

(2011) 11 MAD CK 0086

In the Madras High Court

Case No : Writ Petition (MD) No's. 1379, 2985 and 4248 of 2010 and 8521, 8538, 8455 and 8672 of 2011 and M.P. (MD) No's. 1, 2 and 3 of 2010 and 1, 2, 3, 1, 2, 1 and 1 of 2011

T.M.Thangaraj and Others

APPELLANT

Vs

The Assistant Electricity Engineer (Distribution), Tamil Nadu Electricity Board, Abiramam, Ramanathapuram District and Others etc. etc.

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Electricity Act, 2003 — Section 43

Tamil Nadu Forest Act, 1882 — Section 26, 35, 63

Citation : (2012) 1 CTC 700 : (2012) ELR 278

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : A. Abdul Kadhar for Eddy and Embass, Mr. Veera. Kathiravan, Mr. J. Anandkumar, Mr. V.R. Shanmuganathan and Mr. C. Arul Vadivel @ Sekar, for the Appellant; B. Pugazhenth, Special Government Pleader for Govt./Forest Dept. and Mr. S.M.S. Johnny Basha for TNEB, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice V. Ramasubramanian

1. All the petitioners herein are running Saw Mills. By the orders impugned in these writ petitions, the electricity service connections to these Saw Mills have either been disconnected by the Electricity Board or directions issued by the District Forest Officer to the Electricity Board, to disconnect the service connections, on the ground that no Saw Mill can be allowed to function without a proper license issued by the Central Empowered Committee in terms of the decision of the Supreme Court in T.N. Godavarman Thirumalpad vs. Union of India.

2. I have heard Mr.A.Abdul Kadhar, Mr.Veera. Kathiravan, Mr.J.Anandkumar,

Mr.VR.Shanmuganathan and Mr.C.Arul Vadivel @ Sekar, learned counsel for the petitioners, Mr.B.Pugazhenth, learned Special Government Pleader for the Government/Forest Department and Mr.S.M.S. Johnny Basha, learned Standing Counsel for the Electricity Board.

3. In T.N.Godavarman Thirumalpad vs. Union of India, the Supreme Court constituted a Central Empowered Committee and issued directions from time to time. One of the directions issued by the Supreme Court on 29.10.2002 was as follows:-

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 saw-mills, 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 license without previous concurrence of the Central Empowered Committee.

4. The petitioners in all these writ petitions have admitted in their affidavits that they started their Saw Mills, only after the aforesaid order of the Supreme Court, without a proper license from the Central Empowered Committee. What emboldened them to do so was the fact that unfortunately, the State did not take any steps either to order the closure of the existing Saw Mills or to issue rules for regulating the Saw Mill Industry. At last, after 8 years of the imposition of the ban by the order of the Supreme Court, the Government of Tamil Nadu issued a set of rules known as "Tamil Nadu Regulation of Wood Based Industries Rules, 2010" with effect from 21.10.2010. The rules were issued in exercise of the powers conferred by Sections 26, 35 and 63 of the Tamil Nadu Forests Act, 1882.

5. It is interesting to note that the prohibitory order of the Supreme Court dated 29.10.2002 was in the cold storage of the Government for 5 years without any action. At last, the Chief Secretary to the Government of Tamil Nadu appears to have sent a letter bearing No.30190/FRXIII/01-21 dated 26.3.2007, which reads as follows:

I am directed to request you to pursue necessary action to ensure strict compliance of the order of the Hon'ble Supreme Court of India. I am further directed to inform you that in violation of the above order if any Saw Mill is functioning with the licence/sanction/electricity etc., issued by them after 29.10.2002 without Central Empowered Committee's permission, then your Department will be held fully responsible for violating the orders of the Hon'ble Supreme Court of India and in the contempt proceedings, if any, initiated in this matter.

6. Similarly, the Principal Chief Conservator of Forests issued a letter bearing No.WR3/9116/2008 to the Chairman, TNEB on 28.3.2008, which reads as follows:

I wish to state that it is the duty of every Department including the Tamil Nadu Electricity Board to ensure strict compliance of Hon''ble Supreme Court order and verify the details of Saw Mills to which connections have been issued in the past and necessary action to ensure strict compliance of the Hon''ble Supreme Court of India orders is to be pursued by the concerned Department.

7. Thereafter, the Electricity Board was constrained to file a petition in Miscellaneous Petition No.30 of 2008 before the Tamil Nadu Electricity Regulatory Commission, seeking appropriate directions to the Government of Tamil Nadu to frame rules to implement the directions issued by the Supreme Court in its order dated 29.10.2002. The said petition was disposed of by the Commission by an order dated 29.6.2009. But a perusal of the order of the Regulatory Commission shows that instead of issuing a direction to the Government of Tamil Nadu to frame rules, as prayed for by the TNEB, the Regulatory Commission merely clarified that despite Section 43 of the Electricity Act, 2003, the Electricity Board cannot issue service connection to Saw Mills, which did not have a proper license from the Central Empowered Committee. It is only after this order of the Regulatory Commission dated 29.6.2009, that the Government issued the Tamil Nadu Regulation of Wood Based Industries Rules, 2010 with effect from 21.10.2010.

8. But during this interregnum period from 2002 till 2010, the unlicensed Saw Mills were operating merrily. The direction issued by the Supreme Court on 29.10.2002 to the Chief Secretary to ensure strict compliance with the direction to close all unlicensed units, was thrown to the winds. Not only were the existing industries allowed to operate, but the State also turned a blind eye even to the starting of new Saw Mills without any license, during this period from 2002 to 2010. Ultimately, it was only after the issue of the aforesaid rules that the Forest Department woke up from their slumber and started tightening the noose around the neck of these Saw Mills. When the final wake up call came, some of the petitioners appear to have submitted applications under the aforesaid rules. But in the meantime, the Electricity Board has either disconnected their supply or the Board has been instructed by the Forest Department to disconnect. It is at this stage, that the petitioners are before this Court.

9. The factual position as on date can be summarised as under:

W.P.No.

Petitioner''s Name

Date of Commence ment of Saw Mill

Date of application for license

Fate of the application

1379/2010

T.M.Thangaraj

24.09.2003

Nil

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2985/2010

A.Ammathu Rahima

During 2004

Applied to Principal Chief Conservator of Forests on 18.12.2009

By letter dt 21.4.2010, the petitioner informed that the exercise to frame rules is in progress.

4248/2010

K.Chellam

16.03.2001

Nil

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8521/2011

K.Sennath Begum

During 2007

Application filed on 3.6.2011

Central Empowered Committee, by letter dt. 5.7.2001 called for the recommendations of the State Level Committee. It is pending.

8538/2011

S.Raja Muhammed

November 2006

Application filed on 14.6.2011

But application not in prescribed format as per the rules.

8455/2011

R.Kalimuthu

November 2008

Application submitted on 10.6.2011

Not in the prescribed format.

8672/2011

P.Kaanathan

During 2007

Application filed on 16.6.2011

CEC has called for the recommendations of the State Level Committee, by letter dated 5.7.2011.

10. The details furnished in the above tabular column would show (i) that the petitioners started their Saw Mills, in utter violation of the orders of the Supreme Court dated 29.10.2002 and (ii) that they continued to operate the Saw Mills with impunity for a period of 3 to 8 years. What is worse is the fact:

(i) that some of them have obtained Certificates from the Department of Industries and Commerce (petitioners in W.P.Nos.1379/10, 2985/10, 8521/11 and 8538/11);

(ii) that some of them have obtained licenses from the Directorate of Town and Country Planning (almost all writ petitions);

(iii) that some of them have also obtained consent orders from the Tamil Nadu Pollution Control Board (W.P.Nos.2985/10 and 8521/11); and

(iv) that some of them have even obtained interim orders from this Court, either directing the restoration of electricity supply or injuncting the Electricity Board from disconnecting the supply (W.P.Nos.1379/10, 2985/10 and 4248/10).

11. Thus the strong dictate of the Supreme Court has been thoroughly ignored both by the petitioners and by the State Authorities. What is painful is the fact that this Court has also unwittingly been a party to the violation of the orders of Supreme Court. In a few cases, the violation of the orders of the Supreme court, has actually received the blessings of this court, in the form of positive directions to the respondents to restore electricity supply. Therefore, there is no point in just blaming the statutory authorities.

12. The primary ground on which all the writ petitioners challenge either the orders of the Electricity Board disconnecting supply or the orders of the Forest Department directing disconnection, is that there has been a violation of natural justice. According to the petitioners, they should have been put on notice, before their industries were crippled.

13. But the above contention is wholly misconceived. By effecting disconnection of electricity supply or by ordering the disconnection, the respondents were merely carrying out and implementing the prohibitory orders of the Supreme Court. No person can feign ignorance of the directions issued by the Supreme Court. Therefore, the question of opportunity or violation of natural justice does not arise at all. Moreover, all the writ petitioners started their Saw Mills, only after the Supreme Court imposed a ban. Therefore, their operations were per se

illegal. Consequently, the grant of electricity service connection to these Mills was also illegal. No vested right is created by an illegal act and hence the withdrawal of such an illegal act, violates no principle of natural justice. By disconnecting electricity supply, the TNEB put an end to their contumacious conduct of violating the orders of the Supreme Court. Purging a contumacious conduct, is a necessity of the rule of law and no one can claim that a contumacious conduct was purged without following the principles of natural justice.

14. Another ground of resistance on the part of the writ petitioners is that the Government had not framed rules from 2002 till 2010, to enable them to apply for a license. Therefore, it is their contention that they were handicapped from applying for a license.

15. But the above contention has no merit. If the petitioners were aggrieved by the failure of the State to frame rules, the petitioners ought to have either impleaded themselves as parties before the Supreme Court and sought appropriate directions or at least approached the Central Empowered Committee, which was already there. As a matter of fact, the order of the Supreme Court dated 29.10.2002 itself gave such a scope for persons like the petitioners to approach the Supreme Court. The relevant portion of the order of the Supreme Court dated 29.10.2002, which follows the portion extracted in para 3 above, reads as follows:

It shall be open to apply to this Court for relaxation and/or appropriate modification or orders qua plantations or grant of licenses

Therefore, if the petitioners were aggrieved by the failure of the State to frame rules, they should have approached the Supreme Court, in terms of the aforesaid portion of the order. Alternatively, the petitioners could have approached the Regulatory Commission, as the TNEB did. Without doing so, the petitioners cannot take the failure of the State to frame rules, as a license to carry on the industry, in utter disobedience of the prohibitory orders of the Supreme Court.

16. In view of the above, all the writ petitions are dismissed. However, it is open to the petitioners to apply for and obtain licenses under the new set of rules, from the Central Empowered Committee and thereafter act accordingly. It is needless to point out that the Electricity Board cannot restore electricity supply, until these units obtained necessary licenses and that any restoration of supply without a license under the new rules, would tantamount to a contempt of the order of the Supreme Court. There will be no order as to costs. Wherever, there were interim orders of stay or directions to the Electricity Board, those interim orders shall stand vacated. Consequently connected miscellaneous petitions are also dismissed.