

(2003) 12 SC CK 0003

Supreme Court of India

Case No: IN I.A. NOS.941 IN 754-755 WITH I.A. NO.777

In Re: Shri Pravakar Behera,
D.F.O. Puri Division, Khurda,
Orissa
T.N. Godavarman
Thirumulpad

APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 19, 2003

Acts Referred:

- Orissa Saw Mills and Saw Pits (Control) Act, 1991 - Section 4

Hon'ble Judges: V. N. Khare, C.J; Y. K. Sabharwal, J; Arijit Pasayat, J

Bench: Full Bench

Advocate: Mukul Rohtagi, Additional Solicitor General, Harish N. Salve, A.C., P. Chidambaram, R.K. Jain, Amarendra Sharan, C.S. Vaidyanathan, P.P. Rao, K.K. Venugopal, Rakesh Dwivedi and T.R. Andhyarujina, U.U. Lalit and Siddhartha Chaudhary, P.K. Manohar, Indu Malhotra, S. Muralidhar, Bharat Sangal, Santosh Dwivedi, Rekha Pandey, Sushma Suri, Vijay Panjwani, J.R. Das, S. K. Agnihotri, Atul Kumar, Prashant Kumar, Rakesh K. Sharma, Rachna Srivastava, Rani Chhabra, Sanjay Parikh, Aparna Bhat, Sanjay Parikh, P. Ramesh Kumar, Atul Y. Chitale, Ravikesh Sinha, Suchita A. Chitale, Rajiv Tyagi, S.M. Shah, B.B. Singh, Himanshu Shekhar, A. Subba Rao, C.V. Subba Rao, Naresh Kumar Sharma, Naresh Chandra Sahoo, Swetaketu Mishra, Moushumi Gahlot, Shibashish Mishra, V.S. Raju, T.N. Rao, Raj Kumar Mehta, Janaranjan Das, M.L. Lahoty, Paban K. Sharma, Himanshu Shekhar, S. Guru Krishna Kumar, Prakash Shrivastava, S. Wasim, A. Qadri, Pramod Dayal, S.P. Singh, Sangeeta Mandal, Pankaj Saxena, Kapil Choudhary, Jayasree Singh, Swati Sinha and Vineeta Bhardwaj, for, Pooran Singh Bundela, T.C. Sharma, Neelam Sharma, Avijit Bhattacharjee, Atanu Saikia, Hemantika Wahi, Sandhya Goswami, L.R. Singh, V.N. Raghupathy, P.N. Ramalingam, H.K. Puri, Shiraz Contractor Patodia, Bhupender Yadav, Ritwick Dutta, R.C. Kohli, Amitesh Kumar, Sunil Kumar, A. Subhashini, K.H. Nobin Singh, A. Mariarputham, Aruna Mathur, Satish K. Agnihotri, Anil K. Pandey, Anil Srivastav, T.V. Ratnam, K. Subba Rao, Gopal Singh, Anurag Sharma and Chaudhary Shamsuddin Khadi, for the Appellant;

Final Decision: Allowed

Judgement

Y.K. Sabharwal, J.

By order dated 29/30th October, 2002, this Court directed closure of all unlicensed saw mills and prohibited opening of any new saw mill without prior permission of the Central Empowered Committee (CEC). The proliferation of wood based industry was one of the causes of degradation of forest. It is evident that the order was passed with a view to ensure protection of the forest wealth and to enforce measures to stop illegal felling, removal and utilization of timber. The relevant portion of the said order reads as under:

"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 licence without previous concurrence of the Central Empowered Committee."

2. In Orissa, Section 4 of Orissa Saw Mills and Saw Pits (Control), Act, 1991 prohibits establishment or operation of saw mills within reserve forest, protected forest or any forest area or within 10 kilometers from the boundary of any forest or forest area. The licences of five saw mills were cancelled by the Divisional Forest Officer (DFO) as a licensing authority as licensees were found to be within a radial distances of 10 kilometers from the boundary of nearest forest. The following are those saw mills:

1. Laxmi Saw Mills, Lingipur
2. Bhawani Saw Mill, Lingipur
3. Gopinath Timber Saw Mill, Balakati
4. Sidheswari Saw Mills, Balakati
5. Siula Saw Mill (Maa Tarini Timber Trades)

3. The cancellation of licences by saw mills at serial Nos. 4 and 5 was not challenged. It attained finality. The saw mills at serials 1, 2 and 3, however, filed appeals against the cancellation ordered by DFO. In appeal, the conservator of Forest directed the DFO to reconsider their cases. On reconsideration, the DFO again rejected their licences. The saw mill at serial No. 3 did not this time challenge the decision of the DFO. The saw mills at serial Nos. 1 and 2, however, filed appeals against the decision of the DFO, but the appeals were dismissed by the Conservator of Forest.

4. The respondent joined as DFO, Puri Division on 23rd December, 2002. These licences were granted during January and February, 2003. Despite the aforesaid

facts and the above noted order of this Court, all the 5 saw mills were granted licences by the respondent-contemner. The grant of licences in the above manner was brought into the notice of CEC. CEC considering the affidavit of the Chief Secretary of the State Government, submissions of the Principal Secretary, Forest, Government of Orissa and that of the respondent opined that the issue of saw mill licences was in violation of the State act above referred, the orders of the superior officers and also in violation of the orders dated 30th October, 2002 passed by this Court. Considering the recommendations of CEC, contained in its report dated 18th August, 2003, this Court issued suo motu notice of contempt to the respondent - Pravakar Behera.

5. In reply to the contempt notice, the respondent has filed his affidavit. We have perused affidavit of the respondent dated 20th September, 2003 and have also heard Shri P.P. Rao, learned senior counsel appearing for the respondent. While tendering unconditional apology, the respondent has sought to explain that since he joined as Divisional Forest Officer, Puri Division only on 23rd December, 2002, he was not very much conversant with the latest developments in the management of forest division in general and the order of this Court dated 30th October, 2002, in particular. He has tried to explain that when the Principal Chief Conservator of Forest, Orissa, vide a memo dated 27th December, 2002, sent the case of Laxmi Saw Mill, Lingipur and Bhawani Saw Mill, Lingipur to him for disposal along with the report of the Tehsildar, he committed mistake of renewing the licence bona fide believing that the case of renewal is not prohibited. Under these circumstances, he stated to have renewed the licences of these two mills on 13th January, 2003. Before the CEC, the respondent had stated that the order of this Court dated 30th October, 2002 was received in his office on 16th January, 2003 whereas he had already issued licences on 13th January, 2003. The decision in respect of all other saw mills was taken on the same lines as that of Laxmi Saw Mill. It was also pleaded that he was not aware that the Conservator of Forest had already rejected the appeals filed by saw mills otherwise he would have never overruled the decision taken by the superiors.

6. The State Government, however, does not support the stand of the respondent which is apparent from the affidavit of the Chief Secretary and the stand of the Principal Secretary, Forest. According to the State Government, the saw mills were closed after cancellation of their licences. Their appeals had been dismissed. Therefore, these cases could not be treated as renewal of licences and were clearly cases of grant of fresh licences and that the Principal Chief Conservator of Forest had merely forwarded the applications to the respondent for decision thereof in accordance with law and that did not empower the respondent to grant licences in violation of the order of this Court dated 30th October, 2002 in addition to the further fact of the appeals of the saw mills having been dismissed as above narrated.

7. From the affronted facts, it is clear that the grant of licences to saw mills by the respondent was in clear violation of order of this Court. The plea that the respondent came to know about the orders of this Court only on 16th January, 2003 and in ignorance of the said orders, the licences were granted is not tenable for more than one reason. Firstly, it appears that the said order was sent to the office of the respondent on 30th December, 2002 and the licences were granted for the first time on 13th January, 2003. Secondly, assuming the respondent came to know of the order on 16th January, 2003, as claimed, he took no action on his own to recall the grant of licence. Thirdly, he granted licences to other saw mills admitted after 16th January, 2003 allegedly on the ground of their cases being similar to that of Laxmi Saw Mill. Fourthly, the licences were granted despite cancellation of licences having already attained finality.

8. Apart from the above, even if we assume that the respondent did not know about the cancellation having been upheld by his superiors, as claimed by him, clearly it would show utter negligence of the respondent. The fact that licences were cancelled later on 17th May, 2003 by the respondent is not of much consequence since the cancellation was a result of directions sent to him by the Conservator of Forest on 12th May, 2003 directing cancellation of licences and on receipt of the said directions on 16th May, the cancellation by the respondent was ordered the next day. It is not a case of suo motu cancellation by the respondent.

9. The respondent has tried to overreach this Court by violating the order dated 30th October, 2002 and is clearly guilty of contempt of court. Having regard to the facts above noted, we are unable to accept the apology tendered by the respondent. Having bestowed anxious consideration on the aspect of punishment, considering that respondent had joined as DFO only few days before grant of licences and it to being a case of first lapse on his part, on the facts of the case, in our view the ends of justice would be met by reprimanding the respondent and by issue of a warning to him so that he will be careful in future so as not to repeat such an act and also by imposing on him heavy amount which can be utilized for protection of environments. We order accordingly and impose a cost of Rs. 50,000/- which shall be deposited by the respondent in the Registry within four weeks. The suo motu petition is disposed of accordingly.