
(2009) 10 MAD CK 0065

In the Madras High Court

Case No : Writ Petition (MD) . No. 7742 of 2009 and M.P. No"s. 1 and 2 of 2009

S. Jayachandran

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-10-2009

Acts Referred:

Constitution of India, 1950 — Article 77
Forest (Conservation) Act, 1980 — Section 2

Citation : (2010) 3 MLJ 1103

Hon'ble Judges : S. Nagamuthu, J;D. Murugesan, J

Bench : Division Bench

Advocate : T. Lajapathi Roy, for the Appellant; M. Ravindran, Assistant Solicitor General of India for Respondent 1, R. Janakiramalu, Special Government Pleader for Respondents 2 to 4 and Hema Karthikeyan, for Respondent 5, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—Challenge in this Writ Petition, by way of Public Interest Litigation, is to the proceedings issued by the first respondent in

No. 4-TNB594/2009-BAN dated 18.05.2009, whereby, the Government of India, Ministry of Environment and Forests, has given approval in

principle [stage-1] u/s 2 of the Forest (Conservation) Act, 1960, [hereinafter referred to as ""the Act""], for diversion of 2.98 Hectares of forest land

in Vallakaradu Reserve Forest of Theni Forest Division/Theni District for construction of a new Bus stand at Theni by the Commissioner, Theni,

Allinagaram Municipality, Theni District.

2. The petitioner claims to be the President of an association known as ""Tamil Nadu Green Movement"", involved in environmental activities.

According to the petitioner, u/s 2 of the Act, no State Government or any

authority shall use any portion of a forest land except with prior approval of the Central Government. But, in respect of the forest land in question, according to the petitioner, there has been no such approval obtained from the Central Government by the State Government for converting the same for the purpose of establishing a Bus stand. It is further contended that the Hon''ble Supreme Court in T.N. Godavarman Thirumulpad Vs. Union of India (UOI) and Others, , has imposed a ban on felling of trees which are of spontaneous growth in both forest and plantation areas. In view of the said Judgment, according to the petitioner, since there are spontaneous trees and plants available on the land in question, the impugned proceeding runs contrary to the ban imposed by the Hon''ble Supreme Court. It is further contended that it is a green lung area, which is acting as an oxygen factory for the town having about two lakhs population. If the proposed Bus stand is allowed within the reserve forest, the petitioner alleges, the entire reserve forest would be polluted by throwing of garbage, by plastic waste and forest will die a slow death by the unmindful encroachment and activities in the name of the development. Therefore, according to the petitioner, the impugned proceedings is liable to be quashed.

3. The first respondent has filed a detailed counter, wherein, inter alia, it is contended as follows:

(i) The Environment and Forests Department, Government of Tamil Nadu, vide letter dated 30.03.2009 has submitted a proposal for diversion of

2.98 Hectares of forest land in question for construction of a new Bus stand at Theni for approval under the Act.

(ii) The District Collector has certified that no suitable land is available in Theni Municipal area for the said project and that 14.7 Acres of suitable

non- forest land is available for raising compensatory afforestation in Survey Nos.218, 219/2 and 220 of Kadamalikundu Village, Andipatty Taluk,

Theni Forest Division.

(iii) The State Forest Department has also reported that the proposed area contains the trees of *Acacia melifera*, *Acacia ferruginea* and *Acacia*

planiforms grown through artificial generation in 1986 and other miscellaneous species planted in 2003.

(iv) The proposal of the State Government was examined by the Central

Government and considering the public utility of the proposed Bus stand, the Central Government vide letter No. 4/TNB594/2009-BAN, dated 18.05.2009, has accorded in principle approval subject to fulfilment of certain conditions.

(v) The other contentions raised by the petitioner in the affidavit filed in support of the Writ Petition are stoutly refuted by the respondents.

4. The third respondent, District Collector, Theni District has filed a separate counter, wherein it is stated that the user agency i.e., the

Commissioner, Theni - Allinagaram Municipality has given the following certificates:

(i) The demand for forest land for Theni Bus Stand Project is minimum.

(ii) For payment of compensatory afforestation cost, annual lease rent, NPV and exploitation of tree growth fixed by the Forest Department will be

borne by the Municipality.

(iii) The user agency has enclosed the copy of the administrative sanction.

iv. There is no other suitable land available in Theni Municipal limits for the above project.

(v) The District Forest Officer has made an inspection on 18.02.2009 and reported that the area has dense vegetation of the thorn scrub forest

dominated by Acacia Mellifera. He has further reported that the other Acacia Species available in the area is Acacia planiforms and the Acacia

species were planted in 1986 and about 786 trees are proposed to be diverted. The area also forms part of the treated watershed of the year

2003 Thendral Nagar TAP village.

(vi) There is no spontaneous tree growth in the proposed village area and there is no endangered species of flora and fauna found in the proposed

forest area. The District Forest Officer has finally concluded that the proposed area for diversion does not have any important monuments, which

are archaeological/heritage site/defence establishment etc.

(vii) In respect of the compensatory afforestation, the District Forest Officer has jointly inspected the area proposed for compensatory

afforestation with the District Revenue Officer and reported that the area is located in a compact block on a plateau adjacent to Megamalai

Reserve Land and is suitable for compensatory afforestation land. The cost of

compensatory afforestation has been worked out to Rs. 4,29,999/- including maintenance.

(viii) In conclusion, the Principal Chief Conservator of Forest has recommended the above proposal for construction of Bus Stand and requested

that the said proposal may be forwarded to the Government of India for obtaining concurrence u/s 2 of the Act. Accordingly, the above proposal was forwarded to the Government of India for approval.

(ix) The Allinagaram Municipality Council passed a resolution approving the project on the land in question.

(x) In short, it is stated that all the legal formalities were complied with by the State Government and based on the same, the Central Government has given the first stage of approval under the impugned proceedings, which does not call for any interference at the hands of this Court.

5. The second respondent has filed a counter, which is almost similar to that of the counter filed by the third respondent. Therefore, the contents are not elaborated in this Order.

6. We have heard the learned Counsel appearing for the petitioner, learned Additional Solicitor General of India appearing for the first respondent, learned Special Government Pleader appearing for respondents 2 to 4, learned Standing Counsel appearing for the fifth respondent and we have perused the records carefully.

7. The first and foremost contention of the learned Counsel appearing for the petitioner is that there was no approval given by the Central

Government in terms of Section 2 of the Act, and instead, the impugned proceeding has been issued by the Deputy Conservator of Forest Central

which is without jurisdiction. The said contention of the learned Counsel for the petitioner is refuted by the learned Additional Solicitor General of

India. According to him, what is under challenge in this Writ Petition is only a consequential communication forwarded by the Deputy Conservator

of Forests(Central), which is based on the approval given by the Central Government. He would submit that approval u/s 2 of the Act was, as a

matter of fact, given by the Union Government. The learned Additional Solicitor General of India has produced the entire file relating to the issue.

A perusal of the same would go to show the following facts:

(a) Originally, the entire extent of 31.90 Acres of forest land in Valkaradu reserve forest village was placed at the disposal of the Industries

Department by the Government under G.O.Ms. No. 1536, Food and Agriculture, dated 06.05.1963. The Industrial Department, in turn, after

retaining an extent of 22.55 Acres in use, surrendered the balance area of 9.35 Acres to the Forest Department. Out of the said 9.35 Acres of

land surrendered by the Industries Department, an extent of 2.00 Acres of land was placed at the disposal of the Agricultural Department for the

construction of COGER Shed for Agricultural Engineering Services. The remaining 7.35 Acres of land is now available with the Forest

Department.

(b) The erstwhile Madurai District was bifurcated and a new Theni District was formed during the year 1997. According to the proceedings of the

District Collector dated 22.01.2004, only to cope up with the increasing population, a spacious and a centrally located Bus stand is the need of the

hour insofar as Theni District is concerned. The District Collector, in the said letter reported to the Government that in spite of concerted and

sincere efforts, the District Administration could not find a suitable place for locating a new Bus stand for Theni District.

(c) In such circumstances, the District Collector felt that 9.35 Acres of land mentioned above belonging to the Forest Department may be placed

at the disposal of the Municipal Administration Department for the construction of a new Bus stand on collection of land value. Subsequently, the

Tamil Nadu Legislative Assembly Petitions committee held a meeting on 11.07.2007 at Theni, in which, on receiving representations from the

general public, the Committee decided to make recommendation to the Government to construct a Bus stand soon. The Theni Allinagaram

Municipal Council also passed a resolution on 30.07.2007 requesting the Government to allot the said land for the purpose of establishing the Bus

stand on the said land. The District Collector gave a certificate to the effect that there are no other suitable lands available in the Theni Municipal

area for the above project. In respect of the compensatory afforestation, the District Forest Officer has jointly inspected the area proposed for

compensatory afforestation with the District Revenue Officer and reported that the area is located in a compact block on a plateau adjacent to

Megamalai Reserve Land and is suitable for compensatory afforestation land. All the above reports were duly submitted by the State Government

to the Central Government seeking approval as required u/s 2 of the Act.

8. On a perusal of the above proposals including other reports, the Chief Conservator of Forest Central made an inspection on 09.04.2009 and

submitted a report. Thereafter, the proposal was considered at the Secretary level presided over by the Hon''ble Minister for Environment and

Forests, Union of India on 04.05.2009. Having considered all the relevant materials, approval was accordingly accorded. Based on the same, the

impugned proceedings came to be passed. On perusing the original file produced before this Court, we are fully satisfied that the facts narrated

above are correct and we are also satisfied that there is an order issued by the Central Government in terms of Section 2 of the Act and what is

under challenge in this Writ Petition is only a consequential communication issued by the Conservator of Forests.

9. After it was brought to the notice of the learned Counsel appearing for the petitioner that as a matter of fact, there is an order of approval issued

by the Central Government, he made his further submission, that too, after going through the original file, to the effect that the said approval cannot

be sustained in law, as there has been total non-application of mind on the part of the Government. But, we find it very difficult to persuade

ourselves to agree with the said argument advanced by the learned Counsel appearing for the petitioner for the reasons that follow.

10. As already narrated above, the file discloses that various reports submitted by various authorities were duly considered at the top level of the

Central Government and even the Hon''ble Union Minister for Environment and Forest was taken into confidence and he also ultimately decided to

give approval. The contention of the learned Counsel for the petitioner is that the file discloses that there was no speaking order passed by the

Secretary to Government of India as well as the Hon''ble Minister, which, according to the learned Counsel, discloses non application of mind. In

our considered opinion, the said argument of the learned Counsel for the petitioner is not at all tenable. It is not always necessary that there has to

be a speaking order in respect of the proceedings like one which is under challenge in this Writ Petition. The real test is whether there was

application of mind and all the relevant materials have been duly considered and whether any irrelevant materials have been taken into account to

arrive at the decision. The learned Counsel for the petitioner is not in a position to point out anything to show that any relevant material has been

omitted or any irrelevant material has been considered by the Government.

11. Next, the learned Counsel for the petitioner would submit that the net present value fixed has not been calculated strictly in accordance with

law. In our opinion, it is not so. The learned Counsel for the petitioner is not in a position to point out as to how the calculation of NPV is

defective. Making a mere vague allegation would not satisfy the conscience of this Court so as to interfere with the impugned proceedings.

Assuming that NPV fixed by the Central Government is far less than the actual NPV, on that score, the impugned proceedings cannot be quashed.

12. The learned Counsel would, next, submit that the general directions issued by the Hon''ble Supreme Court in respect of calculation of NPV in

T.N. Godavarman's case has not been complied with. In T.N. Godavarman Thirumulpad Vs. Union of India (UOI) and Others, , wherein in

paragraph 98, it is held as follows:

1. Except for Government projects like hospitals, dispensaries and schools referred to in the body of the Judgment, all other projects shall be

required to pay NPV though final decision on this matter will be taken after receipt of expert committee report.

2. The payment to CAMPA under notification dated 23.04.2004 is constitutional and valid.

3. The amounts are required to be used for achieving ecological plans and for protecting the environment and for the regeneration of forest and

maintenance of ecological balance and ecosystems. The payment of NPV is for protection of environment and not in relation to any proprietary

rights.

13. Regarding the above proposition, the learned Additional Solicitor General of India has got no second opinion. However, he would submit that

NPV has been duly worked out on economic principles as directed by the Hon''ble Supreme Court in the said Judgment and the same will be duly

collected from the user. Thus, we are satisfied that the direction issued by the Hon''ble Supreme Court has been duly complied with.

14. In support of the same contention, the learned Counsel for the petitioner relied on yet another Judgment of the Hon''ble Supreme Court in T.N.

Godavarman Thirumulpad Vs. Union of India (UOI) and Others, , wherein the Hon''ble Supreme Court held that for calculating the average net

per cent value per hectare of forest in India, the following monetary value of goods and services provided by the forest have to be considered:

1. Value of timber and fuel wood
2. Value of non-timber forest products (NTFP)
3. Value of fodder
4. Value of eco-tourism
5. Value of bio-prospecting
6. Value of ecological services forest
7. Value of flagship species
8. Carbon sequestration value

15. The Hon''ble Supreme Court further proceeds to say that based on the above, NPV has to be fixed and recommendations have to be made.

Relying on the said Judgment, the learned Counsel for the petitioner would submit that NPV ought to have been prescribed as per the tabulation

contained in the said Judgment of the Hon''ble Supreme Court.

16. In our opinion, at this juncture, it is not all necessary to go deep into the details of the calculation of NPV made in this case, at this stage.

Indisputably, approval has been granted only at the first stage. Even assuming that NPV has not been fixed by the authorities, in tune with the

above formula, it is always open to challenge in an appropriate proceeding. In so far as the present Writ Petition is concerned, the scope is very

limited, since what is under challenge is only the proceedings of the Deputy Conservator of Forests relating to the first stage approval issued u/s 2

of the Act. There is a long way to go further.

17. The learned Counsel for the petitioner lastly relied on another Judgment of the Hon''ble Supreme Court in Nature Lovers Movement v. State

of Kerala reported in 2009 5 SCC 373, wherein, the Hon''ble Supreme Court has reiterated the need for the State Government to get approval

from the Central Government. There is no controversy before us in respect of the said legal proposition. It is only in consonance with the legal

requirement u/s 2 of the Act, the State Government has submitted proposal seeking approval and the same has been duly issued by the Union of India.

18. The learned Counsel for the petitioner, during his concluding arguments, made a submission that assuming that proper approval has been issued in terms of Section 2 of the Act by the Central Government, even then, it is for the State Government to pass final Orders by having regard to the need for converting the forest land for any other purpose. He would point out that the State Government has not even applied its mind to pass any order. In our considered opinion, the said argument of the learned Counsel for the petitioner is baseless. It is not the case, where the State Government has already passed any order directing conversion of the forest land in question for the purpose of constructing Bus stand.

19. At this juncture, the learned Special Government Pleader would submit that because of the pendency of the present Writ Petition, so far, the State Government could not process the issue further and to pass any order u/s 2 of the Act converting the forest land in question for construction of the Bus stand. In our opinion, there is every force in the said argument of the learned Special Government Pleader. As rightly pointed out, only approval has been granted by the Central Government and further process is to be undertaken by the State Government to pass appropriate orders u/s 2 of the Act. Therefore, it is highly premature on the part of the petitioner to contend that there is total non-application of mind on the part of the State Government.

20. The learned Counsel for the petitioner would further submit that under Article 77 of the Constitution of India, all Executive actions of the Government of India should be expressed to have been taken in the name of the President of India; but, in this case, the approval has not been issued in the name of the President of India. We find no force in the said argument since the order in question is not an executive order, but an order made in exercise of the statutory power conferred u/s 2 of the Act. Such statutory orders need not be issued in the name of the President of India. (Vide 1999 (4) S.C.C. 76).

21. Before parting with this case, we would like to refer to the object of the Act, which aims to prevent deforestation and to check the

environmental deterioration. The deforestation causes serious threat to the existence of human being and other living substances. Hence, to check

the deforestation the Act was enacted. Only in order to regulate the preservation of the forest, u/s 2 of the Act, approval is required from the

Central Government before going for deforestation on any forest land. As held by the Hon"ble Supreme Court in the Judgments cited supra,

whenever deforestation takes place, it is absolutely necessary to go for afforestation on a different suitable place. In the case on hand, all

precautions have been taken both by the State Government as well as the Central Government to go in for afforestation in a different place while

converting the land in question for constructing the bus stand. Thus, we are fully satisfied that the object of the Act is in no manner defeated by the

impugned proceedings whereby the forest land in question is sought to be converted for the purpose of establishing the new Bus stand. After all the

said project is also for the benefit of the public.

22. As rightly pointed out by the learned Special Government Pleader, the erstwhile Madurai District was bifurcated and a new Theni District was

formed during the year 1997. According to the proceedings of the District Collector dated 22.01.2004, only in order to cope up with the

increasing population, a spacious and a centrally located Bus stand is required insofar as Theni District is concerned. Thus, the entire project has

been undertaken with a laudable object and that is the reason why, it has been rightly decided to go in for afforestation in a different place. The

apprehension of the petitioner that the entire forest in that area would die if once a portion of the same is converted as the rest of the area is likely

to be encroached is baseless, as we are hopeful that the Government would not allow any such encroachment. Thus, by the impugned

proceedings, there is no public interest, which is affected in any manner warranting interference at the hands of this Court. We are of the view that

the project will only advance the public interest.

23. For all the reasons stated above, we find no merit in the Writ Petition and the same is dismissed. No costs. Consequently, connected

Miscellaneous Petitions are closed.