

T.N. Godavarman ... vs Union Of India & Ors., State Of J & K & Ors on 15 January, 1998

Equivalent citations: AIR 1998 SUPREME COURT 769, 1998 AIR SCW 484, 1998 (1) UJ (SC) 275, 1998 (1) SCALE 114, 1998 (1) ADSC 251, 1998 UJ(SC) 1 275, 1998 (2) SCC 59, (1998) 1 JT 133 (SC), (1998) 1 SUPREME 265, (1998) 1 SCALE 114

Author: B.N. Kirpal

Bench: B.N. Kirpal

PETITIONER:

T.N. GODAVARMAN THIRUMULPAD, ENVIRONMENT AWARENESS FORUM

Vs.

RESPONDENT:

UNION OF INDIA & ORS., STATE OF J & K & ORS.

DATE OF JUDGMENT: 15/04/1998

BENCH:

A.S. ANAND, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

WITH W.P. (C) No. 171/96 THE 15TH DAY OF JANUARY, 1998 Present:

Hon'ble the Chief Justice Hon'ble Mr. Justice A.S. Anand Hon'ble Mr. Justice B.N. Kirpal Mr. Ashok Desai, Attorney General, Mr. A.K.Goel, Addl, Advocate, General Mr. Harish N.Salve, Mr. N.N. Goswami, Mr. Rajiv Doawan, Mr. Shanti Bhushan, Mr. Dipankar P.Gupta, Mr. H.Nabakumar Singh, Mr. Prashant K.Goswami, Mr. Anil B.Diwan, Mr. G.I.Sanghi, Mr. T.L.V.Iyer, Mr. Jayant Das, Mr. Tapas C. Roy., Mr. P.K. Aggarwal, Sr. Advocates, Mr. U.U. Lalit, Ms. Meenakshi Sakharande, Mr. A.D.N.Rao,

Mr. P. Parmeswaran, Mr. S.Wasim A. Qadri, Mr. Sushma Suri, Mr. U.Hazarika, Mr. S.R. Hedge, Mr. Saikia, Mr. A.S. Bhasme, Mr. Zailre Angami, Mr. C.K. Sasi, Mr. Kailash Vasdev, Mr. Gopal Singh, Mr. h. Wahi Mr. S. Hazarika, Ms.Nelithono Rhetso, Mr, K.H. Nobin Singh, Ms.S. Janani, Mr. Ranjan Mukherjee, Mr. Rajiv Mehta, Mr. Anil Agarwalla, Mr. P.C.Sharma, Mr. Gujarmal, Mr. K.M.K. Nair, Mr. M.L. Lahoty, Mr. Himanshu Shekhar, Mrs. Madhur Dadlani, Mr. S.K. Agnihotri, Mr. Aruneshwar Gupta, Mr. G.Prakash, Ms.Beena Prakash, Mr. R.K. Mehta, Mr. B.S. Chahar, Mr. Ashok Mathur, Mr. Jasbir Malik, Mr. P.P. Malhotra, Mr. K.R.Nagaraja, Mr. K.K.Tyagi, Ms. A.Subhashini, Mr. R.B. Mishra, Mr. Kamendra Mishra, Mr.H.K. Puri, Mr. Ujjwal Banerjee, Mr. K.B.Rohtagi. Ms. Aparna Rohtagi Jain, Mr. S.M. Jadhav, Mr. D.M. Nergolkar, Mr. R.S. Sodhi, Mr. B.B. Singh, Mr. G.M.Kawoosa, Mr. A. Mariarputham, Ms. Aruna Mathur, Mr. Rana Mukherjee, Ms. Sumita Mukherjee, Mr. Goodwill Indeevar, Mr. Maheer Vyas, Mr. P.K. Nanohar, Mr. D.N. Misra , Mr.Parag P. Tripathi, Mr. Vijay Panjwani, Mr. D.N. Goburdhan, Ms. Pinky Anand, Mr. M.N. Shroff, Ms. Shabnam Lone, Ms Purnima Bhat, Mr. R. Sasiprabhu, Mr. Manish Garg, Mr. Anees Ahmad, Mr. P.H. Parekh, Mr. Sameer Parekh, Mr. Zafar Shah, Ms. Rekha Palli, Ms. Indu Malhotra, Mr. S.K. Bhattacharya, Mr. S.K. Dhingra, Mr.Ashok K. Srivastava, Mr. Umesh Bhagwat, Mr. Sanjay R.Hegde, Advocates with them for the appearing parties.

O R D E R The following order of the Court was delivered:

W I T H WRIT PETITION (C) NOT. 171 OF 1996 Learned Attorney General submits that the perception of the Ministry of Environment and Forests is as under:

1. It has been estimated by the HPC that about 1.20 lakhs cubic meters of illicitly felled seized timber, belonging to the State Governments is lying in the forests and depots for varying periods of time between 1 to 2 years and is thereby getting degraded on account of decay and rotting of the wood. It is necessary to dispose it off at the earliest to minimise any further loss in the monetary value. There is, in addition, considerable quantity of timber claimed by the private industry and local people. In view of the approaching monsoon season (April 98) all such timber needs to be disposed off with urgency to save further loss in quality, as also in value, albeit with proper checks and balances.

2. Given the weak infrastructure in the North-Eastern region, it does not seem feasible to transport such huge quantities of timber for auction in markets outside the region in a short time. Moreover, there would be uncertainty of the response in timber markets far away from the source of timber which has been subject to elements of degradation in varying degrees. There is also the likelihood of local resentment, in an otherwise sensitive area, if all such material is removed from the region without processing and value addition, which could be conceived as creating an adverse effect on the region's economy.

3. Even though the proliferation of wood-based industries has been the main cause of degradation of forests in the North-Eastern States, considering the extent of forests (64% of the geographical area) and the dependence of the local people on the forest resources in the region it is neither feasible, nor desirable, to ban completely either the timber trade or running of the wood based industries.

However, their numbers and capacities need to be regulated qua the sustainable availability of forest produce and they are also required to be relocated in specified industrial zones. Moreover, the industrial requirements have to be subordinated to the maintenance of environment and ecology as well as bonafide local needs.

4. There shall be no fresh fellings in the forests belonging to the Government, District and Regional Councils till the disposal of their existing stocks of legal and illegal timber.

5. In view of the multidimensional issues impinging upon forest protection, foolproof institutional arrangements need to be put in place, and made functional under the strict supervision of the North-East Council (NEC). Technical backstopping in the forestry matter will be provided by MoEF by opening a separate cell in the Ministry under an officer of the rank of CCF and starting a satellite office of the Forest Survey of India at Shillong.

We appreciate the perception of MoEF as reflected by the learned Attorney General.

We have heard the amicus curiae, the learned Attorney General and learned counsel for North-Eastern States. In view of the report of the High Power Committee and taking into account the factors which require an order to be made by the Court for disposal of the felled timber and ancillary matters which are lying in the North-Eastern States, we consider it appropriated to make the following order:-

1. Disposal of timber shall commence only after the concerned Principal Chief Conservator of Forests irrevocably certifies that inventorisation of all felled timber in the State has been completed.
2. As a first measure all inventorised timber, including seized timber lying in the forests should be immediately transported to specified forest depots.
3. All illegal/illicit timber found in possession of an offender or abandoned in the forest shall be confiscated to the State Government and shall be disposed off in accordance with the procedure to be adopted for disposal of Government timber.
4. Out of the seized timber, logs found suitable for manufacture of veneer and plywood shall be processed by the State Governments within their own factories and by hiring such facilities. The finished product can be marketed freely.

5. The remaining timber belonging to Government and District Councils shall be first offered for sale to Government Departments for their bonafide official use and the rest shall be sold in public auction or through sealed tenders after fixing floor price by an Expert Committee with representative from the MOEF. Private timber owners whose stocks have been cleared by HPC shall have the option of selling the timber either in the auctions organised by the State Forest Departments/Forest Development Corporations or directly.

6. The State Governments shall formally notify industrial estates for locating the wood based industrial units in consultation with the Ministry of Environment and Forests.

7. Timber as per inventory cleared by HPC may be allowed to

(a) be converted/utilised if the unit is located within the notified industrial estate. As the relocation in proposed industrial estates may take some time, existing units with only legal stocks may convert this timber, as one time exception, notwithstanding anything contained in para 12 hereunder, till such stocks last subject to the maximum period as per the norms prescribed by the High Power Committee (vide their III report) or six months whichever is less. Any stock remaining thereafter shall vest in the state Government. However, fresh trees/Timber will be allotted to these units only when they start functioning within the designated industrial estates. The territorial Deputy Conservator of Forests/Divisional Forest Officer shall be responsible for ensuring that such units process the legal stocks only and will closely monitor the various transit permits (inward and outward) and maintenance of the prescribed records. All such records shall be countersigned (with date) by an officer not less than the rank of an Assistant Conservator of Forests.

(b) allowed to be sold to other units which are located in these industrial estates subject to the condition that such transactions are routed through an authority notified/constituted by the Principal Chief Conservator of Forests.

(c) The state Governments shall ensure disposal of illegal timber before permitting the conversion/disposal of legal/authorised timber available with the wood based industries.

8. Transportation of auctioned timber (as well as legal timber) including sawn timber outside the North-Eastern Region shall only be done through railways under the strict supervision of the Forest Department. The Railway Board shall give Priority for Providing rakes/wagons for such transportation.

9. Modalities for transportation of timber/timber products and alternative modes in case of difficulties in transportation by Railways, will be worked out by the State Governments in concurrence of the Ministry of Environment and Forests.

10. Existing inventorised stock of timber originating from plantations in private and community holdings in the States of Meghalaya, Mizoram, Tripura, Manipur and Nagaland may be disposed of by their owners under the relevant State laws and rules. In States where such laws and rules do not exist, the necessary laws and rules may be framed within six months.

Pricing of Timber

11. The state Governments shall ensure that timber/forest produce is supplied to industries including Government Undertakings, at full market rate. The existing royalty shall be reviewed and revised upwardly by a committee constituted under the Chairmanship of Principal Chief Conservator or Forests with representatives from the concerned Departments and shall also include a representative of ministry of Environment and forest. The prices of timber for which royalty has not been realized in full shall also be reviewed by this committee and the concerned industry shall be required to pay the revised price or the royalty (including surcharge, fee etc.,) whichever is higher after deducting the part royalty already paid.

Licensing

12. Licenses given to all wood based industries shall stand suspended.

13. Wood based industries which have been cleared by the High Power Committee without any penalty shall have the option to shift to industrial estates which shall be identified by the states within 45 days and developed within six months thereafter.

14. Units which have been penalised because they were found to exceed normal recovery norms, but were within 15% of the said norms, will have a right to approach the High Power Committee on or before 9th February 1998. The High Power Committee shall examine all relevant material, in particular the income tax and excise records for the preceeding three years. The High Power Committee shall dispose of all such applications within 45 days thereafter and such mills may be granted licence if the High Power Committee finds that it is not against public interest so to do.

15. nits which have not furnished details/information to the High Power Committee so far or which have not been cleared by the High Power Committee, shall not be granted any licence and the stock in their custody if any, shall be confiscated to the state Government. In case of leased mills belonging to corporations/trusts/cooperative societies owned/controlled/managed by the State Government and where the lessees have been penalised by the High Power Committee, the leases shall stand revoked. Such mills shall, however, be eligible for relicensing subject to the condition that these mills are not leased out in future except to a entity fully owned by the Government.

16. Units who do not want to shift to the designated industrial estates shall be allowed to wind up as per law.

17. Henceforth, licenses of units shall be renewed annually only in those cases where no irregularity is detected.

18. There shall be a complete moratorium on the issue of new licenses by the State Governments or any other authority for the establishment of any new wood based industry for the next five years after which the situation shall be reviewed with the concurrence of Ministry of Environment and Forests.

19. Number of wood based industries shall be determined strictly within the quantity of timber which can be felled annually on sustainable basis as determined by the approved working plans from time to time . If it is found that units after relocation in industrial estate have excess capacity then their capacities shall be reduced pro rate to remain within the sustainable levels.

Forest Protection

20. An action plan shall be prepared by the Principal Chief Conservator of Forests/Chief Forest Officer for intensive patrolling and other necessary protective measures to be undertaken in identified vulnerable areas and quarterly report shall be submitted to the Central Government for approval. The approved plan together with the modifications, if any, shall be acted upon.

21. To ensure protection of the forest wealth the forest officers in the North Eastern States may be empowered with authority to investigate, prosecute and confiscate on the lines of the powers conferred on the forest officers in many other States in the country.

22. The State Government shall be responsible for providing all facilities including security and police force to strictly enforce forest protection measures to stop illicit felling, removal and utilisation of such timber. The Chief Secretary shall review the various matters concerning forest protection and development in his State at least once every six months with senior forest officers upto the rank of Conservator of Forests. Regional Chief Conservator of Forests of MoEF shall be invited to all such meetings. Scientific Management of Forest

23. Working Plans for all forest division shall be prepared by the State Governments and got approved from the Government of India. Forest working shall be carried out strictly in accordance with the approved prescriptions of the working plans. The working plans should be prepared within a period of two years. During the interregnum the forests shall be worked according to an annual felling programme approved by the MoEF which shall be incorporated in the concerned working plan. In case a working plan is not prepared within this time frame, future fellings will remain suspended till the regular working plan is prepared and got approved.

24. The forests under the District, Regional and Village Councils shall be worked in accordance with working schemes which shall specify both the programme for regeneration and harvesting and whose period shall not be less than 5 years.

25. The maximum permissible annual yield in the ad interim measures suggested above, shall not exceed the annual harvestable yield determined by Ministry of Environment and Forests. The plantation schemes raised on private and community holdings shall be excluded from these requirements but shall be regulated under respective State rules and regulations.

26. The States shall identify ecologically sensitive areas in consultation with leading institutions like the India Council of Forestry Research and Education, Wildlife Institute of India, North Eastern Hill University, North Eastern Regional Institute of Science and Technology, leading NGOs. etc., and ensure that such areas are totally excluded from any kind of exploitation. The minimum extent of such areas shall be 10% of the total forest area in the State.

Action against officials

27. The State Government shall identify within 45 days all those forest divisions where significant illegal fellings have taken place and initiate disciplinary/criminal proceedings against those found responsible. The first action taken report (ATR) in this regard shall be submitted to the Central Government within three months which shall be followed by quarterly reports (QRs.) till the culmination of the matter.

General

28. Timber extraction in forests irrespective of ownership, except in private plantations, shall be carried out by a State agency only. The States shall endeavor to adopt pattern obtaining in the State of Himachal Pradesh as described in para 2.5.3 of the Rajamani committee Report.

If there be any local laws/customs relating to the forest in any State. the concerned State Government may apply to this Court for the needed modification, if any, with alternative proposal.

29. The penalties levied on the wood based industries as ordered by the High Power Committee shall constitute the revolving fund to meet the expenses involved in collection and transportation of seized illegal timber. These can be augmented by utilising the funds generated by the initial sales of illegal timber already available in the forest depots.

30. Each State shall constitute a State level Expert Committee for matters concerning the preparation of working plans, their implementation, development of industrial estates, shifting of industrial units to these estates, rules and regulations regarding the grant and renewal of licenses to wood based industry and other ancillary matters, under the chairmanship of principal Chief Conservator of forests and with a nominee of Ministry of Environment and forests as one of its members. Any decision of this committee which is not acceptable to the State Government shall be referred to the Central Government.

31. The existing permit system in Arunachal Pradesh shall stand abolished. The State Government may provide financial assistance in case or kind in the form of timber only for the bonafide use of the local tribals alone. Such concessional timber shall not be bartered or sold. Felling of trees for such purpose shall be carried out only by Government agency.

32. The total sale proceeds from the sale of seized timber, as well as timber products manufactured and disposed by the State Government (vide para 4) and penalties would be credited to the State Revenues. Out of this, the State shall utilise one half of the amount for as assistance to the tribals.

population and as assistance to the tribals. The remaining one half of the total sale proceeds, after deduction of the expenses therefrom, would go to the State coffers for other developmental activities in the State.

33. The States shall ensure that sufficient budgetary provisions are made for the preservation of biodiversity and protection of wildlife.

34. To ensure that timber/forest produce smuggled across the border may not be used as a cover for trade in illegal timber, it is directed that all such timber seized by Customs/Border security Force should not be redeemed in favour of individuals who are smuggling it but should be confiscated and handed over to the concerned State Forest Department along with offenders, vehicles, tools and implements for prosecution under the relevant acts.

35. For the proper and effective implementation of these order, Ministry of Environment and Forests will have the liberty to issue suitable directions consistent with this order.

36. Action taken report be filed by each State Government and the Ministry of Environment and Forests every two months.

37. Liberty to apply for modification/clarification in case of need.

(NOTE: In this order the term "State Government" would include District council also except where the context implies otherwise.)