
(1996) 12 KL CK 0035

In the High Court Of Kerala

Case No : O.P. No"s. 6738 and 16680 of 1996

Nature Lovers Movement

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-12-1996

Acts Referred:

Constitution of India, 1950 — Article 48A, 51A(g)
Forest (Conservation) Act, 1980 — Section 2

Citation : (1996) 2 KLJ 804

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : K.P. Kylasanatha Pillay and P. Sreekumar, for the Appellant; George C.P. Tharakan (S.C.G.S.C.), N. James Koshy, U.K. Ramakrishnan and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Question that arises for consideration in these two Writ Petitions is as to whether the State Government or the other authorities of the State is obliged to obtain prior approval of the Central Govt. in accordance with Section 2 of the Forest (Conservation) Act, 1980, hereinafter referred to as the "Act", for laying roads through reserved forests if the purpose is for conservation, development and management of forests. Government of Kerala have raised two wattle plantations in Koodakkad and Pothady areas during the years 1982-86, namely, 1983 Koodakkad Wattle Plantation, 1984 Koodakkad Wattle Plantation, 1985 Pothady Wattle Plantation and 1986 Chinna Pothadi Wattle Plantation. First two plantations aforesaid are at the top of the Koodakkad Hills and the latter two are at the Pothadi Hills of Marayur Range. Forest Department has fixed the economic rotation period of the wattle species as 8 years and these plantations are matured for extraction. These plantations are at the hill top and there were no approach roads to facilitate extraction of timber and bark. In order to enable extraction of timber, roads had to be constructed to reach these plantations.

2. Government of Kerala had entered into agreements dated 7.10.1974 with the Hindustan Paper Corporation Ltd., a Government of India undertaking, for the supply of raw materials, namely, eucalyptus, reeds and other pulp wood for the newsprint factory which was set up at Velloor. Government of Kerala had agreed that raw materials would be supplied to them from the plantations belonging to Government of Kerala. Hindustan Paper Corporation Ltd., started Hindustan Newsprint project at Velloor for the manufacture of pulp, newsprint, paper and other allied products of paper/Boards and products of different qualities from eucalyptus, grandis, eucalyptus tereticornis and other pulp woods, reeds and other cellulosic materials grown in the forests of Kerala. Newsprint factory was started on the basis of the above mentioned agreement and on the assurance that Government of Kerala would supply raw materials. Later, a supplemental agreement dated 15.9.1990 was executed between Hindustan Paper Corporation Ltd. and the Government of Kerala. Accordingly, Government of Kerala was allotting each year the raw materials from its plantations and the Hindustan Paper Corporation was felling and transporting the raw materials engaging their own contractors.

3. Chief Conservator of Forests (Protection) passed orders dated 6.10.1993 and 30.6.1994 allotting wattle wood from the above mentioned State plantations in Marayur Range of Munnar Division. Extraction and transportation of wattle wood, namely, 18,200 MTs. from 1983 and 1984 Koodakkadu and 1983 Pothady plantations covered by above mentioned orders was awarded to the additional fifth respondent as per the work order dated 2.2.1995. Addl. sixth respondent, Hindustan Newsprint Ltd., has also on the basis of allotment by the Govt. issued another work order dated 15.5.1995 to the addl. fifth respondent for extraction of 2300 MT from 1986 Chinna Pothady Wattle Plantation in Marayur Range of Munnar Division. Divisional Forest Officer, Munnar issued licence No. 4/95 to the addl. fifth respondent for extraction and transportation of wattle wood evidenced by Ext. R5(c).

4. In order to extract wattle wood from Koodakkad and Pothady Plantations and transport the same to the factory site, construction of approach roads from the main road to the plantations was found necessary. Hindustan Newsprint Ltd, then vide their letter dated 30.5.1995 sought permission for the construction of roads from the Forest Department. Chief Conservator of Forests (D) vide inspection note dated 3.11.1994 had accorded sanction for the construction of an approach road to 1983 and 1984 Koodakkad Plantations, the initial reach of which passes through the proposed Koodakkad reserve. In the note submitted to Chief Conservator of Forests, it was proposed to construct road to the above said plantations from Manjapetty. Construction of road from Manjapetty was found difficult due to very steep rocky terrain. Newly proposed road was from Anackapetty and the length of which is about 4400 metres. Out of the above, 1200 metres are through the proposed Koodakkad reserve. On the basis of the direction of the Chief Conservator of Forests, Divisional Forest Officer conducted an enquiry and explored the possibility of construction of roads to the

plantations. He has also ascertained the trees that are to be cut when the roads are laid. Trees were marked, including sandalwood trees. These plantations were found to be comparable in stock to 1958 vattavada wattle plantation and going by the principle of comparative yield, a whopping yield of 75,000 MT pulp wood and 12,000 MT wattle bark are expected from these four plantations. Revenue expected from pulp and bark based on the above assessment is 6.7 crores. It was found considering the expected revenue from bark and pulp, even if some loss is sustained by the Government due to cutting of young sandal trees, that loss can only be marginal. It was pointed out unless permission for construction of roads through sandalwood reserve is granted, to the company, it would be difficult to extract timber from these four plantations, and there is no other source of pulpwood to meet the requirement of the company.

5. Divisional Forest Officer also opined if the roads are constructed, there will be no expenditure on the part of the Government, and it can be advantageously utilised for the protection of sandal and other reserves. Due to vehicular accessibility, these plantations can be regenerated, maintained and protected in future more effectively. It was found wattle growth in these plantations became stunted and trees became over-matured. If only these plantations are extracted, regeneration work could be carried out, thereby sustained productivity could be achieved. He, therefore, recommended sanction for construction of approach roads to the plantations.

6. Conservator of Forests, Kottayam, after consultation with the Chief Conservator of Forests, issued a letter dated 19.9.1995 to the Divisional Forest Officer, Munnar, giving permission to the Divisional Forest Officer to accord sanction for the construction of roads. He was directed to see that the roads are constructed only for the extraction of materials allotted to the company, and that the length of the road through wooded area will be as minimum as possible, and that the width of the road is limited to the minimum, just sufficient for oneway traffic. He was also directed to see that felling of trees is limited to the minimum and where absolutely essential. Various other conditions were also stipulated. Hindustan Newsprint Ltd. agreed to the various conditions laid down by the department and executed an undertaking dated 16.10.1995. Accordingly, Divisional Forest Officer vide his letter dated 16.10.1995 granted permission to construct approach roads in accordance with the conditions laid down in their undertaking.

7. Fifth respondent, under the guidance and supervision of Hindustan Newsprint Ltd. has already constructed roads and removed 50% of the quantity of wattle wood. There are about 2000 Mts of wattle wood timber collected and stacked inside the coupe, ready for transportation. Bark collected is about 600 MTs. which is also made ready for transportation. About 900 MTs. of wattle wood and its one-fifth quantity of bark are yet to be removed. About 200 MTs of bark is also collected and stacked for removal to 7th respondent to whom Government had agreed to supply bark.

8. In the meantime, petitioners, social organisations registered under the Charitable Societies Act, preferred these Writ Petitions seeking a writ of mandamus directing respondents to stop felling and extraction of black wattle from Pothadi and Koodakkad area, and also to stop the on-going road construction inside the Marayur Sandal reserves. It is their case respondents 1 and 2 have not obtained prior approval from the Central Government under the provisions of the Act and therefore the entire action taken by them granting permission to lay the roads through the Marayur forest is illegal and violative of the provisions of the Act.

9. A detailed counter affidavit has been filed on behalf of the respondents. I heard counsel for the petitioner and learned counsel appearing for respondents at length. Main question to be considered is as to whether permission granted by respondents 2 and 3 to respondents 5 to 7 for laying roads through the Marayur range without obtaining prior approval from the Central Government u/s 2 of the Forest (Conservation) Act, 1980 is legal.

10. While learned counsel for the petitioner maintained the stand that prior approval ought to have been obtained from the Central Government, respondents took up the stand that no prior approval is necessary, since construction of road to reach the plantations is for the conservation, development and management of forests. They also maintained the stand that roads are constructed to the plantations for the benefit of the State Government and for the Newsprint Project which is a Government of India undertaking. It was stated wattle and reeds, etc. are highly necessary, since Newsprint Project is a forest based industry. It is also stated if roads are constructed plantations could be regenerated, maintained and protected.

11. In view of the divergent stand taken by the parties, it has become necessary to examine the scope of Section 2 of the Act, which is extracted below:

2. Restriction on the dereservation of Forests or use of forest land for non-forest purpose.-- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing:-

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government.

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for

reafforestation.

Explanation.- For the purpose of this section, "non forest purpose" means the breaking up or clearing of any forest land or portion thereof for

(a) the cultivation of tea, coffee, spices, rubber, palm, oil bearing plants, horticulture crops or medicinal plants.

(b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establish of check-posts fire lines, wire-less communications, and construction of fencing, bridges and culverts, dams, water holes, trench marks boundary marks, pipelines or other like purposes.

It is evident from the above mentioned provision that no State or other authority shall make, except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof, may be used for any non-forest purpose. Non-forest purpose has been explained in the Section itself to mean the breaking up or clearing of any forest land or portion thereof for the cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticulture crops or medicinal plants, any purpose other than reafforestation. However, it will not include any work relating to or ancillary to conservation, development and management of forests and wildlife namely, the establishment of check-posts, firelines, wireless communications and construction of fencing bridges and culverts, dams, water holes, trench marks, boundary marks, pipelines or other like purposes.

12. Counsel for the petitioner submitted that eventhough State Government or the Forest Department has got the right to carry on any work relating to or ancillary to conservation, development and management of forests, and wildlife, they could only establish checkposts, fire lines, wireless communications, and construction of fencing, bridges and culverts, dams, waterholes, trench marks, pipelines or other like purposes. Counsel submitted construction of road is not included as one of the items, and therefore the same can be undertaken by the authorities only after getting prior approval of the Central Government. Counsel submitted when particular words, pertaining to class or category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified and therefore according to counsel "other like purposes" would take in only categories mentioned earlier, and therefore rule of ejusdem generis applies.

13. It is essential for application of the "ejusdem generis" rule that enumerated things before the general words must constitute a category or a genus or a family which admits of a number of species or members. If the specified things preceding general words belong to different categories, this principle of construction will not apply. As held by the Supreme Court in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, , rule of ejusdem generis has to be applied with care and caution. It is not an inviolable

rule of law, but it is only permissible inference in the absence of an indication to the contrary and where context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. As held by the Supreme Court in *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others*, that rule applies when (1) the statute contains an enumeration of specific words; (2) the subjects of enumeration constitute a class or category; (3) that class or category is not exhausted by the enumeration; (4) the general terms follow the enumeration; and, (5) there is no indication of a different legislative intent. Thus it is essential for the application of *ejusdem generis* rule that enumerated things before the general words must constitute a category or a genus. Lord Simond in *Russel v. Scott*, (1948) 2 A11.E.R. 1 pointed out that "indeed if a collection of items is heterogeneous, it almost seems a conflict in words to say that they belong to the same genus. The same principle was followed by the Supreme Court in *Housing Board of Haryana v. Haryana Housing Board* 1996 (2) S.C.C. 95. On the basis of the above mentioned principles it is evident that the words "other like purposes" would take in construction of road also.

14. Therefore question to be consideration is as to whether "construction of road" in the forest area would come within the expression "conservation, development and management of forests". Forest Department has got a duty to conserve, develop and manage forest. Those functions include protection and development of the forests so as to ensure their permanent maintenance and also extraction and utilisation of the forest produce, so as to obtain the maximum sustained yield consistent with the requirements of the people, agriculture and industries. Compiling working plans for the scientific management of the forests, construction of roads, bridges, timber slides, etc., for the opening up of remote and inaccessible forest areas and construction of buildings required for the working and administration of the forests form part of the above functions. Wild life preservation, water shed management, pasture development and soil conservation are also functions of the department, Department also conducts research into problems affecting regeneration and development of forests, utilisation of forest produce, silviculture, soil conservation, etc. Works of regeneration, silvicultural operations, valuation surveys and management of the forests in a State of continuous and progressive productiveness on the sustained yield principle.

15. Therefore for the sustained development and management of forest, authorities have got wide powers. It is too much to contend that they have no right to lay down road for conservation, development and management of forests, If the purpose is bona fide, and the object is for development and management of forest, there is no reason why permission be not granted for construction of road with sufficient safeguards, keeping in mind the ecology environment, wildlife, and so on.

16. In the instant case, road is laid not for any private purpose, but to honour the commitment entered into between the State Government and Hindustan Newsprint Ltd., which is a Government of India undertaking. It is pertinent to note that very project was set up in the State of Kerala on the basis of agreement entered into between the Hindustan Paper Corporation Ltd., and the Government of Kerala on 7.10.1974. By the said agreement, Government of Kerala had agreed to supply raw materials, eucalyptus, reeds and other pulpwood for the newsprint factory which was set up at Velloor. Agreement also specifies that the State would supply eucalyptus, grandis, eucalyptus tereticornis and other pulp woods, reeds and other cellulosic materials grown in the forests of Kerala. From the report of the forest officials also it is seen that plantations are yielding 75000 MT pulp wood and 12,000 MT wattle bark and the revenue expected from pulp and bark based on the above assessment is Rs. 6.7 crores. Considering the expected revenue from bark and pulp, even if some loss is sustained by the Government due to cutting of young sandalwood trees, that loss can only be marginal. It is clear that Hindustan Newsprint Project is a forest based industry and forest produce is highly essential for its very existence.

17. Fourth respondent has produced a report of the Chief Conservator of Forests (Central), Ministry of Environment and Forests, after conducting an on the spot inspection of the roads constructed through the sandalwood reserve. Chief Conservator of Forests (Central) is of the opinion that no prior approval as such is necessary under the Act. He also is of opinion that adequate safeguards and measures have already been taken while laying the road. It is also stated wattle plantations can be put to sustainable yield, regeneration and developmental management practices only if they are regularly harvested. Formation of the roads was only for the purpose of harvesting and properly managing the existing plantations. It is also stated this road can be utilised by the department for more effective patrolling and enhanced movements for fire-fighting activities during summer months and more meaningful and effective programme of afforestation and eco-restoration in these alienated and cut-off areas. Therefore formation of a road through any forest area for the purpose of ancillary to development and management of forest resources does not fall within Section 2 of the Act, since it is not non-forestry activity. It is also stated Koodakkad and Pothadi hills from where the wattle trees are being extracted are more than 4 KMs approximately from Eravikulam National Park as the crow flies and may be 10 KMs by land route marked by several intervening gorges and precipitous rocky cliff along the migratory movement of Nilgiri Tahr is impossible. It is stated wattle trees were planted during 1982-86 at an espacement of 2 x 2m. The undergrowth consisted mostly of non-fodder species like Eupatorium and Lantana. It was pointed out felling of wattles in these plantations which do not form part of Eravikulam National Park will not cause destruction of grass land and affect the fauna of the area/National Park. It is therefore evident for proper management of forest and its preservation and development laying of road cannot be ruled out. Therefore I am of the view that construction of road by the department would come within

the meaning of conservation, development and management of forests. Accordingly, construction of roads cannot be said to be an activity which is prohibited, and therefore no prior approval of the Central Government is necessary u/s 2 of the Act.

18. Counsel for the petitioner referred to the National Forest Policy, 1988 as well as Consolidated Guidelines for Diversion of Forest Land under the Forest (Conservation) Act, 1980, revised on October, 25, 1992. Counsel referred to basic objectives enumerated in the National Forest Policy and the policy applicable to forest based industries and contended that natural forests serve as a gene pool resource and help to maintain ecological balance, and therefore such forests will not be made available to industries for undertaking plantation and for any other activities. However, the same policy states, as far as possible, a forest based industry should raise the raw material needed for meeting its own requirements, preferably by establishment of a direct relationship between the factory and the individuals with inputs including credit, constant technical advice and finally harvesting and transport services. However, one of the basic objectives of National Policy is to increase the productivity of forests to meet essential national needs and to encourage efficient utilisation of forest produce and maximising substitution of wood. Policy also says that conservation includes preservation, maintenance, sustainable utilisation, restoration, and enhancement of the natural environment. Therefore, National Policy as such does not rule out utilisation of forest produce for forest based industries. However, the aim is to ensure environmental stability and maintenance of ecological balance. Policy hereafter may be to insist forest based industries to find alternative raw materials so that ecological balance could be maintained. It is also pertinent to note that object is to conserve wild life. Forest Management has to take special care and forest management plan should include prescription for that purpose.

19. A Division Bench of the Andhra Pradesh High Court in Anupama Minerals Vs. Union of India and Others, held that conservation of forest is a continuous and integrated process, and that forest was to be kept to meet the needs of the country. A Division Bench of the Bombay High Court in The Goa Foundation and another Vs. The Konkan Railway Corporation and others, , took the view that for laying railway line through the forest, no prior approval of the Central Government is necessary under the Forest (Conservation) Act.

20. Chief Conservator of Forests and Divisional Forest Officer submitted that they have taken adequate safeguards and measures so that minimum damage is caused to trees while laying the roads. Roads have already been laid and some of the materials have already been removed to the Hindustan Newsprint Ltd. Therefore at this stage, I am of the view that this Court is not justified in interfering with the steps taken by respondents 1 to 4.

21. However, it is unfortunate that there has not been any enquiry or study conducted by the State Government in this respect. They left everything to the Chief Conservator of Forests and the Divisional Forest Officer concerned, who are

not equipped with to assess the impact of construction of road on ecology, environment and also wildlife. There is nothing to show that the State Government has addressed itself as to whether construction of road as such would have any impact on the ecology, environment and wildlife or on the Eravipuram National Park. Eventhough some of the communications were sent by the Conservator of Forests to the Commissioner and Secretary, Forest and Wildlife Department, department bestowed no serious attention in this respect. Even before this Court, first respondent-State has not chosen to file counter affidavit. I am of the view State Government ought to have conducted their own enquiry rather than leaving the entire matter to the Chief Conservator of Forests and Divisional Forest Officer concerned to take whatever steps which are necessary. As per Kerala Forest Code, Chief Conservator of Forests can act only subject to the orders of the Government. Even if State Government or other authority indulge in any activity for conservation, development and management of forest, they must be guided by mandate of Article 48A of the Constitution of India which states that State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51A(g) had made the fundamental duty of every citizen to protect and improve the natural environment including forest lakes, rivers and wildlife and to have compassion for wildlife creatures. In order to meet the growing needs for essential goods and services, which forest produce, it is necessary to enhance forest cover and productivity of the forest through the application of scientific and technical inputs. National Forest Policy also highlights the production of forestry programmes while aiming at enhancing the forest cover in the country and meeting national needs should also be oriented to narrowing the gap between the demand and supply of fuel wood. National significance of forest has been realised, and the provision of section 57 of the Constitution (Forty-Second Amendment) Act, 1976 has made the administration of forest law a concurrent subject, by inserting Entry 17-A in the Third List of the Seventh Schedule of the Constitution, with the result that the State Governments are left unfettered in forest administration, provided that it was in consonance with the forest policy of the Centre for preservation and development of the nation's forest resources. It is therefore imperative that the State Government should formulate their own scheme and programmes for the proper conservation, development and management of forest. It is highly necessary as is done by the Central Government that the State Government should also appoint a committee consisting of experts from the field of earth science, ecology, environment, forestry, soil conservation, etc. Therefore every proposal of this nature should be considered by the committee and committee can advise Chief Conservator of Forests and the Divisional Forest Officer concerned for the proper conservation, development and management of forest in the State of Kerala. Every proposal mooted by the Chief Conservator of Forests or the Divisional Forest Officer concerned shall be placed before such committee and the committee could examine as to whether forest land proposed to be used for forest or non-forest purpose forms a part of a nature reserve, national park, wild life sanctuary,

biosphere reserve or forms part of the habitat of any endangered or threatened species of flora, and fauna or of an area lying in severely eroded catchment. It is also possible for the committee to decide as to whether the use of any forest land is for agricultural purposes or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydro-electric project. While tendering the advice, the committee may also suggest any conditions or restrictions on the use of any forest land for any non-forest purpose, which would minimise adverse environmental impact, or for the purpose of conservation, development and management of forest.

In the instant case, since I have already found construction of road comes within the expression "conservation, development and management of forest", I do not find any reason to interfere with the action already taken by respondents 1 to 4, especially when the roads have already been laid. Accordingly these Writ Petitions are dismissed.