

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
WRIT PETITION Nos.13798 and 20272 of 2012

W.P.No.13798 of 2012:

Between:

M/s.Penna Cement Industries Ltd., Hyderabad

.. Petitioner

and

The Principal Chief Conservator of Forests, Hyderabad and others

.. Respondents

Counsel for the petitioner: Mr.C.Nageswara Rao

Counsel for respondent Nos.1, 2 and 4: Government Pleader
for Forests (TS)

Counsel for respondent Nos.3 and 5: None appeared

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W.P.No.20272 of 2012:

Between:

M/s.Penna Cement Industries Ltd., Hyderabad

.. Petitioner

and

The Special Chief Secretary to Government, Environment, Forests, Science and
Technology, Hyderabad and others

.. Respondents

Counsel for the petitioner: Mr.C.Nageswara Rao
for Mr.J.Satyanarayana Rao

Counsel for respondent Nos.1 to 4: Government Pleader
for Forests (TS)

Counsel for respondent No.5: None appeared

JUDGMENT PRONOUNCED ON: 02nd September, 2015

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

1. Whether Reporters of Local newspapers Yes/No
may be allowed to see the Judgments?

2. Whether the copies of judgment may be Yes/No
marked to Law Reporters/Journals?

3. Whether their Ladyship/Lordship wish to Yes/No

see the fair copy of the Judgment?

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
+ WRIT PETITION Nos.13798 and 20272 of 2012

%02.09.2015

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.. Petitioner

Vs.

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Counsel for respondent No.5: None appeared

<Gist :

>Head Note:

? Cases referred:

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THE HON’BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION Nos.13798 and 20272 of 2012

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Counsel for respondent No.5: None appeared

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The Court made the following:

COMMON ORDER:

The parties to both these writ petitions and the subject matter thereof are common. Hence, these writ petitions are heard and being disposed of together.

One M/s.Chaanakya Cements Limited had established its cement plant at Ganesh Pahad Village, Damar Cherla Mandal, Nalgonda District. It got itself amalgamated with the petitioner company with effect from 01.04.2003, *vide* this Court's order, dated 25.03.2004, in Company Petition No.192 of 2003. Through proceedings, dated 23.02.2005, the Government of India (Ministry of Environment and Forests) accorded in-principle (Stage I) approval for diversion of 162.56 hectares of forest land for lime stone quarrying in favour of M/s.Chaanakya Cements Limited with certain conditions stipulated therein and it was further informed that after receipt of compliance report on fulfillment of the conditions, the proposal will be considered for final approval. The relevant conditions contained in proceedings, dated 23.02.2005, of the Government of India are as follows:

“1. The User Agency shall transfer the cost of Compensatory Afforestation and penal Compensatory Afforestation to the State Forest Department.

2. The State Government shall charge the Net Present Value of the forest area diverted under this proposal from the User Agency as per the Orders of the Hon'ble Supreme Court of India dated 30.10.2002 and 01.08.2003 in I.A.No.566 in W.P.(C) No.202/1995 and as per the guidelines issued by this Ministry vide letters No.5-1/1998-FC (Pt.II) dated 18.09.2003 and 22.09.2003 in this regard.

3. All the funds received from the User Agency under the project shall be transferred to the Compensatory Afforestation Fund Management and Planning Authority (CAMPA). Till such time an appropriate Head of Account is

communicated in this regard, such funds shall be kept in the form of Fixed Deposits in the name of the concerned DFO or the Nodal Officer in any Nationalised Bank as per the guidelines issued by the Ministry of Environment and Forests dated 22.03.2004.”

As per the above reproduced conditions, the petitioner shall not only provide 162.56 hectares (Acs.162.56 guntas) of land towards compulsory afforestation (CA) besides paying the cost of CA and penal CA to the State Forest Department.

The petitioner pleaded that in order to comply with the aforementioned conditions of CA, they have acquired 191.14 hectares (Acs.472.32 guntas) of land in survey Nos.101 to 109, 113, 145 to 148, 428/2, 442, 445, 446, 472 and 478/1 of Vellatore Village, Mellacheruvu Mandal, Nalgonda District of erstwhile State of Andhra Pradesh (presently in Telangana State); that on such acquisition, they have addressed letter No.CCL/HO/2003, dated 01.05.2003, to respondent No.3 in W.P.No.20272 of 2012 (Divisional Forest Officer, Nalgonda) for inspection of the same and that accordingly, the CA land was inspected on 08.05.2003 by the Forest Department as per letter in Rc.No.277/2001-SI(S5), dated 14.05.2003. The petitioner further pleaded that to their consternation, they came to know that an extent of 94.43 hectares (Acs.233.35 guntas) from out of the proposed CA land acquired by them got submerged in Pulichintala Irrigation project; that they were left with only 96.46 hectares (Acs.238.37 guntas) of land; that in view of this un contemplated event, the petitioner addressed letter in PCIL/P&A/2007, dated 15.10.2007, to respondent No.1, wherein it requested to handover only an extent of 86 hectares (Acs.212.20 guntas) of forest land instead of 162.56 hectares (Acs.401.27 guntas) in its name, as M/s.Chaanakya Cements Limited was amalgamated with the petitioner. A map demarcating the reduced area of mining was also enclosed to the said representation.

From the pleadings of the parties, it is evident that nothing

transpired after the aforementioned letter was addressed by the petitioner. However, the respondents addressed two separate letters to the petitioner, one was dated 19.04.2012 addressed by respondent No.1 in W.P.No.13798 of 2012 and another was dated 19.06.2012 addressed by respondent No.4 in W.P.No.20272 of 2012.

In the first letter in Rc.No.27013/2003/F2(ii), dated 19.04.2012, it was stated that as per guideline 4.2(ii) of the guidelines issued under the Forest Conservation Act, 1980, where compliance of conditions stipulated in the in-principle approval is awaited for more than five years from the State Governments, the in-principle approvals would summarily be revoked; that after the revocation of the in-principle approval, if the State Government/user agency is still interested in the project, they would be required to submit a fresh proposal, which shall be considered *de novo*. Based on this guideline, respondent No.1 in W.P.No.13798 of 2012 informed the petitioner through the said letter that as it has failed to comply with the condition of providing CA land, the in-principle approval issued by the Government of India on 23.02.2005 is no more valid and the same is deemed to have been summarily revoked.

In the second letter in Ref.No.274/2001/M, dated 19.06.2012, respondent No.4 in W.P.No.20272 of 2012, while repeating the contents of the first letter, requested respondent No.3 in the said writ petition to furnish the above facts to the Government of India for necessary action and orders in the matter.

Assailing the first letter, dated 19.04.2012, the petitioner filed W.P.No.13798 of 2012. By order, dated 11.05.2012, in W.P.M.P.No.17569 of 2012, this Court granted interim suspension of the aforesaid letter and consequently, no further action has been taken by either Governments.

The petitioner filed W.P.No.20272 of 2012 assailing the second

letter, dated 19.06.2012, following the first letter, dated 19.04.2012, wherein it was directed to remove the water and power lines from the forest areas within 15 days as it failed to comply with the conditions stipulated in the in-principle approval. In other words, this letter was issued by respondent No.4 (Forest Range Officer) as a sequel to the first letter of respondent No.1 in W.P.No.13798 of 2012. This letter, dated 19.06.2012, was also stayed by this Court, by order, dated 05.07.2012 in W.P.M.P.No.25993 of 2012 and the same is subsisting as on today.

At the hearing, Mr.C.Nageswara Rao, learned counsel for the petitioner, has submitted that though the required extent of CA land was offered by the petitioner in an extent of Acs.472.32 guntas (191.14 hectares) at Vellatore Village, Mellacheruvu Mandal, Nalgonda District and respondent No.3 in W.P.No.20272 of 2012 (Divisional Forest Officer, Nalgonda) visited the area and *vide* his letter/proceedings, dated 14.05.2003, he gave clearance for the said land on being satisfied that the same is suitable for CA purpose, due to the unfortunate and unexpected development of submergence of a part of the said land under Pulichintala project, the petitioner could not comply with the condition contained in the in-principle approval issued by the Government of India and that respondent No.1 in W.P.No.13798 of 2012 has not responded to the representation, dated 15.10.2007, whereunder, the petitioner requested for acceptance of the land left after submergence and confine permission to only 86 hectares of forest land for mining stone quarry as against 162.56 hectares. He has further submitted that due to this unexpected development, the petitioner has acquired an alternative land of Acs.360.00 in Anantapur District towards CA purpose and that unfortunately, thereafter the State was divided.

Opposing the above submissions, the learned Government Pleader for Forests (TS), submitted that the petitioner is not diligent in

providing CA land and that it has been postponing to comply with the essential conditions stipulated in the in-principle approval granted by the Government on one pretext or the other.

When these cases came up for hearing on 19.08.2015, this Court *prima facie* felt that these are the cases where the dispute needs to be amicably settled having regard to the events that transpired after the in-principle approval given by the Government of India and to enable the learned counsel for both the parties to obtain appropriate instructions from their respective clients, the case was adjourned to today. After the case was last adjourned, Mr.J.Mukesh, law officer of the petitioner company, has filed affidavit, dated 02.09.2015, describing the same as reply-affidavit, wherein he has, *inter alia*, stated that if for any reason, the respondents are not willing to accept the land in Anantapur District, they may accept Acs.142.14 cents of land remained with the petitioner at Vellatore Village, Mallacheruvu Mandal, Nalgonda District and the petitioner has undertaken to provide the balance extent of CA land within the State of Talangana within a period of one year.

A perusal of the first letter, dated 19.04.2012 referred to above shows that he understood guideline No.4.2(ii) of the guidelines framed by the Government of India to the effect that if the user agency fails to comply with the conditions stipulated in the in-principle approval for more than five years, such approval would summarily stand revoked. However, a reading of the said guideline reveals that respondent No.1's understanding of the same is not correct. This guideline to the extent it is relevant reads as under:

“4.2 Two Stage Clearance of Proposals.

i).....

ii) However, in cases where compliance of conditions stipulated in the in-principle approval is awaited for more than 5 (five) years from the State Governments, the in-principle approvals would summarily be revoked. After the revocation of the in-principle approval, if the State Government/user

agency is still interested in the project, they would be required to submit a fresh proposal which shall be considered de-novo.
(Emphasis added)

.....”

It is evident from the above reproduced clause that non-compliance with the conditions stipulated in the in-principle approval would not automatically result in revocation of such approval. In case of such non-compliance, the Government of India has to necessarily pass an order revoking the in-principle approval. It is not in dispute that the Government of India has not passed any such order either before or after the impugned letters/proceedings were issued by the respondents concerned. Therefore, the premise on which, respondent No.1 in W.P.No.13798 of 2012 addressed the first letter is erroneous. As stated hereinbefore, having regard to the interim order passed by this Court in the said writ petition on 11.05.2012, the Government of India has not revoked the in-principle approval.

In the afore-noted facts and circumstances of the case, this Court needs to consider the plea of the petitioner for providing reasonable time for handing over the balance CA land. There is no gain saying the fact that the environment needs to be protected at all costs and all events. As the saying goes, “Forests precede civilization and deserts follow it”, the present state of affairs in the society truly reflects this position. Too much of industrialization without proper care for protecting the environment is destroying the forests leading to serious ecological problems. However, at the same time, the society *sans* development cannot move forward. Therefore, the countries all over the world are adopting the principle of “sustainable development”. The CA is precisely a part of this principle. Where in the course of exploitation of natural resources, such as excavation of mineral required for industrial purpose, if the forest land is destroyed, an equal extent of land needs to be provided to develop afforestation by the entrepreneurs. Any callousness or negligence in this regard, I am

afraid, would completely destroy the ecology. Therefore, there is imperative need for every industrialist to scrupulously follow this requirement of providing land for CA purpose.

If the facts of this case are closely analyzed, I find merit in the plea of the petitioner that because of two principle reasons it was unable to comply with the essential condition of providing CA land. The first is submergence of a part of the land under Pulichintala project and the second is the division of State due to which the alternative land acquired by the petitioner in Anantapur District for CA purpose proved to be of no use as it fell in outside the State of Telangana, viz., the State of Andhra Pradesh. Considering these reasons, this Court is of the opinion that due to the circumstances beyond its control, the petitioner was unable to comply with the condition of providing CA land thus far. I am, therefore, of the opinion that the petitioner deserves some reasonable accommodation.

As noted above, the petitioner is ready to handover Acs.142.14 cents of land situated in Vellatore Village, Mallacheruvu Mandal, Nalgonda District and is also prepared to acquire and handover the balance extent required to compensate for 162.56 hectares forest land within one year. As the land acquired by the petitioner at Anantapur is of no use in view of the division of the State, I feel it appropriate that respondent Nos.1 and 2 shall accept the land of Acs.142.14 cents situated in Vellatore Village, Mallacheruvu Manda, Nalgonda District, and send proposal to the Government of India for granting final approval for allotment of equal extent of forest land for mining purpose.

Within three months of receiving such proposal, respondent No.3 in W.P.No.13798 of 2012 shall consider grant of final approval for the said extent of land and communicate his decision to the petitioner and respondent Nos.1 and 2. Similarly, as undertaken by the petitioner, it shall provide the balance extent of CA land to supply the shortfall out of 162.56 hectares of mining area and on such provision, respondent

Nos.1 and 2 shall send a separate proposal for allotment of balance land. On receipt of such proposal, respondent No.3 in W.P.No.13798 of 2012 shall repeat the same process directed to be undertaken in respect of Acs.142.14 cents. If the petitioner fails to provide the balance extent of CA area within one year, the respondents shall be free to revoke the in-principle approval in respect of the balance land equivalent to the land which the petitioner failed to handover.

In the aforesaid facts and circumstances of the case, impugned letters/proceedings, dated 19.04.2012 and 19.06.2012 are set aside and both these Writ Petitions are allowed in terms of the directions given hereinbefore.

As a sequel to allowing these writ petition, the miscellaneous petitions pending in these writ petitions shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

02nd September, 2015

Note: L.R. copies to be marked.

(B/o)

GHN