
(1990) 08 OHC CK 0044
In the Orissa High Court
Case No : OJC No. 2035 of 1990

Sri Kantilal Patel

APPELLANT

Vs

Divisional Forest Officer, Athgarh Division and Others

RESPONDENT

Date of Decision : 21-08-1990

Acts Referred:

Orissa Forest Saw Pits and Saw Mills (Control) Rules, 1980 — Rule 4, 6, 8

Citation : (1990) 2 OLR 374

Hon'ble Judges : R.C. Patnaik, J;A. Pasayat, J

Bench : Division Bench

Advocate : R.K. Mohapatra, B. Routray, K.B. Kar and J.B. Sahoo, for the Appellant; Additional Government Advocate for O.Ps. 1 to 4, for the Respondent

Judgement

R.C. Patnaik, J.—One M/s. K.L. Gor and Company, a partnership firm had set up a saw mm in the Industrial Estate, Jagatpur Cuttack. The Petitioner entered into an agreement with the Said firm for running the mill on lease basis and run it. In December, 1981, the aforesaid firm transferred the saw mill in favour of one M/s. Naik and Company, another partnership firm. That saw mill was being run under the name and style of M/s. Jalaram Saw Mill. The christening was done by the Petitioner. Dissention between the Petitioner and M/s. Maik and Company having arisen, the Petitioner wanted to have his own saw mill, purchased a piece of land, constructed a shed and installed machinery for running the mill He made an application under Rule 4 of the Orissa Forest Saw Pits and Saw Mills (Control) Rules, 1980 for grant of licence (vide Annexure-10 dated 1-2-1985.) It is worthwhile to mention here that during the subsistence of the arrangement which he had entered with the mill originally owned by M/s. K.L. Gor and Company and later by M/s. Naik & Company, the licence had been obtained on behalf of the Petitioner and permits were being granted to him. By order dated 30-10-1984 as per Annexure-10 he was called upon to produce the documents for further action inasmuch as the licence granted was in respect of the mill owned by M/s. Naik & Company and the Petitioner had no licence for his mill. The Petitioner preferred an appeal. By judgment dated 8-12-1985 (vide

Annexure-85) the same was dismissed. By Annexure 14 dated 8-7-1986, the Chief Conservator of Forests, while dismissing the second appeal, observed that in view of the instructions issued by the Government fresh licence to new saw mills set up after 28-4-1981, could not be granted.

2. Shri R.K. Mohapatra, the learned Counsel for the Petitioner, raised three contentions. Firstly, the first and second appellate authorities misdirected themselves by confused assumption of facts. The Petitioner was not seeking a renewal of licence granted in respect of Jalaram Saw Mill which belonged to M/s. Naik and Company, secondly, the Rules mandated an opportunity of hearing prior to rejection of an application and, thirdly, neither the Orissa Forest Act nor the Rules having authorised the Government to issue instructions banning issue of licence to saw mills. It was not open to the appellate authorities which were statutory functionaries to follow instructions issued by the Government banning grant of licence. The letter dated 28-4-1981 referred to in the order of the second appellate authority as well as in the counter-affidavit was issued by way of an interim measure pending consideration of certain questions by the Government letter dated 26-3-1982, however, places it ban on the issue of licence to saw mills established after 28-4-1981.

3. Rule 4 provides for making an application in the form prescribed for issue of licence Rule (sic) authorises the Divisional Forest Officer to reject for good and sufficient reasons to be recorded in writing, the application for licence or renewal thereof. Rule 8 is important. It persists that before taking any action under Rule 6, the Divisional Forest Officer shall issue a show cause notice fixing a time limit for submission of the application of the Applicant which should be taken into consideration while passing the final order and if no explanation is submitted, the Divisional Forest Officer would decide as he considers fit. The rule mandatorily prescribes grant of an opportunity of hearing to the Applicant before his application is rejected. Admittedly, no opportunity has been afforded to the Petitioner to submit show-cause or explanation. The decision of the Divisional Forest Officer is, therefore, violative of the provisions contained in Rule 8 and is invalid. The appellate order confirming the original order has got infected with the same vice as the original one and is, therefore, unsustainable.

4. The other contention of Shri Mohapatra is unassailable. There is no provision either in the Act or in the Rules authorising the Government to place a total embargo on the issue of licence to saw mills. Individual applications though may, after following the provisions contained in the Rules, be rejected for good and sufficient reasons. Mr. Mohapatra has argued that no specific guidelines have been laid down and the matter has been left to the unguided and unchannellized exercise of discretion by the Divisional Forest Officer. Hence, he urges that Rule 6 be declared as ultra vires. It is true that guidelines have not been specified in detail in Rule 6, but the same can be spelt out from the object and the reasons for the Act the purpose for which it was enacted and the rules were framed. Hence, though the Divisional Forest Officer can, for good and sufficient reasons,

which are germane, reject an application for grant of licence or renewal thereof, that does not enable the Government to impose a blanket embargo on grant of licence to saw mills set up after the specified date. The rules nowhere authorise the Government to impose a blanket embargo. The date 28-4-1981 has no relevance and correlation with the object and purpose for which the provisions "Were made. The total ban imposed by the Government, therefore, is ultra vires the rules. We, therefore, declare the total ban imposed as invalid and quash Annexures-12, 13 and 14 as invalid and direct the Divisional Forest Officer, Athgarh to consider the application of the Petitioner as per Annexure-10 in accordance with law and the observation made by us above. The application be disposed of by him within two months from the date of receipt of the order.

5. The writ application is accordingly disposed of. In the circumstances, there would be no order as to costs.

A. Pasayat, J.

6. I agree.

Application disposed of.