

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3518 OF 2020

- 1) S.N. Timber Mart Saw Mill,
through its Partner/Proprietor,
Shriniwas S. Buggawar, Chandrapur.
- 2) M/s. Kiran Saw Mill,
through its Partner/Proprietor,
K.S. Chandel, Chandrapur.
- 3) M/s. Patel & Brother Saw Mill,
through its Partner/Proprietor,
Gopalbhai A. Patel, Chandrapur.
- 4) M/s. Hansraj Dana Patel & Co.,
through its Partner/Proprietor,
Purushottam G. Patel, Chandrapur.
- 5) A.K. Patel Saw Mill,
through its Partner/Proprietor,
Ashok A. Patel, Chandrapur.
- 6) Nursing Bhagwan Saw Mill,
through its Partner/Proprietor,
Krishna R. Mistri, Dhule.
- 7) Kalbhairav Saw Mill,
through its Partner/Proprietor,
Ramesh P. Narvekar, Kolhapur.
- 8) Ashapura Saw Mill,
through its Partner/Proprietor,
Lalji K. Patel, Kolhapur.
- 9) Vaibhavi Saw Mill,
through its Partner/Proprietor,
Ramdas M. Dalavi, Kolhapur.

- 10) Bhagwati Saw Mill,
through its Partner/Proprietor,
Jivraj D. Patel, Kolhapur.
- 11) Jalaram Saw Mill,
through its Partner/Proprietor,
Dahyalal N. Patel, Kolhapur.
- 12) Patel Saw Mill,
through its Partner/Proprietor,
Gopal A. Patel, Kolhapur.
- 13) M/s. Dattaprasad Saw Mill,
through its Partner/Proprietor,
Dayanand K. Shenavi Kolhapur.
- 14) Swami Samarth Saw Mill,
through its Partner/Proprietor,
Rajendra J. Yedave, Kolhapur.
- 15) Anand Saw Mill,
through its Partner/Proprietor,
Ramchandra J. Aroskar, Kolhapur.
- 16) Saraswati Saw Mill,
through its Partner/Proprietor,
Ganesh K. Sutar, Kolhapur.
- 17) Jai Hind Wood Works,
through its Partner/Proprietor,
Dilip G. Patel, Kolhapur.
- 18) Surya Vijay Saw Mill,
through its Partner/Proprietor,
Pethalal D. Patel, Kolhapur.
- 19) Ganesh Saw Mill,
through its Partner/Proprietor,
Vilas L. Kadav, Kolhapur.
- 20) Radha Krishna Saw Mill,
through its Partner/Proprietor,
Vinayak R. Telang, Kolhapur.

- 21) M/s. Bhairavnath Saw Mill,
through its Partner/Proprietor,
Subhash K. Sutar, Kolhapur.
- 22) Shivkumar Saw Mill,
through its Partner/Proprietor,
Jagdish K. Karmakar, Kolhapur.
- 23) Vaibhav Saw Mill,
through its Partner/Proprietor,
Hemlata V. Kuveskar, Kolhapur.
- 24) M/s. Bhaurao & Sons,
through its Partner/Proprietor,
Bhaskar B. Jadhav, Kolhapur.
- 25) Abhyankar Saw Mill,
through its Partner/Proprietor,
Vrunda S. Abhyankar, Kolhapur.
- 26) Shri Mahakali Saw Mill,
through its Partner/Proprietor,
Subhash A. Shinde, Kolhapur.
- 27) Vishvakarma Saw Mill,
through its Partner/Proprietor,
Dhondur S. Sutar, Kolhapur.
- 28) Hindustan Saw Mill,
through its Partner/Proprietor,
Laherikant P. Patel, Kolhapur.
- 29) M/s. Mamta Saw Mill,
through its Partner/Proprietor,
Chhagan S. Dayani, Kolhapur.
- 30) Dattaprasad Saw Mill,
through its Partner/Proprietor,
Kashinath Y. Patil, Kolhapur.
- 31) Someshwar Saw Mill,
through its Partner/Proprietor,
Sanjai K. Vaidya, Kolhapur.

- 32) M/s. Ganesh Timber Mart,
through its Partner/Proprietor,
Dinesh N. Patel, Satara.
- 33) Dattaprasad Saw Mill,
through its Partner/Proprietor,
Karamshi K. Patel, Kolhapur.
- 34) Shri Bhavani Timber Mart,
through its Partner/Proprietor,
Khimji W. Patel, Kolhapur.
- 35) Gayatri Saw Mill,
through its Partner/Proprietor,
Ramjibhai J. Patel, Kolhapur.
- 36) Shiv Shankar Saw Mill,
through its Partner/Proprietor,
Hiralal R. Sutar, Kolhapur.
- 37) Bhairavnath Saw Mill,
through its Partner/Proprietor,
Rajendra A. Nage, Kolhapur.
- 38) Bismmilla Saw Mill,
through its Partner/Proprietor,
Shamshuddin I. Mulla, Kolhapur.
- 39) Bharat Saw Mill,
through its Partner/Proprietor,
Shantabai S. Sutar, Kolhapur.
- 40) Lata Saw Mill,
through its Partner/Proprietor,
Lata Ashok Singi, Nashik.
- 41) Sharma Saw Mill,
through its Partner/Proprietor,
Roshan B. Sharma, Nashik.
- 42) Pandurang Saw Mill,
through its Partner/Proprietor,
Manikrao B. Chavan, Nashik.

- 43) Vishvakarma Saw Mill,
through its Partner/Proprietor,
Haribhau B. Survase, Nashik.
- 44) Shiv Shakti Saw Mill,
through its Partner/Proprietor,
Sanjay S. Parkhe, Nashik.
- 45) Vishvakarma Saw Mill,
through its Partner/Proprietor,
Gangadhar R. Raut, Nashik.

.... **PETITIONERS**

VERSUS

- 1) The Regional Officer,
Integrated Regional Office,
Ministry of Environment, Forest and
Climate Change, Nagpur.
- 2) State Level Committee Maharashtra,
through its Member Secretary, Van
Bhavan, Nagpur, District – Nagpur.
- 3) State of Maharashtra,
through its Chief Secretary,
Mantralaya, Mumbai-32.
- 4) Principal Chief Conservator of Forests
(Head of Forest Force), Van Bhavan,
Nagpur.
- 5) Adv. Shri Manish Chandumal Jeswani,
Aged – Major, Occupation – Advocate,
R/o 301, Ramdev Amrut Apartment,
Near Railway Crossing, Manish Nagar,
Nagpur, District – Nagpur.
- 6) Union of India,
through its Secretary, Ministry of
Environment, Forest and Climate
Change, New Delhi.

- 7) Shri V.N. Ambade,
Aged about – Major,
Occupation – Service, IFS, posted as
Regional Officer in Integrated Regional
Office, Ministry of Environment, Forest
and Climate Change, Ground Floor,
East Wing, New Secretariat Building,
Civil Lines, Nagpur – 440001
Email – apccfcentral-ngp-mef@gov.in. RESPONDENTS
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Mr. F.T. Mirza, Counsel for the petitioners,
Mr. U.M. Aurangabadkar, ASGI for respondents 1 & 6,
Mr. D.P. Thakre, Addl.G.P. for respondents 2 to 4,
Mr. A.B. Moon, Counsel for respondent 5,
Ms. N.A. Biala, Counsel for respondent 7.

CORAM : ROHIT B. DEO, J.
DATED : 6th MAY, 2022

ORAL JUDGMENT :

Heard. **Rule.** Rule made returnable forthwith. With consent, the petition is heard finally.

2. The petitioners, who are engaged in the business of cutting and conversion of timber at their respective sawmills, assail the order dated 30-10-2020 rendered by respondent 1-The Regional Officer, Integrated Regional Office, Ministry of Environment Forest and Climate Change, Nagpur, whereby the decision dated 23-7-2018 taken by the State Level Committee (SLC) granting permission to add 42” additional Horizontal Band Saw (HBS) to the existing 50 sawmill licences and the decision

dated 15-11-2019 whereby the SLC upheld the decision dated 23-7-2018, are set aside on the premise that the existing capacity of sawmills is enhanced in violation of the orders passed by the Hon'ble Supreme Court of India.

3. I have heard the learned Counsel for the petitioners Mr. F.T. Mirza, the learned Assistant Solicitor General of India for respondents 1 & 6 Mr. U.M. Aurangabadkar, the learned Additional Government Pleader for respondents 2 to 4 Mr. D.P. Thakre, the learned Counsel for respondent 5 Mr. A.B. Moon and the learned Counsel for respondent 7 Ms. N.A. Biala.

4. Entertaining a Public Interest Litigation in *T.N. Godavarman Thirumulpad v. Union of India & Others, 2015(13) Scale 848*, the Hon'ble Supreme Court has, *inter alia*, issued several directions in the interest of protecting the environment. Some of the directions seek to regulate the functioning of the sawmills, which are engaged in cutting timber.

5. The Hon'ble Supreme Court directed the constitution of SLC headed by the Principal, Chief Conservator of Forest (PCCF) and authorised the Ministry of Environment and Forest (MoEF) to issue

appropriate guidelines in conformity with the orders and directions issued by the Hon'ble Supreme Court and the existing guidelines, relating to assessment of timber availability for wood-based industries and grant of licence/permission to the wood-based industries including addition of new machineries. The Hon'ble Supreme Court directed that any person aggrieved by the decision taken by the SLC shall be entitled to prefer an appeal before the MoEFCC seeking appropriate relief within sixty days. A person aggrieved by the decision in appeal may prefer an appropriate petition/application/appeal before the appropriate forum/court for grant of appropriate relief. The Hon'ble Supreme Court permitted the MoEFCC to condone the delay, if any, in filing an appeal, if sufficient cause is made out.

6. The order impugned is rendered by respondent 1, as the appellate authority and the decisions taken by the SLC are set aside in the appeal which is preferred by respondent 5, who claims to be an environment activist interested in ensuring true and faithful compliance of the directions issued by the Hon'ble Supreme Court in *T.N. Godavarman Thirumulpad v. Union of India (Supra)*. It is indubitable that the order impugned adversely affects the interest of the petitioners-sawmills. In the 11th meeting of the SLC held on 23-7-2018, the applications preferred by the petitioners seeking permission for

commissioning HBS in the existing sawmills whereat Vertical Band-Saws (VBS) are installed, are allowed.

7. The petitioners emphasize that the decision to permit installation and commissioning of HBS was taken by the SLC after due consideration of the reports submitted by the concerned forest officials and the guidelines dated 15-9-1994 issued by the Government of Maharashtra. The petitioners further emphasize that the meeting of the SLC was attended by the Head of the Forest Force, Additional PCCF (Protection), Chief Conservator of Forest (CCF), the representative of the Regional Office of the MoEFCC, Nagpur, the Managing Director of SCRDC and the decision was unanimous. The petitioners contend that the representative of the MoEF, who was present in the meeting, concurred with the decision.

8. The petitioners contend that pursuant to the decision of the SLC permitting commissioning of HBS, the petitioners deposited the requisite fees and commissioned the HBS. Appropriate entries were recorded in the licences.

9. It is a matter of record that although in an appeal preferred by respondent 5, respondent 1 set aside the permissions granted by the SLC

in favour of the petitioners, who installed HBS at the existing sawmills, the petitioners were neither made parties to the appeal, nor were the petitioners noticed muchless heard by respondent 1, who set aside the permissions granted by the SLC in favour of the petitioners.

10. The petitioners are assailing the order impugned on the ground that the principles of natural justice are flagrantly violated and that the order impugned is even otherwise flawed. Per contra, respondent 5 at whose behest the order impugned is rendered, has strenuously submitted that the petitioners cannot be heard alleging violation of the principles of natural justice and that on merits the order impugned is unexceptionable. The learned Assistant Solicitor General of India Mr. U.M. Aurangabadkar has, with his usual fairness, not joined issues with the submission of the learned Counsel for the petitioners Mr. F.T. Mirza that the petitioners were entitled to an opportunity of hearing.

11. I may note that while respondent 1 is impleaded as the appellate authority, the petitioners have, by amending the petition, impleaded Mr. V.N. Ambade, who is author of the order impugned as respondent 7. The petition is amended to incorporate certain averments which seek to demonstrate lack of faith in respondent 7, who is the author of the order impugned, and that the petitioners are entitled to an assurance

from the Union of India that the petitioners-sawmills' owners shall not victimized. An exhaustive affidavit-in-response running into as many as 67 pages comprising 55 paragraphs is filed by respondent 1-appellate authority seeking to justify the order impugned. The appellate authority has further filed an affidavit dated 04-1-2022 pursuant to his impleadment in the petition as respondent 7. The said affidavit is filed by the concerned officer.

12. The author of the order impugned, while not disputing that while setting side permissions granted by the SLC in favour of the petitioners, no opportunity of hearing to the petitioners was given, justifies the denial of opportunity of hearing thus :

“3. It is submitted that even if the petitioners had been called for hearing, it would not have made any difference in the order as the SLC clearly violated the Hon’ble Supreme Court’s orders dated 12-12-1996, 04-3-1997 & 05-10-2015, the MoEF&CC Guidelines/ National Forest Policy, 1988 and the provisions of Maharashtra Forest Rules, 2014.

4. It is further submitted that the respondent No.2 (the SLC) and the respondent No.4 (the PCCF) have submitted their replies to the appeal filed by the respondent No.5. Neither of these respondents raised any objection for not including the petitioners as a necessary party to the said appeal.”

13. Respondent No.5 at whose instance the permissions granted to the sawmills are set aside in appeal also echoes the views of the author

of the order impugned thus :

“47. Therefore, in these set of facts and circumstances the argument of violation of natural justice, principles of audi alteram partem holds no water. It is submitted that, based existing licences and same cannot be granted without Timber Availability Report.”

14. I have no hesitation in rejecting the stand of respondent 1 and the complainant-respondent 5, that it would have been an empty and ritualistic formality if the petitioners were to be heard, and therefore, no interference in the order impugned is necessary. It is further difficult to accept the submission that since the respondents who appeared in appeal, to-wit respondent 2-SLC and respondent 4-PCCF did not raise any objection to the failure of the complainant-respondent 5 to implead the petitioners herein, no exception can be taken to the order impugned on the touchstone of the principles of natural justice. It is the petitioners who are adversely affected, and the fact that the respondent 2-SLC and respondent 4-PCCF did not, on behalf of the petitioners, raise the issue of their impleadment, is irrelevant. The first respondent was exercising the appellate power conferred in view of the directions issued by the Hon'ble Supreme Court. The decision of the SLC whereby the petitioners are permitted to install HBS in the sawmills, was challenged by respondent 5 claiming to be an activist, without

impleading the petitioners. Pursuant to the permissions granted by the SLC, the petitioners have, as a fact, installed the HBS. The least which was expected from respondent 1, who was exercising quasi-judicial power, was to notice and hear the petitioners since the ultimate order purports to set aside the permissions granted in favour of the petitioners to install the HBS in the sawmills.

15. In the context of the submissions canvassed on behalf of the author of the order impugned and the complainant, that the breach of the principles of natural justice has not caused prejudice, it would be apposite to refer to the decision of the Hon'ble Supreme Court in ***State of U.P. v. Sudhir Kumar Singh and Other, 2020 SCC OnLine SC 847.*** The Hon'ble Supreme Court approved the view of the High Court that before cancellation of the award of tender, the successful tenderer before the High Court ought to have been heard. The Hon'ble Supreme Court, took a resume of the earlier decisions in the context of the submission that the breach of the principles of natural justice has not caused prejudice, and summarised its analysis of the earlier decisions thus :

“39. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The

breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

16. If the factual matrix is considered on the touchstone of the articulation supra, it is obvious that the petitioners have suffered prejudice. It is not even the case of the contesting respondent that the petitioners have not disputed the case against them either on the principle of non-traverse or express admission or estoppel or acquiescence or waiver. Indeed there was no occasion for the

petitioners to respond to the averments and the grounds in the memo of appeal preferred by the complainant-respondent 5 since the petitioners were not noticed. I am satisfied, that the breach of the *audi alteram partem* rule has seriously prejudiced the petitioners and the order impugned is manifestly illegal.

17. In view of the discussion supra, I have no option except to set aside the order impugned.

18. However, it is made abundantly clear, that nothing observed in the order be construed as an expression on merits of the appeal, which will have to be reheard after granting an opportunity of hearing to the petitioners. Considering that the author of the order impugned has vehemently defended the order impugned and particularly the denial of opportunity to the petitioners is explained and justified on the premise that even had such opportunity being granted, it would not have made any difference in as much as the SLC clearly violated the Hon'ble Supreme Court's orders dated 12-12-1996, 04-3-1997 & 05-10-2015, the MoEF&CC Guidelines/National Forest Policy, 1988 and the provisions of Maharashtra Forest Rules, 2014, it would be appropriate if the appeal is heard by any authorised officer other than the author of the order impugned.

19. The petition is allowed.

20. The order impugned dated 30-10-2020, passed by the Regional Officer, Integrated Regional Office, Ministry of Environment Forest and Climate Change, Nagpur (Annexure K) and the consequential orders are quashed and the matter is remitted for fresh hearing after giving due opportunity to all the stakeholders. However, respondent 6-Union of India is directed to assign the hearing to any authorised officer other than the officer who has passed the order impugned. The needful shall be done within the next ninety days.

21. The prayer for direction to pay compensation is rejected with liberty to the petitioners to avail remedy under the civil law, if so advised.

JUDGE

adgokar