
(2010) 09 MP CK 0049

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6434 of 2000

Smt. Raju Bai (dead) through L.R. Dimak Chand

APPELLANT

Vs

Collector and Another

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 165(6), 241, 241(4)
Madhya Pradesh Protection of Aboriginal Tribes (Interest in Trees) Rules, 1960 — Rule 14, 3, 3(2), 4, 5

Citation : (2010) ILR (MP) 2031 : (2010) 4 MPHT 319 : (2010) 4 MPLJ 452

Hon'ble Judges : Sanjay Yadav, J;Ravi Shankar Jha, J;A.K. Mishra, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

R.S. Jha, J.

This petition has been referred to a Full Bench by the learned Single Judge by order dated 21-1-2002 doubting the correctness of the decision of this Court rendered in the cases of Raghubir Singh v. Board of Revenue and Ors. 1984 RN 382 and Kanhaiyalal v. State of M.P. and Ors. M.P. No. 75 of 1983, decided on 24-6-1983.

The brief facts, leading to the present reference, are that the petitioner, who is Bhumiswami of Khasra No. 268/2, area 0.607 hectares of Village Changotola, Patwari Circle No. 3, Tehsil and District Balaghat, filed an application on 24-2-1997 before Collector, Balaghat for permission to cut three Bija trees standing on her fields. As no order or communication was received by the petitioner in response to the application, filed by her, she gave a reminder on 26-6-1997 which was received by the Collector on 21-8-1997 and, thereafter, again on 4-12-1997, 5-2- 1998 and ultimately on 2-4-1998 as is evident from a perusal of the order passed by the Collector dated 31-5-1999. Ultimately, on receiving no response the petitioner proceeded to cut the Bija trees on 2-4-1998.

A show-cause notice was issued to the petitioner on 7-7-1998 by the respondent authorities u/s 241(4) of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred to as "the Code") and thereafter by order dated 31-5-1999 a penalty of Rs. 200/- was imposed upon the petitioner and twenty pieces of wood obtained from cutting the Bija trees were confiscated. The appeal, filed by the petitioner, before the Commissioner, Jabalpur Division, Jabalpur against the order dated 31-5-1999 passed by the Collector also suffered dismissal by order dated 5-11-1999. Being aggrieved by which the petitioner has filed the present petition before this Court.

It was submitted by the learned Counsel for the petitioner before the learned Single Judge that in accordance with Rules 3 and 4 of the Rules published by notification No. 218-6477-VI-N (Rules), dated 6-1-1960, in the M.P. Rajpatra, dated 22-1-1960 framed in exercise of powers u/s 241 of the Code, as the petitioner applied for cutting of the Bija trees on 24-2-1997, and thereafter submitted several reminders to which she did not receive any reply within a further period of three months, it was deemed that the Collector has agreed to the cutting of the Bija trees and consequently the petitioner proceeded to cut the Bija trees on 2-4-1998 which act on her part is in conformity with the provisions of Section 241 read with Rules 3 and 4 of the Rules notified thereunder and, therefore, the impugned orders passed by the Collector and the Commissioner be quashed and the 20 pieces of wood be released to her.

Refuting the claim of the petitioner, it was submitted by the respondents before the learned Single Judge in the return that the Bija trees have been cut by the petitioner without obtaining any permission as required by the Rules and have further contended that even if the provisions of granting deemed permission to the petitioner is applied, the said deemed permission was operative only till the end of the calendar year and, therefore, the felling of trees by the petitioner in the next calendar year amounts to violation of the provisions of Section 241 of the Code and the Rules framed thereunder and in such circumstances the impugned orders passed by the Collector and Commissioner being in conformity with law, do not call for any interference by this Court.

Before the learned Single Judge, the learned Counsel for the petitioner had relied upon the judgment rendered in the case of Raghubir Singh (supra) and Kanhaiyalal (supra). The relevant facts in the case of Raghubir Singh (supra), were that the petitioner therein had applied on 12-6-1979, seeking permission to cut trees u/s 241 of the Code before the Collector. An enquiry was made on the application filed by the petitioner and on 19-10-1979 the Tehsildar Seoni-Malwa submitted a report recommending grant of permission in spite of which no permission was given to the petitioner therein. On 8-7-1980, an application was filed by the petitioner therein by way of a reminder before the respondent Collector in response to which the petitioner received a reply dated 30-9-1980 from the Collector informing him that the matter had been sent for further investigation to the SDO Harda on 12-9-1980 and a final decision in the matter

shall be taken only after receipt of the report from the SDO. A similar reply was again received by the petitioner from the Collector on 31-10-1980. However, as the petitioner did not hear anything from the Collector thereafter, he filed another application by way of a reminder on 22-7-1982 requesting for decision on the earlier application filed by him for permission to cut trees which was received by the Collector on 24-7-1982. As no reply was received from the respondents, the petitioner therein assumed that he had been granted permission to cut trees on the lapse of a period of three months in view of the provisions of Rule 4 of the Rules notified u/s 241 of the Code and started cutting the trees. The Naib Tehsildar Seoni-Malwa issued a show-cause notice to the petitioner on 4-11-1982 in response to which the petitioner submitted that the permission, would be deemed to have been granted to him after a lapse of a period of three months from 22-7-1982 in the absence of any reply from the respondents and on that count no fault can be found with the cutting of trees. The submission of the petitioner therein was not accepted by the Collector who by order dated 10-2-1983 imposed a fine of Rs. 1,000/- and confiscated the felled trees. The appeal, filed by the petitioner, before the Additional Commissioner and Board of Revenue also suffered dismissal.

In the background of the aforesaid facts, the learned Single Judge in the case of Raghbir Singh (supra), interpreted the Rules in the following manner in Para 4 of the judgment:

4. In view of the admitted facts, the entire controversy between the parties is confined to the interpretation (sic) the Rules. Rule 4 of these Rules reads as under:

If the applicant does not receive any communication from the Collector on his application within a period of three months, he shall by another written communication call the attention of the Collector and if no reply is received within a further period of three months; the Collector shall be deemed to have agreed to the cutting applied for, without any reservation of trees.

A bare reading of this Rule shows that it is the intention of the Rule Making Authorities to dispose of the application within a period of three months. This Rule is, however, an exception to the general rule regarding disposal of application within three months and provides for making representation by the petitioner so as to remind the Collector of his application so that the necessary orders may be passed within three months thereafter. Clearly the intention appears to be to affect disposal of the application either by granting permission or refusing the same. The intention does not appear to be either to avoid passing an order or to extend the period of limitation indefinitely. There is also no bar to making more than one written communication to the Collector, calling his attention to the delay involved in disposal of the application in his office. It is true that if, in spite of the written communication, no reply is received, legal fiction operates when the petitioner become entitled to cut trees as if he has been permitted. This is also the interpretation of this Rule done by this Court in

Kanhaiyalal v. State of M.P. (Miscellaneous Petition No. 75 of 1983, decided on 24-5-1983). The submission of the respondents, however, is that once a reply has been given to the communication of the petitioner dated 8-7-1980, he was entitled to send another communication on 22-7-1982 and was not entitled to affect cutting after three months thereafter. It is not possible to agree with this interpretation of the learned Counsel for the respondents, as it has the effect of defeating the very purpose for which these Rules have been made. The Rules are intended to effect disposal of the application either by granting permission or refusing such permission. A reply given by the respondent-Collector, in the context of Rule 4, cannot be accepted as authorising the Collector to extend the period of limitation provided by this Rule indefinitely by not passing any order on the application. Then, there is no warrant for the submission that if, in spite of a communication from the petitioner, his application remains pending, he cannot send another communication to the Collector. Such an interpretation would again defeat the purpose of the Rule. Under the circumstances, it must be held that the petitioner had a right to send a second communication to the Collector, particularly when his application remained pending in spite of the reply of the Collector dated 31-10-1980. If right to send a second communication is held to be included in Rule 4, there would be no escape from the conclusion that consequence of not deciding his application within a period of three months thereafter, would follow as a matter of course. It would also follow that the respondent-Collector was bound to decide his application within a period of three months from the date of this communication dated 22-7-1982 and since he has failed to do so, the fiction will become fully operative and the Collector shall be deemed to have agreed to the cutting applied for without any reservation. In this view of the matter, no fault can be found with the action of the petitioner if he having waited for three months, assumed that the Collector had given him authority, and, thereafter he affected felling of trees.

In the case of Kanhaiyalal (*supra*), which was decided by a Division Bench, the petitioner a Bhumiswami had applied on 21-2-1979 for permission to fell 374 trees standing on his land but as no orders were passed on his application, he sent a reminder on 21-1-1982 and thereafter on receiving no response, proceeded to fell the trees in May, 1982, which were seized and ultimately by order dated 23-4-1983 the trees were confiscated. The Division Bench of this Court allowed the petition, filed by the petitioner therein, on considering the provisions of Rules 3 and 4 of the Rules notified u/s 241 of the Code and held that the permission for cutting the trees was deemed to have been granted to the petitioner on expiry of a period of three months from 21-1-1982, i.e., the date on which he filed a reminder application and, therefore, the order of confiscation of the trees was not in accordance with law.

From a perusal of the aforesaid two judgments of this Court, it is clear that this Court in the case of Raghubir Singh (*supra*), has held that there is no bar to making more than one written communication to the Collector for calling his attention to the delay in the disposal of the application seeking permission to cut

trees and that the deemed permission would come into operation immediately after a lapse of a period of three months from the date of the reminder even in cases where a reply is given to the reminder filed by the petitioner but no final decision is taken on the application seeking permission as permission or refusing the same, therefore, the reply given by the Collector does not extend the period of limitation provided in the Rules indefinitely. It has also been held that the petitioner has a right to send a second communication to the respondents in case his application remains pending and the deemed permission would become operative on the lapse of three months from the date of filing of the second or the last communication. It has also been held, in view of the interpretation of the Rules given by the Division Bench in the case of *Kanhaiyalal (supra)*, that if in spite of written communication no reply is received, legal fiction operates and the petitioner becomes entitled to cut trees as if he has been granted permission.

In the instant case, the learned Single Judge doubting the correctness of the decision in the case of *Raghubir Singh (supra)*, as well as *Kanhaiyalal (supra)*, as interpreted by this Court in the case of *Raghubir Singh (supra)*, has referred the petition for decision by a Full Bench by stating the following:

(10) The real crux of the matter is whether a deemed permission would arise at any point of time or it would deem to have been granted after expiry of the stipulated period. The rule envisages that the applicant can make any written communication. Does it necessarily mean such written communication can be made after any lapse of time?

(11) That apart, other question that arises for reconsideration is whether the word "another" would mean many as understood in the case of *Raghubir Singh (supra)* and whether the concept of "Calendar Year" would scuttle the deemed permission by end of December of every year.

(12) In view of my proceeding analysis, the decision rendered in the case of *Raghubir Singh (supra)*, as well as in the case of *Kanhaiyalal (supra)*, require reconsideration by a Larger Bench. Accordingly, it is directed matter be placed before my Lord the Chief Justice for constitution of an appropriate Larger Bench.

To properly appreciate the issues requiring adjudication in the present petition it is necessary to take into consideration the provisions of Section 241 of the Code and Rules 3, 4 and 5 framed therein. From a perusal of the provisions of Section 241 of the Code it is clear that the intent and object of this Section is to prevent the theft of timber from any Government forest and for that purpose in the public interest to regulate the felling and removal of timber in the villages adjoining Government forest and in furtherance thereof to declare areas of such villages to be notified area for the purpose of Section 241 of the Code.

It is, therefore, clear that the object and purpose of Section 241 of the Code is the prevention of theft of timber from in and around Government forests and for that purpose to regular the cutting of trees in the adjoining areas. Rules 3, 4 and 5 of the Rules notified u/s 241 of the Code, which are relevant for the purpose of

decision in the present petition, are in the following terms:

3. (1) On receipt of such application, the Collector shall immediately send the duplicate copy of the Divisional Forest Officer for his information. He shall then ascertain which timber trees from among those applied to be cut, require to be retained in public interest the cutting of all timber trees in the holding other than those which he orders to be retained : Provided that in the case of a Bhumiswami belonging to a tribe which has been declared to be aboriginal tribe under Sub-section (6) of Section 165 of the M.P. Land Revenue Code, 1959, the Collector shall grant such permission if he is satisfied that the provisions of the M.P. Protection of Aboriginal Tribes (Interest in Trees) Act, 1956, have been duly complied with.

If the applicant does not receive any communication from the Collector on his application within a period of three months, he shall by another written communication call the attention of the Collector and if no reply is received within a further period of three months, the Collector shall be deemed to have agreed to the cutting applied for, without any reservation of trees.

(1) Permission granted in writing by the Collector to a Bhumiswami under Rule 3, or deemed to have been granted under Rule 4, shall hold good for the calendar year in which it has been granted or deemed to have been granted.

(2) A Bhumiswami shall have to obtain fresh permission from the Collector in case the work of felling and extraction in the holding is to continue beyond the calendar year in which the permission was so granted.

A conjoint reading of the Rules makes it abundantly clear that on receipt of an application for felling of trees, the Collector shall send a copy to the Divisional Forest Officer and shall, thereafter, cause an enquiry to be made on the said application. Sub-rule (2) of Rule 3 lays down that the Collector shall communicate to the applicant the decision on his application within three months of receipt of the same. Rule 4 provides that if no communication is received from the Collector by the applicant on his application within three months, the applicant by another written application shall call the attention of the Collector and if no reply is received by him within a further period of three months thereafter, it shall be deemed that the Collector has agreed to the cutting of the trees applied for without reservation. Rule 5 lays down that the permission granted under Rule 3 or deemed permission granted under Rule 4 shall hold good for the calendar year in which it has been granted or deemed to have been granted. Rule 5 (2) stipulates that in case the work of felling and extraction of trees in the holding is not completed and is required to be continued beyond the calendar year in which the permission was granted the Bhumiswami shall have to obtain fresh permission from the Collector.

The answer to the first issue referred to by the learned Single Judge in Para 10 has to be found in the interpretation of Rule 4 of the Rules. Rule 4 lays down that in case a communication from the Collector on the application is not received by

the petitioner within three months he/she shall, by another written communication, call the attention of the Collector to this fact by filing a reminder. Apparently, the Rule does not prescribe or lay down any specific period after the lapse of the first three months within which a reminder by way of a communication is to be filed before the Collector. In the absence of such a stipulation, it cannot be said that the Rules prohibit filing of a reminder even after lapse of some time after the end of the first period of three months.

We are constrained to say so as a bare perusal of the rule makes it explicitly clear that the rule does not cast any mandatory obligation upon the Collector to decide the application seeking permission to fell trees within three months of filing the same nor does it prescribe any consequences thereof in the first stage. The rule also does not prescribe that the reminder communication has to be filed immediately on the lapse of the first three months or within a specific time thereafter. The only duty cast upon the Collector is to reply to the reminder communication sent by the petitioner within three months of filing the same failing which permission to cut trees would be deemed to have been granted. As the rule is silent in this respect and as there is no ambiguity in the language of the rule it is not possible for this Court to read something into the rule which is otherwise explicit and clear and the rule has to be interpreted in accordance with the clear and unambiguous language used therein.

At the same time, it does not mean that the petitioner can file a reminder after an indefinite period of time. It necessarily allows the applicant to file a reminder communication within a reasonable period of time. What is reasonable period of time would depend on the facts of each case. The relevant extracts of the definition of reasonable time given in the Advanced Law Lexicon by P. Ramanatha Aiyar, Third Edition is as follows:

Reasonable Time. "That is a reasonable time that preserves to each party the rights and advantages he possesses and protects each party from losses that he ought not to suffer."

"Reasonable Time" is defined to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case.

In determining what is a reasonable time or an unreasonable time, regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the fact of the particular case.

Reasonable time always depends on the circumstances of the case.

(Kinney)

The expression "reasonable time" means so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. *Veerayee Ammal Vs. Seenii Ammal*,

In the case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, , the Supreme Court while considering what was reasonable time within which the Commissioner should exercise his revisional powers in the absence of any period of limitation or prescription as to time under the statutory provisions has held that the power must be exercised within a reasonable period of time which in that given case was held to be a few months or more depending upon the facts of each case. The aforesaid view has been consistently followed by the Supreme Court in the cases of *Shri Santoshkumar Shivgonda Patil and Others Vs. Shri Balasaheb Tukaram Shevale and Others*, *B.T. Jayaram v. State of Karnataka* (2008) 14 SCC 530; *Pune Municipal Corporation Vs. State of Maharashtra and Others*, ; and *Collector and Others Vs. P. Mangamma and Others*,

In the case of *P. Mangamma (supra)*, the Supreme Court while dealing with the question as to what is the reasonable time has held as under:

5. A reasonable period would depend upon the factual circumstances of the case concerned. There cannot be any empirical formula to determine that question. The Court/authority considering the question whether the period is reasonable or not has to take into account the surrounding circumstances and relevant factors to decide that question.

In *The State of Gujarat Vs. Patil Raghav Natha and Others*, , it was observed that when even no period of limitation was prescribed, the power is to be exercised within a reasonable time and the limit of the reasonable time must be determined by the facts of the case and the nature of the order which was sought to be varied... It would be hard to give an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic stands now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the decision of the Judge usually determines what is "reasonable" in each particular case; but frequently reasonableness "belongs to the knowledge of the law, and therefore to be decided by the Courts". It was illuminatingly stated by a learned author that an attempt to give a specific meaning to the word "reasonable" is trying to count what is not a number and measure what is not space. It means *prima facie* in law reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know, [See *Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another*, and *Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another*, . As observed by Lord Romilly, M.R. in *Labouchere v. Dawson* (1872) LR 13 Eq. Ca 322, it is impossible a priori to state, what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is reasonable under the circumstances. Reasonable, being a relative term is essentially what is rational according to the dictates of reason and not excessive or immoderate from the facts and circumstances of the particular case.

From a perusal of the above, it is clear that the reminder communication has to be filed by the applicant within a reasonable time during which the application can reasonably be expected to remain alive which would require consideration of various facts such as the intent of the applicant to pursue his application, the amount of vigilance exercised by him, whether he was prevented by circumstances to file a reminder communication earlier or whether he had by his actions and conduct, abandoned the pursuit of his application and so on. The aforesaid list is not exhaustive. The reasons could be varied and different in each case and would have to be examined in the facts of each case.

In view of the aforesaid conclusion recorded by us, it cannot be said that the Division Bench judgment in the case of Kanhaiyalal (supra), wherein it was held that the petitioner was deemed to have been granted permission to cut the trees after the lapse of three months from the date of a reminder which was filed two years after the date of the first application, to be bad law. It is worth taking note of the fact that this issue was neither raised or decided by the Division Bench but was relied upon by the learned Single Judge in the case of Raghubir Singh (supra), to hold that the deemed permission comes into effect on the lapse of three months from the date of filing the reminder. The judgment in the case of Kanhaiyalal (supra) is, accordingly, approved with a stipulation that the reminder application must be filed within a reasonable period of time and whether it is within a reasonable time or not would depend upon the facts of each case.

The second issue referred for adjudication by the learned Single Judge in Para 11 of the referral order is in two parts. We proceed to deal with the first part of the issue, i.e., as to whether the word "another" used in Rule 14 would mean "many" as understood and interpreted by this Court in the case of Raghubir Singh (supra). Etymologically the word "another" is a combination of "an + other", which is a determiner meaning "one more, in addition to a former number; a second or additional one". In the Oxford Advanced Learner's Dictionary Current English, Seventh Edition the word "another" has been defined to mean "one more; an extra thing or person". Macmillan English Dictionary also defines "another" as "one more person or thing of the same type as before". In Collins Cobuild English Dictionary for Advanced Learners, Major New Edition, Third Edition, 2001 it has been defined as "one more, a different one". In Websters New International Dictionary of the English Language, another has been defined as "one more, in addition to a former number". From the aforesaid, it is clear that the word "another" means "one other and no more".

When we read Rule 4 by properly applying the aforesaid meaning to the word "another" used therein, i.e., "one other" which meaning is clear and unambiguous as it does not envisage any other interpretation, it becomes luminously clear that the Rules permit filing of one other reminder and that the further period of three months on the lapse of which it is deemed that the petitioner has been granted permission has to be counted from the date of the first reminder filed by the petitioner after the lapse of the initial first three

months. It is also clear that the use of the word "another" in the Rules contemplates and envisages filing of only one other reminder and not a series of reminders and, therefore, the deemed permission by operation of the provisions of Rule 4 comes into existence on the lapse of three months from the date of filing the first reminder and that the subsequent reminders, if any, filed by the petitioner are neither recognized nor contemplated by the provisions of the Rules. In such circumstances the conclusion recorded in the case of Raghubir Singh (supra), to the effect that the rule envisages filing of several reminders and that the petitioner would be deemed to have been granted permission to cut the trees on the lapse of three months from the date of filing the last of a series of reminders, in our considered opinion, does not lay down the correct law and is hereby overruled.

For the sake of completeness it would be appropriate to clarify at this stage that there is no statutory mandate in Rule 4 to the effect that a final decision has to be taken by the authority within three months from the date of filing of the reminder. On the contrary, a bare perusal of the Rules clearly indicates that the duty cast upon the Collector on receiving the reminder is to "reply" to and not to decide the reminder within three months and in such circumstances if the Collector files a reply to the reminder filed by the petitioner and states that further enquiry into the application for cutting the trees is pending before the authorities, it would be sufficient and would immediately halt the running of the period of three months prescribed by the Rules and in that case the deemed fiction in Rule 4 would not come into operation on the lapse of three months and the petitioner would not be deemed to have been granted permission to cut trees on the lapse thereof and the fate of his application would depend upon the final decision on his application.

In view of the aforesaid analysis the conclusion to the contrary, recorded by the learned Single Judge in the case of Raghubir Singh (supra), is apparently not in conformity with the provisions of Rule 4 and it cannot be said to be good law and is, accordingly, over-ruled.

We now proceed to advert to the second issue referred for decision in Para 11 of the referral order, that is, as to whether the concept of "Calendar Year" would scuttle the deemed permission by the end of December of every year?

The answer to the aforesaid question is inherent and inbuilt in the provisions of Rule 5 framed u/s 241 of the Code, which was not taken into consideration either in the case of Raghubir Singh (supra) or Kanhaiyalal (supra), and which clearly lays down that the permission granted in Rule 4 shall hold good only for the calendar year in which it has been granted or deemed to have been granted and that the Bhumiswami shall have to obtain fresh permission from the Collector in case the work of felling and extraction continues beyond the Calendar year. In view of the clear and specific terms of Rule 5 it is manifest that the deemed permission granted under Rule 4 automatically comes to an end by operation of law at the end of the calendar year in which it has been granted and, therefore,

in case an applicant fails to fell the trees, in the calendar year in which the permission is deemed to have been granted, he cannot do so on the lapse of the calendar year and has to file a fresh application under Rule 5 (2) for obtaining permission.

As is apparent from a reading of the judgment in the case of Raghubir Singh (supra), the learned Single Judge failed to take into consideration the provisions of Rule 5 and on that count upheld the act of the petitioner therein of felling the trees even beyond the calendar year in which the deemed permission was granted.

In view of the conclusion recorded by us as aforesaid, the judgment in the case of Raghubir Singh (supra), which holds to the contrary does not lay down the correct law and is hereby overruled on this issue also.

In the instant case, as the entire petition has been referred to this Full Bench for deciding the correctness of the judgments in the case of Raghubir Singh (supra) or Kanhaiyalal (supra), the learned Counsel for the parties are also heard on merits of the case. In the case at hand, the petitioner initially applied for grant of permission to cut three Bija trees on 24-2-1997 and thereafter filed another reminder on 26-6-1997, which was received by the Collector on 21-8-1997. In accordance with the interpretation of the provisions of Rules 3 and 4 given by us in the preceding Paragraph the petitioner was deemed to have been granted permission to cut the trees on the lapse of three months from 21-8-1997, i.e., with effect from 21-11-1997. She was, therefore, entitled to and required to fell the trees by the end of December, 1997 in view of the provisions of Rule 5 of the Rules framed u/s 241 of the Code. As she failed to do so, the deemed permission granted under Rule 4 lapsed by the efflux of time, that is, by the end of the Calendar year and the petitioner was required to file a fresh application seeking permission which she failed to do. On the contrary, she filed repeated reminders and thereafter proceeded to cut the trees on 2-4-1998, which in our considered opinion was contrary to the provisions of Section 241 of the Code and the Rules framed therein. The Collector, taking into consideration the aforesaid facts, has recorded a finding that the cutting of trees by the petitioner on the lapse of the Calendar year in which the deemed permission was granted was contrary to law, and consequently imposed a penalty of Rs. 200/- and confiscated the 20 pieces of wood which the petitioner has obtained from felling the three Bija trees.

We are of the considered opinion that no fault can be found with the aforesaid order of the Collector dated 31-5-1999, which is apparently in conformity with the provisions of law as interpreted by us in the preceding paragraphs and does not suffer from any perversity or manifest illegality. For the same reason the order passed by the Commissioner rejecting the petitioner's appeal also cannot be found fault with.

In the light of the aforesaid, the conclusions and findings recorded by us are summed up as under for the sake of clarity:

(a) The reminder communication incorporated in Rule 4 need not be filed immediately on the lapse of the first three months from the date of filing the original application but must be filed within a reasonable period of time which would depend on the facts of each case;

(b) The provision of Rule 4 does not envisage filing of repeated or more than one reminder in view of the use of the word "another" therein as the word "another" means "one other and nor several other reminders";

(c) The deemed permission stipulated in Rule 4 comes into operation only on the lapse of three months from the date of filing the one and only reminder/communication envisaged in Rule 4 and this period is not extended by filing repeated reminders which are not contemplated or envisaged by Rule 4;

(d) In case the application for permission is not finally decided within three months or the extended period of three months but a reply is communicated to the petitioner by the Collector then the running of time of three months on the lapse of which the deemed communication comes into operation is arrested and in such cases the Collector has the power and authority to take his time in deciding the application, without being fettered by the time limit prescribed in Rule 4 as the very object of the provision of Section 241 of the Code is to prevent theft of timber from any Government forest and adjoining areas;

(e) The permission granted under Rule 3 or the deemed permission granted under Rule 4 is limited to an remains alive only till the end of the calendar year in which it has been granted and thereafter automatically lapses and in case the petitioner wants to undertake felling operations or continue with the same even beyond the calendar year, he/she has to apply afresh under Rule 3.

(f) In view of the aforesaid conclusions, the judgment in the case of Raghubir Singh (supra), is hereby overruled not being good law while the judgment in the case of Kanhaiyalal (supra), is explained and has to be understood in terms of Clause (a) of the conclusion recorded in this paragraph.

In accordance with the above conclusions, in the instant case, the order imposing penalty and order of confiscation passed by the Collector, Balaghat dated 31-5-1999 and the appellate order dated 5-11-1999 passed by the Commissioner, Jabalpur Division, Jabalpur are hereby affirmed and upheld.

For the aforesaid reasons the reference to this Full Bench is answered in terms of Paragraph 31 (supra), and the petition filed by the petitioner being meritless is, accordingly, dismissed. In the facts and circumstances of the case there shall be no order as to the costs.