
(2018) 11 UK CK 0182
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 207 Of 2018

Smt. Rajni Sharma

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 17-11-2018

Acts Referred:

Citation : (2018) 11 UK CK 0182

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Singh, J

Bench : Division Bench

Advocate : Navnish Negi, Lalit Sharma, Pankaj Purohit, Vivek Gupta

Final Decision : Allowed

Judgement

Ramesh Ranganathan, C.J.

1. Mr. Navnish Negi, Advocate, for the petitioner.
2. Mr. Lalit Sharma, Standing Counsel takes notice for the respondent no.1.
3. Mr. Pankaj Purohit, Dy. Advocate General takes notice for the State/ respondent nos.2 to 4.
4. Mr. Vivek Gupta, learned counsel for the petitioner is permitted to take out notice on the fifth respondent and to file proof of service within three weeks.
5. By a notification, issued by the Ministry of Environment and Forest and Climate Change (Survey and Utilization Division), Government of India dated 11th September, 2017, certain amendments were made to the earlier guidelines which, among others, included the stipulation that a wood-based industry can be established in an Industrial Estate or a Municipal area, irrespective of the aerial distance from the boundary of nearest notified forest or protected area.
6. The Supreme Court, by its order in 'T.N. Godavarman Thirumalpad v. Union of India & others' (Order in Writ Petition (Civil) No.202/95 dated 7.5.1997), permitted the Principal Chief Conservator of Forests (PCCF), State of Uttar

Pradesh, on a case to case basis, to consider grant of permission to an existing licensed saw-mill to relocate itself, provided that the relocated site is not within 10 kilometers of any existing forest.

7. Thereafter, the Central Empowered Committee, constituted by the Supreme Court, informed the Chief Secretary, Government of Uttaranchal, by its letter dated 15.3.2005, that, since a major portion of Uttaranchal (present State of Uttarakhand) is mountainous and under forest cover, wood-based industries can only be located in two districts, namely, Haridwar and Udham Singh Nagar; in these two districts also, some of the areas are extremely sensitive from the point of view of forest and wildlife; a good example was the area adjoining the Rajaji National Park; it was, therefore, desirable and necessary that these industries are located only within the identified industrial estates with proper checks and balances; after considering the various options suggested by the State Government, it was decided that the present two locations, namely, Integrated Industrial Estate, Pant Nagar (Udham Singh Nagar District) and Rudrapur Industrial Estate (Tehsil Roorkee) would be considered for setting up wood-based industries; the Central Empowered Committee did not agree with the suggestion of the State Government to permit the Integrated Industrial Estate at Haridwar and the Growth Center at Kotdwar because those were not only very near the Rajaji National Park but also fell in the Rajaji-Corbett Elephant Corridor.

8. Thereafter, by its order in 'T.N. Godavarman Thirumulpad v. Union of India and others' (Order in I.A. No.2365 in 1406/2005 in Writ Petition(s) (Civil) No(s)202/1995 dated 05.10.2015, the Supreme Court authorized the Ministry of Environment and Forest to issue appropriate guidelines in conformity with the orders and directions issued by the Supreme Court and also the existing guidelines to the State Level Committees relating to assessment of timber availability for wood-based industries and grant of license/permission to the wood-based industries including addition of new machineries and also utilization of amounts recovered from the wood-based industries and connected matters.

9. The petitioner's complaint, in this writ petition, is that the State of Uttarakhand has not made any assessment of timber availability before grant of licence/ permission to the wood-based industries; and, if the guidelines issued by the Ministry of Forest in its resolution dated 11.09.2017 are implemented, then the State Government would have the power, in terms of Para 5(b) of the said Notification No. S.O. 3000 (E) dated 11.09.2017 whereby Para 7(ii)(b) of the earlier guidelines were substituted, to extend the boundaries of a municipal area to the edge of the reserved forest, and thereafter grant license to wood based industries to be located adjacent to the reserved forest in the State, thereby contravening the order of the Supreme Court in T.N. Godaverman Thirumulpad which stipulated a 10 kilometers radius, from the reserved forest, within which no license shall be granted to any wood based industry.

10. As we find considerable force in this submission of learned counsel for the petitioner, we consider it appropriate to suspend that part of Para 5(b) of the

Notification dated 11th September, 2017 whereby Para 7(ii)(b) of the earlier guidelines were substituted, i.e. 'irrespective of the aerial distance from the boundary of nearest notified forest or protected area' till 20.12.2018, as this part of the notification would enable the State Government to grant license to wood-based industries adjacent to the reserved forests located within the State.

11. While the respondent shall not grant any license, till 20.12.2018, to any wood based industry within a radius of 10 kilometers of a reserve forest, this order shall not disable them from granting license to any wood based industry established in an industrial estate or municipal area, beyond 10 kilometers' radius of a reserve forest, pending further orders in this writ petition.

12. Mr. Vivek Gupta, learned counsel for the petitioner, would submit that after the matter came up for admission yesterday i.e. 16.11.2018 and this Court granted time to the learned Deputy Advocate General to obtain instructions, proceedings dated 16.11.2018 were issued granting permission to establish a saw-mill. Learned Deputy Advocate General, appearing for the State Government, would submit that all proceedings, whereby licenses for establishing wood-based industries were issued on or after 15.11.2018, shall be withdrawn forthwith.

13. In light of the submission made by learned Deputy Advocate General, we see no reason to take action against the respondents herein, for their having issued proceedings dated 16.11.2018 after the matter was adjourned by this Court at the request of the learned Deputy Advocate General to enable him to obtain the instructions from the respondent officials.

14. Learned counsel appearing for respondent nos.1 to 4 seek, and are allowed, three weeks' time to file their respective counter affidavits.

10. Post the writ petition for admission on 12.2018.

16. Let a copy of this order be issued to the parties, today itself, as per Rules.