

(2012) 08 MAD CK 0128

In the Madras High Court

Case No : W.A. No's. 1706, 1707 and 1708 of 2012

Senthil Kumar and Others

APPELLANT

Vs

Junior Engineer, Operation and Maintenance, Tamil Nadu
Electricity Board and Others

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Citation : (2012) 7 MLJ 33

Hon'ble Judges : M.Y. Eqbal, C.J.;A. Arumughaswamy, J

Bench : Division Bench

Advocate : V. Raghavachari, for the Appellant; G. Vasudevan and M.K. Subramaniam, Special Government Pleader (Forests), for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J.—These writ appeals are directed against the common order passed by the learned single Judge in W.P. Nos. 14158 to 14160 of 2012. The writ petitions were filed seeking to quash the orders passed by the first respondent directing disconnection of service connections to the appellants' saw mills on the ground of non-production of license for running the saw mills and for a direction to the respondents not to interfere with the electricity connection to the appellants' premises. Briefly stated, the facts of the case are as follows:

The appellants/writ petitioners are wood based industries claiming to be in vogue for more than a decade. They were issued with notices by the Electricity Department informing them that they should produce a licence issued by the competent authority under the provisions of Tamil Nadu Regulation of Wood Based Industries Rules, 2010 for the grant of power supply, failing which, the electricity supply to their premises would be disconnected. In W.P. No. 14159 of 2012, since the writ petitioner failed to furnish produce the license before the authority concerned despite due notice, the service connection stood disconnected.

2. The case of the appellants/writ petitioners is that they are Small Scale Industries, having limited annual capacity and having secured prior permission from the authorities concerned. On the introduction of the Tamil Nadu Regulation of Wood Based Industries Rules, 2010, they were called upon to file applications for grant of license and accordingly they filed applications for grant of license to run their saw mills. However, instead of issuing the said permission, they were issued with the impugned notices calling for production of requisite licenses from the authorities concerned and the consequent disconnection of service connections on failure to do so. The appellants contended that the electricity department was not competent to direct disconnection of power supply, especially when the authorities of the Forest Department, who are only authorised to issue license etc., had granted no objection for running of the appellants' saw mills, the high handed action of the electricity department in disconnecting power supply to the appellants' saw mills caused considerable hardship to the appellants' businesses.

3. Per contra, the case of the respondents is that sawmills started prior to 30.10.2002 shall have to obtain licence and permission from the licensing officer as prescribed in Tamil Nadu Regulation of Wood Based Industries Rules, 2010, pursuant to the orders of the Hon'ble Supreme Court of India in W.P. (C) No. 202 of 1995 dated 30.10.2002, which stipulated that all Sawmills, Plywood and Veneer Industries shall operate only with license. The concurrence of the Central Empowered Committee shall have to be obtained for grant of licence for opening of any sawmills after 30.10.2002. Thus, the District Forest Officer before granting license shall obtain permission of the Central Empowered Committee. The opening of a sawmill without such prior permission is contempt of the orders of the Supreme Court. According to the respondents, they received 395 applications post 30.10.2002. Those applications were under examination and will be placed before the State Level Committee for recommendations to the Central Empowered Committee and will be taken up on priority basis. The mills who had applied for permission post 30.10.2002 cannot be allowed to run the sawmills as it would amount to violation of the orders of the Hon'ble Supreme Court of India and provisions of Tamil Nadu Regulation of Wood Based Industries Rules, 2010. Therefore, according to the respondents, they are duty bound to close all the sawmills, which are running in violation of the orders of the Hon'ble Supreme Court.

4. Mr. V. Raghavachari, learned counsel for the appellants mainly contended that the Rules framed by the Government of Tamil Nadu, viz. the Tamil Nadu Regulation of Wood Based Industries, 2010 occupies the field of registration of saw mills in the State of Tamil Nadu and therefore, the judgment of the Supreme Court nominating the Central Empowered Committee for scrutinizing the applications insofar as saw mills are concerned automatically ceases. According to the learned counsel, the rules framed by the Government superseded the judgment of the Supreme Court. We do not find any force in the submission made by the learned counsel.

5. In the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, , while considering the scope of Forest Conservation Act, 1980, the Supreme Court, noticing large scale deforestation, resulting in severe ecological imbalance, issued interim directions. While issuing general direction, their lordships held that in accordance with Section 2 of the said Act, all on-going activity within any forest in any State through out the country without prior approval of the Central Government must cease forthwith. Running of saw mills of any kind including veneer or ply-wood mills and mining of any minerals are no forest purposes and are therefore not permissible without prior approval of the Central Government. Further, felling of trees in all forests shall remain suspended except with the working plans of the State Government as approved by the Central Government, Their Lordships further directed that there shall be complete ban on the movement of cut of trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or water ways. Each State will constitute an expert committee to identify the areas which are forest irrespective of whether they are identified, recognized or classified under any law, identified areas which are earlier forest but stand degraded or cleared and identify areas covers by plantation trees belonging to the Government and those belonging to the private persons. Further directions were issued for the State of Jammu and Kashmir, Himachal Pradesh, Uttar Pradesh and West Bengal.

6. In the same case, subsequently in I.A. Nos. 276 with I.A.Nos. 413, 437, 453 and 454 in W.P. (C) No. 202 of 1995, by order dated 29.10.2002, the Supreme Court appointed a Central Empowered Committee to implement the earlier directions and in order to curb the menace, the following order was passed:

(i) The ban imposed with regard to the opening of the new sawmills and other wood-based industries by this Court's order dated 15.1.1998 in the State of Nagaland is extended by a further period of five years.

(ii) The High Powered Committee is allowed to dispose of the assets on such defaulting units, including plants, machinery, land shed, timber and timber products who have not paid the penalty imposed by the High Powered Committee of the wood-based units of North-Eastern States. This will be subject to such orders which may be passed by the Central Empowered Committee.

(iii) No state or Union Territory shall permit any unlicensed saw mills; veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any sawmills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance of this direction. There shall also be no relaxation of Rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee. It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licences.

7. Their Lordships further modified and clarified the earlier order dated 12.12.1996 by passing a modified order dated 4.3.1997, and as regards saw mills and other connected industries, their Lordships observed thus:

All unlicensed saw mills, veneer and ply-wood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission licence for the opening of any such saw mill, veneer and ply-wood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief Secretary of this State will ensure strict compliance report within two weeks.

In *Jawahar Lal Sharma and Another Vs. Divisional Forest Officer, U.P. and Another*, the Supreme Court held as under:

...It appears that a larger issue dealing with ecology, projection and conservation of forests in *T.N. Godavarman Thirumulkpad v. Union of India* (supra), is pending in this Court, wherein from time to time directions are being issued. Two such directions are dated 12.12.1996 and 4.3.1997. On account of the Supreme Court of India being seized of the matter and monitoring the issue there has been reluctance on the part of the government officials to deal with saw mill licences and their renewals. In the cases before, us, the renewal fees have been deposited by the appellants but orders of renewal are not passed. A vague plea is raised on behalf of the respondents that the applications for renewal were not in prescribed proforma. If that be so the defect could have been pointed out to the applicant concerned and, an appropriate application in the prescribed proforma could have been called for to be substituted in place of defective application if any or such other particulars as may be necessary could have been called for. The relevant consideration for, and the rights and obligations flowing from a prayer for renewal of a pre-existing licence are different rather substantially at variance from those for an application for the grant of a fresh licence. The learned counsel for the appellants submitted that an application for the grant of a fresh licence may not be entertainable at all though the appellants may be entitled to renewal subject to such directions, as the Supreme Court of India may be pleased to make. The orders made by the High Court do not therefore, meet the ends of justice. Admittedly, the licence of any of the appellants has not been cancelled.

8. In *Rajeeva Ranjan Sinha Vs. The State of Bihar and Others*, the petitioner moved the Patna High Court challenging the order rejecting his application for grant of licence for establishing saw mill in the district of Aurangabad on the ground that undisputedly village Obra where the petitioner sought to establish saw mill is a forest or forest land within the meaning of the Forest Conservation Act. Allowing the said application learned Judge held as under:

The other direction concerning saw mills is to be found in the order dated 4.3.1997 passed by the Supreme Court in the same case. In paragraph 4 of that

order, it is stated as follows:

4. All unlicensed saw mills, veneer and ply-wood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mill, veneer and ply wood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief Secretary of this State will ensure strict compliance report within two weeks.

From the above it is evident that the direction to close down all unlicensed saw mills related to the State of Maharashtra and the State of U.P. and there was no such direction so far as this State is concerned.

No other direction of the Supreme Court was brought to my notice to justify the direction issued by the Principal Chief Conservator of Forest in his aforementioned circular letter.

I am, therefore, clearly of the view that the direction of the Principal Chief Conservator of Forest not to issue any fresh licence for saw mill in this State was quite unjustified and cannot be sustained in the eyes of law. In so far as this State is concerned prior permission of the Central Government would be required for establishing a Saw Mill within a forest or within a forest area. But a saw mill outside a forest or forest area will not attract this restriction and it would not be covered by the direction of the Supreme Court relied upon by the A.A.G. III.

9. In *Anand Timber v. State of Jharkhand and Others*, (2002) 3 J.L.J.R. 340, the petitioner's case was that in 1996 he had applied for grant of licence for saw mill and after due inquiry that the saw mill situated outside the forest area a licence was granted in 1997 which was time to time renewed. All of a sudden in 2001 the authority refused to renew the licence on the ground of ban imposed by the Supreme Court for grant of fresh saw mill licence. It was contended by the respondents that State of Bihar took a policy decision not to grant licence for saw mills in the district of Deoghar and it was further decided to reduce the number of saw mills in the District of Deoghar in the light of the Supreme Court decision. Allowing the writ application a Bench of this Court held as under:

From the orders of the Supreme Court quoted hereinabove it is clear that the Supreme Court has not issued direction to close down all saw mills and to stop grant of renewal of licence for such saw mills which are situated outside the forest area. The direction of the Supreme Court is to close down all unlicensed saw mills related to the State of Maharashtra and the State of Uttar Pradesh and there was no such direction so far State of Bihar (now Jharkhand) is concerned. As noticed above it is not the case of the respondents that, since the saw mill of the petitioner is situated within the forest area, therefore, licence could not be renewed. The authority refused to renew the licence only because of order dated 12.12.1996 passed by the Supreme Court.

10. In *Narayan Saw Mill v. State of Bihar and Others* (2002) 3 J.L.J.R. 306, the question that arose for consideration before the Division Bench was whether proviso to Section 5 of the Bihar Saw Mills Regulation Act, 1990 is liable to be struck down as being an invalid piece of legislation and against the public policy. Relying upon the decision of the Supreme Court in *T.N. Godavarman Thirumulkpad v. Union of India* (supra) this Court held as under:

In the light of the settled proposition of law laid down by the Supreme Court, I am of the view that there is repugnancy in the proviso to Section 5 of the Bihar Saw Mills Regulation Act, 1990 and the Forest Conservation Act, 1980. The proviso to Section 5 of the said Act entitles a person to establish and operate a saw mill which is an activity for non-forest purposes even without having a valid licence after expiry of 30 days from the date of making such application for the grant of licence. The establishment of saw mill and operating it by sawing trees as a deemed licensee under the aforesaid proviso amounts to giving licence to a person to use the forest for non-forest purposes without complying with the requirements of law. In my opinion proviso to main Section it shall be a valid piece of legislation. The main part of this Section 5 regarding grant of license is separate from the proviso and if the proviso to Section 5 is expunged or struck down then the main Section can be enforced with full force. Prima facie I am of the opinion that the proviso to Section 5 regarding deemed licensee is totally in conflict with the provisions of the Forest Conservation Act and, therefore, to that extent i.e. proviso to Section 5 regarding deemed licensee is liable to be struck down as void.

Besides above the proviso to Section 5 of the Regulation Act, 1990 in my considered opinion is against the public policy. If the proviso to Section 5 is allowed to stand it would give much scope to the mischievous to use the forest land for non-forest purposes by carrying on sawing activities of forest products immediately by filing an application for grant of licence awaiting expiry of thirty days instead of deemed permission to operate saw mill to use forest land for non-forest purposes in the garb of an application for the grant of licence. Proviso to Section 5, in my opinion, is also against the public policy which is liable to be struck down.

11. In *Singh Saw Mill v. State of Jharkhand and Others*, (2003) 1 J.L.J.R. 137, the writ petitioner challenged the order passed by Divisional Forest Officer, Deoghar by which application for grant of licence was refused. The claim of the petitioner was rejected by the respondents on the ground that the petitioner was running saw mill illegally without any licence rather on the basis of deemed licence and on inquiry it was found that petitioner violated the provisions of India Forest Act and further that the State Government vide letter No. 343, dated 28.10.2000 had instructed the Divisional Forest Officer to close down all illegal saw mills and reduce the saw mill in the district of Deoghar. It was contended by the respondents that decision was taken to reduce the number of saw mills in the district of Deoghar. A Bench of this Court while disposing of, the writ petition

directing the respondents to reconsider the application observed:

Thus, from a bare perusal of the observation of the Supreme Court, it is apparent that there is no ban on renewal of licences and the respondents, while passing the impugned order appears to have not properly appreciated this aspect of the matter, Therefore, so far as the refusal to grant the licence on the ghazals of the order of the Supreme Court is concerned, the same needs reconsideration on the basis of reasonings which would be appropriate in the facts and circumstances of the case. In the instant case, the petitioner had no licence at all. He had applied for one and therefore what was the basis for restricting the saw mills to a limited number is not well explained save and except a vague plea that the Committee decided to do so. Moreover, and as has already been noticed earlier, the direction of the Hon''ble Supreme Court was in relation to Maharashtra and Uttar Pradesh only.

12. It is worthwhile to mention here that at the time when the aforesaid directions were issued by the Supreme Court in I.A. Nos. 276 etc. in W.P. (C) No. 202 of 1995, there were no Rules, and only upon the direction of the Supreme Court to the States to frame the relevant rules, in the year 2010, the Tamil Nadu Regulation of Wood Based Industries Rules, 2010 were brought into effect and under the said Rules, the District Forest Officer is the authorised officer to grant the licence and before granting such licence, certain procedures have to be complied with. One of the conditions for grant of licence is that the concurrence of the Central Empowered Committee has to be obtained and that is also the mandate as per the order of the Supreme Court.

13. The learned single Judge rightly observed that in view of the directions of the Hon''ble Apex Court in the aforesaid order, it is clear that the Saw Mills, Veneer, Plywood Industries cannot operate without the licence issued by the competent authority and therefore, the appellants cannot make a plea for issuing an order to restrain the electricity board from disconnecting the power supply or for a direction to continue the industries without a licence issued by the competent authority. It was accordingly held that unless and until the licence is issued after complying with the formalities as required under the rules and the direction of the Supreme Court, no right will accrue to the appellants to run the industries, which admittedly, are unauthorised.

14. The grievance of the appellants is that they had made applications to the competent authority for grant of licence and in many cases, their applications had been considered, processed and forwarded to the State Level Committee for scrutiny and for further consideration by the Central Empowered Committee for its approval, but no orders were passed and the inordinate delay was causing prejudice. It was also contended that since the recommendations of the District Forest Officer/competent authority had already been given, they should be allowed to run the industries. The learned single Judge rightly observed that the relief sought for by the appellants cannot be issued in view of the specific direction issued by the Supreme Court that no State or Union Territory shall

permit any unlicensed saw-mills, veneer, plywood industry to operate without proper licence and also in view of the direction to close the unlicensed units forthwith.

15. Before the learned single Judge, the respondents had stated the reason for the time taken to process the applications. The learned single Judge held that in view of the above, the appellants cannot insist for electricity or an order of the Court to run the industry pending consideration of their claim, which will be contrary to the order passed by the Apex Court. However, in view of the plea of the learned counsel for the appellants/writ petitioners that the applications may be directed to be considered at an early date since their livelihood is very much affected, the learned single Judge directed the District Forest Officers concerned to verify the applications, which if were found in order, were directed to be forwarded to the State Level Committee, which in turn shall scrutinise and place the same before the Central Empowered Committee at the earliest for its consideration, without any delay. This will ensure that the applications are considered as early as possible and assuage the grievance of the appellants that their right to livelihood is being affected for non consideration of the applications in time. However, the learned single Judge made it amply clear that till such time the license is issued by the competent authority after following the procedure as applicable, the appellants/writ petitioners cannot claim as a matter of right to run the industry or for grant of electricity power supply. The learned single Judge further directed that in cases where the applications had been returned for certain defects, they could be re-submitted in proper format with requisite fee to the appropriate authority, who shall thereafter scrutinise it and forward the same to the Empowered Committee for its approval in the manner stated above without undue delay for consideration and expeditious orders.

16. After giving our anxious consideration to the facts of the case and the law laid down by the Supreme Court, we are of the definite view that the Rules framed by the State Government will not in any way supersede the guidelines framed by the Supreme Court in the matter of regulation of sawmills in the State. For the aforesaid reasons, we do not find any merit in these appeals, which are accordingly dismissed. However, there shall be no order as to costs.