

(1996) 12 SC CK 0094

In the Supreme Court Of India

Case No : Writ Petition Appeal No. 202 of 1995

T.N. Godavarman Thirumulkpad

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 18

Citation : AIR 1997 SC 1228 : (1997) AIRSCW 1263 : (1997) 10 JT 377 : (1996) 9 SCALE 269 : (1997) 2 SCC 267 : (1996) 9 SCR 982 Supp : (1997) 2 Supreme 221 : (1997) 1 UJ 290

Hon'ble Judges : J. S. Verma, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Ashok Desai, Attorney General, N.N. Goswami, H.N. Salve, Rajiv Dhawan and Shanti Bhushan, for the Appellant;

Final Decision : Disposed Of

Judgement

1. In view of the great significance of the points involved in these matters, relating to the protection and conservation of the forests throughout the country, it was considered necessary that the Central Government as well as the Governments of all the States are heard. Accordingly, notice Was issued to all of them. We have heard the learned Attorney General for the Union of India, learned Counsel appearing for the States and the parties/applicants and, in addition, the learned Amicus Curiae, Shri H.N. Salve, assisted by Sarvashri U.U. Lalit, Mahender Das and P.K. Manohar. After hearing all the learned counsel, who have rendered very able assistance to the court, we have formed the opinion that the matters require a further indepth hearing to examine all the aspects relating to the National Forest Policy. For this purpose, several points which emerged during the course of the hearing require further study by the learned Counsel and, therefore, we defer the continuation of this hearing for some time to enable the learned Counsel to further study these points.

2. However, we are of the opinion that certain interim directions are necessary at

this stage in respect of some aspects. We have heard the learned Attorney General and the other learned Counsel on these aspects.

3. It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest Conservation Act, 1980 (for short the 'Act') and the meaning of the word "forest" used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambalal Manibhai Patel Vs. State of Gujarat*, *Rural Litigation and Entitlement Kendra Vs. State of U. P.*, , and recently in the order dated 29th November, 1996 in *W.P.(C) No. 749/95 (Supreme Court Monitoring Committee v. Mussorie Dehradun Development Authority and Ors.)*. The earlier decision of this Court in *State of Bihar Vs. Banshi Ram Modi and Others*, , has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

5. We further direct as under :

I. General:

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior

approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or ply-wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

2. In addition to the above, in the tropical wet ever-green forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills veneer mills and ply-wood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 kms, from its border, in Assam, should also be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.

3. The felling of trees in all forests is to remain suspended except in accordance with the Working Plans of the State Governments, as approved by the Central Government. In the absence of any Working Plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

4. There shall be a complete ban on the movement of cut 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. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.

5. Each State Government should constitute within one month an Expert Committee to:

(i) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

(ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and

(iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

6. Each State Government should within two months, file a report regarding:

- (i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
- (ii) the licensed and actual capacity of these mills for stock and sawing;
- (iii) their proximity to the nearest forest;
- (iv) their source of timber.

7. Each State Government should constitute within one month, an Expert Committee to assess:

- (i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;
- (ii) the number of existing saw mills which can safely be sustained in the State;
- (iii) the optimum distance from the forest, qua that State, at which the saw mill should be located.

8. The Expert Committees so constituted should be requested to give its report within one month of being constituted.

9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator 'of Forests and another Senior Officer to oversee the compliance of this order and file status reports.

II. FOR THE STATE OF JAMMU & KASHMIR:

1. There will be no felling of trees permitted in any "forest", public or private. This ban will not affect felling in any private plantations comprising of trees planted by private persons or the Social Forestry Department of the State of Jammu & Kashmir and in such plantations, felling will be strictly in accordance with law.

2. In 'forests', the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber, and that only from areas other than those notified under the Jammu & Kashmir Wild Life Protection Act, 1978 or any other law banning such felling or removal of trees.

3. For this purpose, the State Government will constitute an Expert Committee comprising of a representative being an IFS officer posted in the State of Jammu & Kashmir, a representative of the State Government, and two private experts of eminence and the Managing Director of the State Forest Corporation (as Member Secretary) who will fix the qualitative and quantitative norms for the felling of fallen trees, diseased and dry standing trees. The State shall ensure that the trees so felled and removed by it are strictly in accordance with these norms.

4. Any felling of trees in forest or otherwise or any clearance of land for execution of projects, shall be in strict compliance with the Jammu & Kashmir

Forest Conservation Act, 1990 and any other laws applying thereto. However, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency will be permitted to deal with this aspect. This direction will also cover the submerged areas of the THEIN Dam.

5. All timber obtained, as aforesaid or otherwise, shall be utilised within the State, preferably to meet the timber and fuel wood requirements of the local people, the Government and other local institutions.

6. The movement of trees or timber (sawn or otherwise) from the State shall, for the present, stand suspended, except for the use of DGS & D, Railways and Defence. Any such movement for such use will -

(a) be effected after due certification, consignment-wise made by the Managing Director of the State Corporation which will include certification that the timber has come from State Forest Corporation sources; and

(b) be undertaken by either the Corporation itself, the Jammu & Kashmir Forest Department or the receiving agency.

7. The State of Jammu & Kashmir will file, preferably within one month from today, a detailed affidavit specifying the quantity of timber held by private persons purchased from State Forest Corporation Depots for transport outside the State (other than for consumption by the DGS & D, Railways and Defence). Further directions in this regard may be considered after the affidavit is filed.

8. No saw mill, veneer or plywood mill would be permitted to operate in this State at a distance of less than 8 Kms. from the boundary of any demarcated forest areas. Any existing mill falling in this belt should be relocated forthwith.

III. FOR THE STATE OF HIMACHAL PRADESH AND THE HILL REGIONS OF THE STATES OF UTTAR PRADESH AND WEST BENGAL:

1. There will be no felling of trees permitted in any forest, public or private. This ban will not effect felling in any private plantation comprising of trees planted in any area which is not a 'forest'; and which has not been converted from an earlier "forest". This ban will not apply to permits granted to the right holders for their' bonafide personal use in Himachal Pradesh.

2. In a 'forest', the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber from areas other than those notified u/s 18 or Section 35 of the Wild Life Protection Act, 1972 or any other Act banning such felling or removal of trees.

3. For this purpose, the State Government is to constitute an expert Committee comprising a representative from MOEF, a representative of the State Government, two private experts of eminence and the MD of the State Forest Corporation (as Member Secretary), who will fix the qualitative and quantitative norms for the felling of fallen trees and diseased and standing timber. The State

shall ensure that the trees so felled and removed are in accordance with these norms.

4. Felling of trees in any forest or any clearance of forest land in execution of projects shall be in strict conformity with the Forest Conservation Act, 1980 and any other laws applying thereto. Moreover, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency is to be involved in any aspect thereof.

IV. FOR THE STATE OF TAMIL NADU:

1. There will be a complete ban on felling of trees in all 'forest areas. This will however not apply to:

(a) trees which have been planted and grown, and are not of spontaneous growth, and

(b) are in areas which were not forests earlier, but were cleared for any reason.

2. The State Government, within four weeks from today, is to constitute a committee for identifying all "forests".

3. Those tribals who are part of the social forestry programme in respect of patta lands, other than forests, may continue to grow and cut according to the Government Scheme provided that they grow and cut trees in accordance with the law applicable.

4. In so far as the plantations (tea, coffee, cardamom etc.) are concerned, it is directed as under:

(a) The felling of shade trees in these plantations will be -

(i) limited to trees which have been planted, and not those which have grown spontaneously;

(ii) limited to the species identified in the TANTEA report;

(iii) in accordance with the recommendations of (including to the extent recommended by) TANTEA; and

(iv) under the supervision of the statutory committee constituted by the State Government.

(b) In so far as the fuel trees planted by the plantations for fuel wood outside the forest area are concerned, the State Government is directed to obtain within four weeks, a report from TANTEA as was done in the case of Shade trees, and the further action for felling them will be as per that report. Meanwhile, eucalyptus and wattle trees in such area may be felled by them for their own use as permitted by the statutory committee.

(c) the State Government is directed to ascertain and identify those areas of the plantation which are a "forest" and are not in active use as a plantation. No

felling of any trees is however to be permitted in these areas, and sub-paras (b) and (c) above will not apply to such areas.

(d) There will be no further expansion of the plantations in a manner so as to involve encroachment upon (by way of clearing or otherwise) of "forests".

5. As far as the trees already cut, prior to the interim orders of this Court dated December 11, 1995 are concerned, the same may be permitted to be removed provided they were not so felled from Janmam land. The State Government would verify these trees and mark them suitably to ensure that this order is duly complied with. For the present, this is being permitted as a one time measure.

6. Insofar as felling of any trees in Janmam lands is concerned (whether in plantations or otherwise), the ban on felling will operate subject to any order made in the Civil Appeal Nos. 367 to 375 of 1977 in C.A. Nos. 1344-45 of 1976. After the order is made in those Civil Appeals on the LAs. pending therein, if necessary, this aspect may be re-examined.

7. This order is to operate and to be implemented, notwithstanding any order at variance, made or which may be made by any Government or any authority, tribunal or court, including the High Court.

6. The earlier orders made in these matters shall be read, modified wherever necessary to this extent. This order is to continue, until further orders. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal.

7. We also direct that notwithstanding the closure of any saw mills or other wood-based industry pursuant to this order, the workers employed in such units will continue to be paid their full emoluments due and shall not be retrenched or removed from service for this reason.

8. We are informed that the Railway authorities are still using wooden sleepers for laying tracks. The Ministry of Railways will file an affidavit giving full particulars in this regard including the extent of wood consumed by them, the source of supply of wood, and the steps taken by them to find alternatives to the use of wood.

9. I.A. Nos. 7, 9, 10, 11, 12, 13 and 14 in Writ Petition (Civil) No. 202 of 1995 and LA. Nos. 1, 3, 4, 5, 6, 7, 8 & 10 in Writ Petition (Civil) No. 171 of 1996 are disposed of, accordingly.

10. List the matter on February 25, 1997 as part-heard for further hearing.