

(i) Ad-interim ex parte order staying the impugned notices and to confirm the same till the hearing and disposal of the present writ petition.

(j) Pass such other and further orders as this Hon"ble Court may deem fit and proper in the facts and circumstances of the present case."

3. After arguing at great length and with the persuasion of this Court, learned counsel for the petitioners confined his prayer only to the extent of point no. (g) & (h) of the prayer clause.

4. Writ Petition No.1425 of 2015 (M/S) shall be the leading case.

5. The basic facts giving rise to the writ petitions are that the petitioners" companies are primarily engaged in the manufacture of different types of papers by using bagasse, rice husk, waste paper and wheat waste as raw materials. It is the specific case of the petitioners that large quantities of raw material are

obtained by the petitioners from the State of Uttar Pradesh, Bihar, etc. and only a minimal quantity of these raw materials is obtained by the petitioners from within the territorial boundary of Uttarakhand.

6. Coming straightaway to the notices, which were sent by the respondent no.2 to the petitioners, it is stated in the writ petitions that on 25.02.2015, respondent no.2 sent first notice to the petitioners under Sections 7 and 24 of the Biological Diversity Act, 2002 (hereinafter referred to as the "Act") threatening to take legal action against them for violation of Sections 7 and 24 of the Act, which is a cognisable and non-bailable offence and is punishable under Section 55(2) of the Act. The said notice of respondent no.2 was replied to by the petitioners companies submitting that they are primarily using bagasse, rice husk, waste paper, wheat straw, etc. as raw material, which cannot be considered as "biological resources" in terms of Section 2(c) of the Act, and it is an industry, which is not covered under the definition of "commercial utilization" as given in Section 2(f) of the Act.

7. Thereafter, respondent no.2 again sent notice to the petitioners stating therein that the submissions of the petitioners are not tenable and further directed them to furnish information regarding "biological resources" in Form - I and Form - A for the financial years 2014-15, 2015-16 & 2016-17. Respondent no.2 considered the waste paper as "biological resource". Thereafter, the petitioners sent letter to the respondent no.2 questioning the authority of respondent no.2 under Section 7 of the Act to seek prior intimation regarding "biological resources", which are procured from outside the territorial boundary of Uttarakhand and whether Form - I, which has been issued by the Central Government under Section 62 of the Act, on which the desired information are sought, would be the appropriate form for providing information from those who presumably fall under Section 7 of the Act?

8. It has specifically been pleaded in the writ petitions that respondent no.1 (State of Uttarakhand), as on date, has not framed rules in terms of Section 63 of the Act and, consequently, when no prescribed form as contemplated under Section 24(1) of the Act is in existence for those falling under Section 7 of the Act, the petitioners are not bound to give information to the respondent no.2 in a particular form, which is not prescribed by the State Government. Respondent no.2 sent a letter to the petitioners ascertaining that the compliance of Access and Benefit Sharing (ABS) is mandatory and the person/organization involved in the commercial utilisation of biological resources within the territorial boundary of Uttarakhand shall have to provide information regarding biological resources as required under Section 7 of the Act. Respondent no.2 sought for the said information and threatened to take legal action in case there is non-compliance of its direction and hence, present writ petitions.

9. Learned senior counsel for the respondent no.2 raised a preliminary objection with regard to the maintainability of the writ petitions. In support of his submission, he drew the attention of this Court towards Section 52A of the Act,

which reads as under:

"52A. Appeal to National Green Tribunal. - Any person aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act, on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act."

10. Learned counsel for the petitioners, on the other hand, laboured hard to argue that the writ petitions would be maintainable and the matter need not be referred to the National Green Tribunal (NGT) and the matter is not cognisable by the National Green Tribunal, inasmuch as no "order" has been passed by respondent no.2 under Section 24(2) of the Act. Sub-section (2) of Section 24 of the Act reads as under:

"24. Power of State Biodiversity Board to restrict certain activities violating the objectives of conservation etc. -

(1)

(2) On receipt of an intimation under sub-section (1), the State Biodiversity Board may, in consultation with the local bodies concerned and after making such enquiries as it may deem fit, by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity:

Provided that no such order shall be made without giving an opportunity of being heard to the person affected.

(3)"

11. Learned counsel for the petitioners is at pains to point out that as per Section 2(g) of the Act, "fair and equitable benefit sharing" means sharing of benefits as determined by the National Biodiversity Authority under Section 21, which deals with the determination of equitable benefit sharing by National Biodiversity Authority. In a nutshell, it is the submission of learned counsel for the petitioners, to which this Court agrees, that the National Biodiversity Authority has nothing to do with the impugned notices and these are within the domain of the State Biodiversity Authority only, but since no "order" as such under Section 24(2) of the Act has been passed, therefore, the matter is cognisable by this Court and not by the National Green Tribunal. This Court, therefore, holds that the writ petitions are maintainable.

12. Let us clarify, at this juncture that, in fact, the writ petitions are only the remedy available to the petitioners against the impugned notices.

13. Section 55(2) of the Act provides penalty clause, which is quoted hereinunder :

"55. Penalties. - (1)

(2) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 7 or any order made under sub-section (2) of section 24 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both."

14. It is admitted in the writ petitions that the petitioners are obtaining a minimal quantity of raw materials, namely, bagasse, rice husk, waste paper and wheat waste, from the territorial boundary of Uttarakhand and large quantity of these raw materials are obtained from the State of Uttar Pradesh, Bihar, etc (i.e. outside the territorial boundary of Uttarakhand). In view of such averments in the writ petitions, the petitioners are bound to give the desired information to respondent no.2 in respect of the raw materials which they have obtained from within the territorial boundary of Uttarakhand. This Court refrains from giving any opinion, in this writ petition, on the point as to whether the "waste paper" is covered under the definition of "biological resources" or not.

15. In order to settle the issue of submission of information in the form, the following provisions of the Act would be important. Section 63(1) of the Act provides that the State Government, by notification in the official gazette, make rules for carrying out the purposes of this Act. Sub-section (2)(b) of Section 63 of the Act provides that in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,

"(a)

(b) the form in which the prior intimation shall be given under sub-section (1) of section 24."

16. Sub-section (1) of Section 24, in turn, says that any citizen of India or a body corporate, organisation or association registered in India intending to undertake any activity referred to in Section 7 shall give prior intimation in such form as may be prescribed by the State Government to the State Biodiversity Board. Section 2(k) defines the word "prescribed", which means "as prescribed by rules made under this Act".

17. Whereas the contention of learned counsel for the petitioners is that no such prescribed form has been framed under the rules, it is the submission of learned counsel for respondent no.2 that there is a requirement in the Act itself that under Section 7, no person, who is a citizen of India or a body corporate, association or organisation which is registered in India, shall obtain any biological resource for commercial utilization, or bio-survey and bio-utilization for commercial utilisation except after giving prior intimation to the State Biodiversity Board concerned.

18. Thus, such persons, like the petitioners, are bound to give prior intimation to the State Biodiversity Board concerned for obtaining biological resources for

commercial utilization, or bio-survey and bio-utilization for commercial utilization.

19. The conclusion, therefore, would be that even in the absence of any prescribed form, the petitioners are bound to give information to the respondent no.2 in respect of the biological resources obtained by them within the territorial boundary of Uttarakhand.

20. The next question, which arises for consideration of this Court is - what should be the modality, in case such a form is not prescribed by the State Government? The contention of learned counsel for the respondent no.2 is that the petitioners should give such information to the respondent no.2 regarding biological resources obtained from Uttarakhand in the forms as prescribed under the Central Rules and the same will not cause any hardship to them.

21. The submission of learned counsel for the petitioners, on the other hand, is that since such form has not yet been prescribed by the Government and it will be inappropriate for respondent no.2 to ask the petitioners to provide information in the forms prescribed under the Central Rules. For the purpose of the decision of the aforesaid writ petitions, this Court is of the opinion that it should be left to the discretion of the petitioners to supply desired information in whatever form they like, but it is made clear that while giving information in respect of the biological resources obtained by them from within the territorial boundary of Uttarakhand, the provisions of the Act shall be given due regard by the petitioners. The Court will appreciate if other information regarding the biological resources obtained from outside the territorial boundary of Uttarakhand is also furnished by the petitioners to the respondent no.2.

22. It is further made clear that the Court has dealt with only relief clauses (g) & (h) of writ petition no.1425 of 2016 (M/S) and has not dealt with other prayers, inasmuch as this Court does not think it necessary to adjudicate upon all the issues while disposing of these writ petitions. The petitioners are at liberty to take recourse to such prayers in some other writ petitions, as and when required.

23. All the writ petitions are, therefore, disposed of at the admission stage itself with the following directions:

(a) Petitioners shall supply the desired information to the respondent no.2 in respect of the biological resources obtained by them from within the territorial boundary of Uttarakhand within four weeks from today;

(b) The respondent no.2 cannot compel upon the petitioners to give desired information in respect of the biological resources obtained from outside the territorial boundary of Uttarakhand; and

(c) Subject to fulfilment of direction (a), as above, now, no prosecution shall be launched against the petitioners under Section 55(2) of the Act on the pretext that the desired information, as sought for, had not been supplied by the petitioners.