

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C.) No.4697 of 2021

- Baldau Prasad Gupta S/o Ishwar Dutt Gupta Aged About 74 Years R/o Village Gudi, Tahsil Masturi, District- Bilaspur (C.G.)

---- Petitioners

Versus

1. Union Of India Through- The Secretary, Ministry Of Environment Forest And Climate Change, New Delhi
2. State Of Chhattisgarh Through- The Secretary, Department Of Forest And Climate Change, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District- Raipur (C.G.)
3. The Principal Chief Conservator Of Forest Chhattisgarh Aranya Bhawan, Sector- 19, North Block, Atal Nagar, Nawa Raipur, District- Raipur (C.G.)
4. State Level Committee Chhattisgarh Under Wood Based Industries Guidelines Through- Its Member Secretary, Aranya Bhawan Sector-19, North Block, Atal Nagar, Nawa Raipur, District- Raipur (C.G.)
5. The Divisional Forest Officer-Cum-Licensing Authority Bilaspur (C.G.)

---- Respondents

For Petitioners	– Mr. Ritesh Verma, Advocate.
For State	– Mr. Ashish Tiwari, Govt. Advocate.
For Respondent No.01/U.O.I.	– Mr. R.K. Gupta with Mr. Ashwani Shukla, Advocate.

S.B.- Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

22-11-2021

1. Heard on petition.
2. It is submitted that the petitioner is proprietor of saw mill which was granted license in the year 1994 for production of finished wood products, under the provisions of Chhattisgarh Kashtha Chiran

(Viniyam) Adhiniyam, 1984. The license has been renewed from time to time. In the recent development, the respondent No.5 has issued notice vide Annexure P-3 dated 21.10.2021, on this basis, that by the memo dated F-19-51/va/10-2/2005 dated 13.08.2021 decision has been taken that the wood industries within the aerial distance of 10 kilometers from reserved areas shall not be operated. The petitioner intends to file reply to the show cause notice and also file representation praying to the respondent to adhere to the guidelines laid down by the Supreme Court in the case of T.N. Godavarman Thirumulkpad vs Union Of India & Ors. in W.P.(C.) No.202/1995. Therefore, it is prayed that appropriate direction may be issued.

3. Learned State counsel representing respondents No.2, 3, 4 and 5.
4. Learned counsel for respondent No.1 submits that the decision has already been taken by the State Government and in accordance with the memo dated 13.08.2021, the industry of the petitioner is situated in the prohibited area. The petitioner has yet the opportunity to file reply and make representation, therefore, the petition be disposed off.
5. Considered on the submissions and perused the documents filed along with the petition.
6. The paragraph No.5, 6, 7 and 8 of the order in W.P.C. No.3874 of 2021 are as follows:-

“5.The order of the Hon'ble Supreme Court dated 05.10.2015 in the matter of T.N. Godavarman Thirumulkpad (supra) is perused. The relevant consideration with the guideline which was issued by the Hon'ble Supreme Court is reproduced hereinbelow :-

“(iii) The MoEF is authorized to issue appropriate guidelines in conformation with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to assessment of timber availability for wood-based industries and grant of license/permission to the woodbased industries including

addition of new machineries and also utilization of amounts recovered from the wood-based industries and connected matters;

(iv) Any person aggrieved by the decision taken by the SLC may file an appeal before the MoEFCC seeking appropriate relief within 60 days' time. If, for any reason, any person is aggrieved by the orders so passed in the appeal, he may prefer an appropriate petition/application/appeal before the appropriate forum/Court for grant of appropriate relief(s)."

6. Pursuant thereto, the MoEFCC issued a notification on 11.11.2016 (Annexure P/1), the relevant part of restriction on the location of Wood Based Industries was resolved as under :-

"7. Restriction on location of wood based industries.

(i) In the North Eastern States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and Sikkim the wood based Industries shall be permitted to be established within the Industrial estates.

(ii) In the State other than the afore-mentioned North Eastern States, wood based industries shall ordinarily be not allowed to be established within ten kilometers aerial distance from the boundary of nearest notified forests and protected areas. The State Level Committee for the reasons to be recorded in writing and after obtaining prior approval of the Central Government in the Ministry of Environment, Forest and Climate Change may permit to establish/operate a wood based industry at an aerial distance less than 10 kilometers from the boundary of a notified forest or a protected area."

7. Subsequently, this notification was further amended on 11.09.2017 which reads as under:-

"5. The entries under Para-7 (ii) of these Guidelines are substituted with the following:-

(a) In the States/UTs (other than North Eastern States), in respect of distance from the boundary of nearest notified forests or protected areas, wood based industries shall be allowed to operate as per state-specific order/approval of the Hon'ble Supreme Court/ Hon'ble High Court of the concerned state/Central Empowered Committee;

Or, beyond ten kilometers of aerial distance from the boundary of nearest notified forests or protected areas, excluding roadside/railway side/canal side plantations, whichever is less.

(b) A Wood Based industry can be established in an industrial

Estate or a Municipal area, irrespective of the aerial distance from the boundary of nearest notified forest or protected area.”

8. The reading of the aforesaid direction of the Hon'ble Supreme Court and the notification show that the prima facie the MoEF was authorised by the direction of the Hon'ble Supreme Court to issue the guideline. The State Government thereafter has issued the notification on 13.08.2021 (Annexure P/2) wherein aerial distance of 10 kms from the forest has been fixed to put up the Wood Based Industry. Simply for the reason that the show cause notice has been issued prior to the said notification, the show cause notice dated 05.08.2021 and 16.08.2021 (Annexure P/3) cannot be said to be premeditated, otherwise also, it is for the State to ensure the protection of the forest and to establish Wood Based Industry at a particular distance from the forest.”
7. As per the submissions, the petitioner has to file reply to the show cause notice. The petitioner is also granted liberty to file representation praying for consideration on relaxation as has been permitted in the case of T.N. Godavarman Thirumulpad (supra). The respondent authorities are directed to consider on the reply and the representation filed by the petitioners and take decision in the same in accordance with law and also in accordance with the guidelines, which have been issued by the Hon'ble Supreme Court in the case of T.N. Godavarman Thirumulpad (supra).
8. In the meanwhile, it is ordered that no coercive action shall be taken against the petitioner until the final order on the show cause notice is passed by the respondent Authorities.
9. The respondents are also directed to take decision on the representation of the petitioner at the earliest.
10. With these observations, this petition is disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge