

Supreme Court of India

T.N. Godavarman Thirumulkpad vs Union Of India (Uoi) And Ors. on 10 December, 1998

Equivalent citations: JT 1998 (9) SC 161, (1999) 9 SCC 151

Author: A A I.

Bench: A Anand, B Kirpal, V Khare

ORDER A.S. Anand, C.J.I.

I.A 295/95

1. We are rather distressed that many States have either not implemented various directions issued by this Court from time to time including the directions issued on 12th December, 1996 and 15th January, 1998 or have committed breach of those directions with the result that the efforts made by this Court to prevent large scale of deforestation and for protection and conservation of forests and environment are not bearing the fruit that we expected them to bear.

2. The Central Government, in exercise of the powers conferred by Sub-section 3 of Section 3 of the Environment Protection Act 1987 constituted an Authority for Arunachal Pradesh known as Arunachal Pradesh Forest Protection Authority. The powers and jurisdiction of the Authority was notified on 17th September, 1998. Mr. Kriti N. Rawal, learned Additional Solicitor General appearing for the Union of India states that according to his instructions, this Committee has been functioning quite satisfactorily and many matters have been sorted out by that Authority. Keeping in view this experience of the Authority constituted under Sub-section 3 of Section 3 of the Environment Protection Act, 1986, we have asked the learned Additional Solicitor General to seek instructions about the feasibility of constituting such Committees/Authorities for the other States also. It would also be expedient if instructions are also obtained by him with regard to the feasibility of appointment of officers under Section 4 or issuance of directions under Section 5 of the Environment Protection Act 1986. The response of the Central Government may be filed within 8 weeks. It may also be worth the consideration of the Central Government whether a Committee of the type envisaged by Sub-section 3 of Section 3 of the Environment Protection Act can also be constituted at national level in the nature of a supervisory or Appellate Authority over the State Authorities.

I.A. 397

3. On 15th January, 1998, after taking note of the fact situation that proliferation of wood-based industries is the main cause of degradation of forests in the North-Eastern States, it was directed that though it was not desirable or feasible to ban completely the timber trade or running of the wood based industries because of the dependence of the local people on the forest resources in the region, there was need to regulate the functioning of these industries. Keeping in view the availability of forest produce, it was suggested that those industries be relocated in specified industrial zones. A specific direction was issued to the effect that: "The State Governments shall formally notify industrial estates for locating the wood based industrial units in consultation with the Ministry of Environment and Forests".

4. In this interim application, a copy of a Notification issued by the Government of Nagaland dated 15th June, 1998 has been placed on record. A perusal of the Notification shows that, "The whole foothill areas of Nagaland" and "All areas within 1 KM of National and State Highways, State Roads" have been declared as Industrial Estates for the purpose of establishing Forest based Industrial Estates. There is no indication in this Notification as to whether any prior consultation took place with the Ministry of Environment and Forests, Government of India. The learned Additional Solicitor General has drawn our attention to a communication dated September 2, 1998 (which is taken on record) issued by the Additional Inspector General of Forests, Sh. S.C. Sharma to the Chief Secretary, Government of Nagaland. The last paragraph of that communication reads thus:

The State Government has not consulted this Ministry before notifying the industrial estates. The notification is also not in accordance with the Court order and a very large area had been declared as industrial estates. The intention of the Court to notify industrial estates was to keep the industries in compact blocks, where effective monitoring can be done, I, therefore, request you to kindly look into the matter personally and reconsider the action of the State Government in this matter

5. This communication was followed by another letter No. 13-18/98 SU dated 5th October, 1998 (taken on record) from the Inspector General of Forests and Special Secretary, Government of Nagaland requesting him to look into the matter because of the non-response to the letter dated September 2, 1998 and further requesting him that, "the notification be held in abeyance immediately, as it is not in conformity with the orders of Supreme Court...." We are informed that there has been no response to the communication dated 5th October, 1998 either. It is stated that the Notification has not been kept in abeyance. The Notification, ex-facie, runs in the teeth of the direction issued by this Court (supra).

6. A notice shall issue in this application to the respondents and to the Chief Secretary, Government of Nagaland to show cause against the application and, in particular, the Chief Secretary shall also state on affidavit as to why action be not initiated for issuing a Notification in breach of the directions issued by this Court. The notice shall be made returnable within six weeks. A copy of this order shall also be served on the learned Standing Counsel for the State of Nagaland.

7. Till further orders from this Court, any follow up action based on the Notification dated 15th June, 1998 shall stay.

Contempt Petition No. 336 of 1998

8. Before we consider proceeding further in this petition, let a copy of the petition be served on the learned Standing Counsel for the State of Nagaland. The learned Standing counsel shall ascertain and inform this Court as to whether the allegations contained in paragraph 5 of the application, which amount to encroachment into a reserved forest and are in breach of the order issued by this Court on 12th December, 1996, are correct. The response to that effect shall be filed on the affidavit of a responsible official of the State Government of Nagaland. The needful shall be done within six weeks.

I.A. Nos. 408 and 409/98

9. It is averred by the applicant that he has a legally acquired and inventoried stock of raw material to the tune of about 2100 cubic mtrs. There is no indication, however, in this application as to the source from which the stock of timber had been acquired. Mr. M.N. Rao, learned Senior counsel appearing for the applicant submits that he shall file an additional detailed affidavit with regard to the acquisition of 'legal' timber stock. Four weeks' time, as prayed for, is granted for the purpose.

Writ Petition (C).../98 (D 13386/98)

10. Mr. G.L. Sanghi, learned Senior counsel, on instructions, withdraws prayer 'B' at page 37 of the paper book. He submits that this writ petition may be considered minus that prayer and the same may be treated as an interim application, to be heard along with other four interim applications, which are already pending in this Court. We grant his prayer. This petition shall be numbered as an I.A. after the necessary correction is made by the learned Counsel on record assisting Mr. Sanghi with regard to deletion of prayer 'B'.

Writ Petition (C) 202 of 1995 (Reg. State of Assam)

11. Learned Counsel for the State of Assam has placed on record Notification No. FRE-150/96/VOL.-I/PT.V/239 dated 23rd September, 1998 (taken on record) according to which the Government of Assam has notified certain Town Areas/ Municipal Areas/ Municipal Corporation Areas as Industrial Estates for locating wood based Industrial Units in the State of Assam. Mr. Rawal, learned Additional Solicitor General, appearing for the Ministry of Environment and Forests has brought to our notice a communication issued by the Additional Inspector General of Forests dated 27th October, 1998 (taken on record) addressed to the Chief Secretary, Government of Assam, Gauhati drawing the attention of the Chief Secretary to the order of this Court dated 15th January, 1998. In that communication, the Additional Inspector General of Forests has pointed out that the Notification dated 25th September, 1998 is not in conformity with the order of the Supreme Court dated 15th January, 1998. The learned Additional Solicitor General points out that after this letter was issued to the Chief Secretary, a meeting has taken place between the officials of the Government of India and the Government of Assam on 6th November, 1998 at Gauhati, concerning the subject matter of the Notification. The Additional Inspector General of Forests had advised the Chief Secretary in his communication dated 27th October, 1998 that the Notification dated 25th September, 1998 be kept in abeyance and the State Government was advised to either submit a fresh proposal in conformity with the order of this Court dated 15th January, 1998 or to seek suitable guidance by way of clarification from this Court.

12. It was in view of large scale destruction of forests and pilferage of timber by the wood based industries that this Court had made an order on 15th January, 1998 directing all North Eastern States to direct industrial estates for relocation of wood based industries so that effective monitoring could be done for conservation of forests in those States. The States were directed to identify the Industrial estates within 45 days of the date of the order and to develop the industrial estates within six months thereafter. The Notification issued on 23rd September, 1998, ex-facie, does not comply

with the requirements as spelt out in the order dated 15th January, 1998. It is necessary that the State Government and the Ministry of Environment and Forests (Union of India) should have a joint meeting to sort out the question of location and identification of industrial estates. The needful shall be done within four weeks.

13. Mr. G.L Sanghi, learned Counsel who appears for M/s. Kit ply Industries Ltd. (the applicant in I.A. Nos. 217. 236/97, 285 and 286/98) submits that the applicants are prepared to give an undertaking to the effect that they shall, till the industrial estates is identified, run their unit only on imported veneer. It is submitted that on an affidavit of a responsible officer of the applicant, this Court shall be informed about the total quantity of veneer which is being imported by the unit for one year and that it shall also be disclosing as to the approximate quantity of veneer required to be imported and the parties from whom that import shall take place. The application shall be supported by necessary documentary evidence. A responsible officer of the applicant shall also file an undertaking along with that affidavit to the effect that the operation of the unit shall be confined only to imported veneer. The applicants may also file a chart indicating the consumption and import of timber and veneer during the last three years, (domestic and imported). Necessary information shall be furnished within two weeks. A copy of the affidavit and the undertaking shall be furnished to learned Counsel for the State of Assam and to Mr. P. Parmeshwaran, Advocate-on-Record for Central Agency, who may file their response thereto within one week from the date of receipt of the affidavit. A copy of the same shall also be furnished to the learned Amicus Curiae.

General Direction

14. Any application filed in Writ Petition 202 of 1985 by any of the parties shall be entertained only after it has been served both on the learned Amicus Curiae and the Central Agency (Office of Mr. P. Parmeshwaran, Advocate-on-Record).