

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 5361 of 2021**

Santosh Kumar Kesharwani S/o Jethu Ram Kesharwani, Aged About 47 Years R/o. Katoli Chowk, Champa, District Janjgir - Champa Chhattisgarh

---- Petitioner**Versus**

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

----Respondents

For Petitioner	:	Mr. Vivek Mishra on behalf of Mr. Manoj Paranjpe, Advocate
For Respondent No.1	:	Mr. Tushar Dhar Diwan, Advocate on behalf of Asstt. S.G.
For State	:	Mr. Chandresh Shrivastava, Dy. A.G.

Hon'ble Mr. Justice P. Sam Koshy
Order on Board

21/12/2021

1. This writ petition has been filed by the petitioner seeking following reliefs :-

“(i) That, the Hon'ble Court may issue appropriate writ/writs order/orders, direction/directions, quashing clause 7 (ii) of the impugned 2016 Guidelines dated 11.11.2016 issued by Respondent No.1 (Annexure P/1) and consequential notification bearing no. F 19-51/Va/ 10-2/2005 (Part) dated 13.08.2021 (Annexure P/2) issued by respondent No.2 and show cause notice dated 18.10.2021 (Annexure P/3).

(ii) That, the Hon'ble Court may issue appropriate writ directing the SLC/expert committee (Respondent No. 4) to decide the optimum distance for establishment of saw mills from protected and notified area for the State of Chhattisgarh as directed by the Hon'ble Supreme Court in the matter of WPC No. 202/95 T.N. Godavarman Thirumulpad vs. Union of India.

(iii) That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case and the Hon'ble Court may kindly be pleased to call for the decision taken by the SLC/Expert Committee (Respondent No.4) in the year 2016-17 which relates to the recommendation of the distance and establishment of the Saw Mills.”

2. Learned counsel for the petitioner submit that pursuant to the guideline issued in the case of **T.N. Godavarman Thirumulpad vs. Union of India & Ors. in WPC No. 202/98**, initially a notification was made by the Expert Committee and thereafter by the State Government which had fixed the aerial distance of 10 kms and within the periphery of forest, the operation of the Wood Based Industries have been prohibited. It is contended that pursuant thereto the show cause notice was issued by the State on 18.10.2021 to the petitioner. It is further contended that as per the guideline issued by the Ministry of Environment and Forest and Climate Change (hereinafter referred to as 'MoEFCC'), the restriction on location of wood based industries as per clause-7(ii), the 10 kms of aerial distance from the boundary of nearest notified forests and protected areas was notified. It is stated that as per the Hon'ble Supreme Court's guideline, it was for the SLC who should have decided the optimum distance on which such restriction can be placed. Since the notice is served with decision

already arrived at hearing would be a mere formality. As such, the notification of the Union of India dated 11.11.2016 (Annexure P/1) and the consequential notification dated 13.08.2021 (Annexure P/2) and the show cause notice dated 18.10.2021 be quashed as it is against the Hon'ble Supreme Court guideline and is issued arbitrarily.

3. Per contra, learned State counsel oppose the argument and would submit that the directions have been issued pursuant to the order passed by the Hon'ble Supreme Court on 05.10.2015 and as per the guideline, the MoEF is authorised to issue the appropriate guideline to decide the distance for establishing a Wood Based Industry near a forest. It is submitted that further the order purport that the person aggrieved by the decision taken by the SLC may filed an appeal before the MoEFCC seeking appropriate relief and thereafter may approach the concerned Court, therefore this petition against show cause notice would not be maintainable.
4. Having heard the learned counsel for the parties on admission.
5. The order of the Hon'ble Supreme Court dated 05.10.2015 in the matter of **T.N. Godavarman Thirumulpad** (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 wood-based 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. In the instant case, the show cause notice has been issued subsequent to the notification by the State on 13.08.2021, therefore, on this premises alone, the prejudice cannot be inferred, 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.

9. Since at present, the reply has not been filed by the petitioner to the show cause notice, therefore it is for the respondent authority to take a final decision on this issue. The petitioner is also at liberty to raise the grounds before the respondent authority by filing reply within a period of 15 days from the date of receipt of copy of this order in respect of those petitioners, where the reply has not been filed. The respondent authority, it is expected that, would hear the case of the petitioner and thereafter decide it in accordance with law and the guideline which is issued by Hon'ble Supreme Court.
10. In the meanwhile, it is directed that no coercive action shall be taken against the petitioner till final order on show cause notice is passed. The case of the petitioner should be decided expeditiously.
11. With the aforesaid observation/ direction, the writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved