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W.P.No.24883 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2022

CORAM

THE HONOURABLE MR JUSTICE N.SATHISH KUMAR

W.P.No.24883 of 2012

P.Saraswathi, Proprietor,
M/s Dhanalakshmi Saw Mill,
No.1/32/48, Mallikuntham Main Road,
Mecheri, Mettur Taluk,
Salem Distrit 636 453

... Petitioner

Vs.

1. The District Forest Officer,
Salem Division, Salem,
Salem District.
2. The Junior Engineer
(Operation and Maintenance) East,
TANGEDCO, Mecheri, Salem District.
3. The Assistant Executive Engineer
(Operation & Maintenance),
TANGEDCO, Samballi, Mettur Dam,
Salem District.
4. The Member Secretary,
Central Empowered Committee,
II Floor, Chanakya Bhavan,
Chanakyapuri, New Delhi.

... Respondents



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Prayer: Writ Petition filed under Article 227 of Constitution of India seeking to issue a Writ of Certiorari, calling for the records on the file of the respondents relating to the impugned orders: a. Se.Mu.Aa.No.9405/2012/T dated 13.07.2012 passed by the first respondent; b. impugned order letter No.31/JE/O & M (East)/Mechery/K.Thani/2012 dated 10.08.2012 passed by the second respondent; c. The impugned order bearing reference No.AEE/O&MSam/k.Thani No.168/12 dated 05.09.2012 passed by the third respondent and quash the same.

* * *

For Petitioner : Mr.T.Saikrishnan

For Respondents : Mr.Dr.T.Seenivasan,
Spl. Gov.Pleader(Forest) for R1

Mr.Syed Sibghatulla for RL2 and R3

No appearance for R4

ORDER

This Writ petition has been filed to quash a) the impugned order in Se.Mu.Aa.No.9405/2012/T dated 13.07.2012 passed by the first respondent; b) impugned letter No.31/JE/O & M (East)/Mechery/K.Thani/2012 dated 10.08.2012 passed by the second respondent; c) The impugned order in No.AEE/O&MSam/k.Thani No.168/12 dated 05.09.2012 passed by the third respondent.



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2. The case of the petitioner in brief:

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The petitioner started a Saw Mill in the name of M/s Dhanalakshmi Saw Mill in the year 1975. Subsequently, as per the notification issued by the Central Empowered Committee, New Delhi, the petitioner obtained clearance certificate from above said Committee and based on the clearance certificate, the Principal Chief Conservator of Forests had issued license to run the Saw Mill for the period from 2011 to 2015, vide order dated 29.07.2011. Thereafter, the petitioner applied to raise the Horse Power from 15 HP to 60 HP to the Saw Mill by producing no objection certificate dated 19.10.2011 obtained from first respondent and based on that, the second respondent sanctioned 60 HP electricity power to the petitioner's connection No.04-108-003-162, vide order dated 19.10.2011.

2.1. While that being so, the first respondent, vide impugned order dated 13.07.2012, has cancelled the no objection certificate dated 19.10.2011 stating that, as per the advice of the Hon'ble Apex Court, if the Horse Power of the electricity connection is raised, large number of trees would be cut down and hence, only after concurrence obtained from the Central Empowered Committee, New Delhi, the Horse Power can be raised.



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2.2. According to the petitioner, the Central Empowered Committee, New Delhi, had already issued clearance Certificate for getting 60HP electricity. Therefore, without verifying the above fact, the impugned order was issued. Further, the second respondent, vide order dated 10.08.2012, has directed the petitioner to apply for reducing the Horse Power of Electricity connection, within 7 days. The petitioner made a representation dated 18.08.2012, stating that it is not possible to reduce the Horse Power and only after obtaining 60 HP electricity connection, she invested more than Rs.15,00,000/- to install a Trolley machinery and she imported timber to the tune of Rs.50 Lakhs and it is yet to cut down into small pieces. But, the third respondent, without considering the above fact, has rejected the representation, vide order dated 05.09.2012. Hence this writ petition.

3. The contentions raised in the counter affidavit filed by the first respondent is briefly as follows.

The Hon'ble Supreme Court of India in W.P.(C) No.202/1995, vide order dated 30.10.2002, held as follows.

“ No State Government or Union Territory shall permit unlicensed saw mills, veneer or plywood industry to operate and they are directed to close all such unlicensed units forthwith.



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No State Government or Union Territory will permit the opening of any saw mills, veneer or plywood industries without prior permission of the Central Empowered committee. The Chief Secretary of each state will ensure strict compliance of this direction, There shall also be no relaxation of rules with regard to the grant of license without previous concurrence of the Central Empowered Committee.

It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licenced."

3.1. The Central Empowered Committee, New Delhi, in its minutes of the meeting held on 12.05.2011, has decided that the cases of post 30th October 2002, wood based industries will be considered, only after assessment of timber availabilities from all sources in the State of Tamil Nadu qua timber requirement of existing units is completed. The Tamil Nadu Forest Department has conducted the wood balance study by utilizing the services of Madras School of Economics, Chennai and the study report has also been sent to the said Central Empowered Committee. The State Level Committee in the meeting held on 13.12.2011, was pleased to resolve to get orders from the Central Empowered Committee for considering the applications started after 30.10.2022. The respondents received 395 applications relating to post 30.10.2002 and are under examination.



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3.2. The first respondent issued no objection certificate for enhancing horse power electricity from 16 HP to 60 HP, vide order dated 19.10.2011 to the petitioner, based on the representation in a routine manner. The petitioner by virtue of enhanced power, sawn large number of timber. Subsequently, the above no objection certificate was withdrawn vide order dated 13.07.2012 and the petitioner was directed to make application to the Central Empowered Committee for such enhancement of Power. The second respondent, vide order dated 10.08.2012, informed the third respondent to reduce the horse power of the petitioner's saw mill.

3.3. The sawmills functioning as on 30.10.2002 is being regularized by issuing licence with concurrence of the Central Empowered Committee and as per Tamil Nadu Regulation of Wood Based Industries Rules, 2010, no license is issued for any sawmill after 30.10.2002. The regulation of sawmills was brought in with reference to indiscriminate felling of trees and sourced and availability of timber in the State. If additional horsepower is granted, it will defeat the purpose of order of the Hon'ble Supreme Court of India.



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3.4. The Central Empowered Committee, in application No.278, vide order dated 25.02.2004, has held as follows,

The Central Empowered Committee is of the view that use of imported timber in place indigenous timber from natural forest specially for manufacturing face veneer, which requires higher girth timber will help in conservator of forests. However, permitting additional sawing capacity in the State of Rajasthan for the purpose is not desirable, as the assessment of capacity of existing wood based units qua timber availability has not been completed and it has not been established that the timber available is more than the capacity of the existing wood based industries. It would, therefore, be appropriate that for the time being, while granting permission for licence to new wood based units, based on imported timber, the license of the existing wood based units having equivalent sawing capacity is asked to be surrendered, so as to maintain the existing capacity of the saw mills in the State.

In view of the above, Central Empowered Committee hereby permits grant of license to M/s Greenply Industries Limited for installation of a vertical and a horizontal saw machine and two slicers on the condition that the State of Rajasthan will grant such a license only after the license of existing saw mill(s) having equivalent sawing capacity is surrendered anywhere in the State on behalf of the applicant. With the above order, application No.278 is disposed of.

3.5. The basic point is that the sawmills shall function only with the horsepower as on 30.10.2002. The sawmills functioning as on 30.10.2002 are under regularization process as per the orders of the Apex Court. At this



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point of time, the horse power of particular unit cannot be enhanced, which will affect the forest/trees in the State and also defeat the object for which the order of the Apex Court was passed. The contention of the petitioner that she invested large amount for developing infrastructure is not justifiable, as it is a fact that every development of infrastructure of a sawmill result in sawing of trees/timber. Therefore, the writ petition is liable to be dismissed.

4. The contentions of third respondent in the counter affidavit is briefly as follows.

The no objection certificate issued to raise Horsepower from 15HP to 60 HP by the first respondent was withdrawn, vide order dated 13.07.2012 and also directed the second respondent to reduce the load to the existing level to the petitioner. The above order is still in force, Hence the second and third respondents cannot act against the above order and as such, the additional load already granted to the petitioner is liable to be reduced.

5. The learned counsel for the petitioner submitted that already, the Central Empowered Committee has issued clearance certificate and inview



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of the same, the petitioner was permitted to transport imported wood by the Forest Department. Without this permission, this kind of wood cannot be cut into small pieces, within the 15HP electricity power and hence it necessary to raise the Horsepower to 60 HP. He further argued that, on one hand, the forest department has permitted the petitioner to transport the wood in the above said manner and on the other hand, directed to reduce the Horse Power of electricity. The learned Counsel further submitted that, since the petitioner purchased foreign imported wood, the question of cutting the wood grown India and causing damage to the forests as well as to the environment, will not arise. Hence, the impugned orders are liable to be quashed, and the petitioner may be granted 60 HP electricity to run her sawmill.

6. The learned Special Government Pleader appearing for the first respondent and the learned counsel for the second and third respondents submitted that the Government of Tamilnadu, has issued a Notification dated 04.03.2020, by which, made certain amendments to the Tamil Nadu Regulation of Wood Based Industries Rules. The relevant amendments made to Rule 3 is extracted hereunder.



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3. After rule 3, as so amended, the following rules shall be inserted, namely:-

3-A State Level Committee:-

(1) the Government shall constitute a State Level Committee to perform the functions stipulated under rule 3-B.

(2) The Committee shall consists of the following

- (i)..**
- (ii)..**
- (iii)...**
- (iv)...**
- (v)...**
- (vi)..**
- (vii)..**

(3) ...

(4)..

(5)..

3-B. Powers and functions of the Committee:- The Committee shall perform the following functions, namely

- a) assess the availability of timber in the State by way of appropriate study on demand and supply as and when it decides and shall devise suitable mechanism for sustainable use of timber in a way that does not affect the forests of the area adversely.
- b) approve the name of wood based industries which may be considered for grant of fresh licence or enhancement of the existing licensed capacity in case the Committee is satisfied that timber is available legally for the said new Wood Based Industries, such as, trees outside forests, forests, etc.
- c) ensure that the amount lying with Tamil Nadu Forest Department as recovered from Wood Based industries is utilized for the purpose of afore station only.
- d) examine and make appropriate recommendations or any other matter referred by the Government to the Ministry of Environment, Forest and Climate change.



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Therefore, the respondents have no power to raise the Horsepower and as per the above notification, only the State Empowered Committee is the authority and having power to consider the case of the petitioner. Hence the writ petition is liable to be dismissed.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents. I have perused the materials on record.

8. It is an admitted fact that originally, the petitioner was granted licence with 15HP electricity to run saw mill with the concurrence of the Central Empowered Committee. Subsequently, on the basis of No objection certificate given by the first respondent, the second and third respondents increased the electricity power from 15 HP to 60 HP. However, it is revealed from the counter affidavit of the second and third respondents that at the time of effecting additional load, an agreement in Form-7 was entered into between the petitioner and the TANGEDCO, wherein, at para-11, it is stated as below.

“ The agreement shall be read and constituted as subjects in all respects to provision of applicable Act Regulations as noted in distribution code and supply code and of any modification or reencurant there of for the time



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being in force there under so far as the same respectively may be applicable and subject to the condition of approved from time to time”.

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9. Further more, as per the order of the Hon'ble Supreme Court dated 30.10.2002 in W.P.(C)No.202/1995, regularization of all sawmills, functioning as on 30.10.2002, are under process. Hence, pursuant to the order of the Apex Court as well as the guidelines of the Central Empowered Committee, no objection certificate issued already by the first respondent, to increase the Horsepower for the petitioner's sawmill, was withdrawn.

10. It is to be noted that, the State of Tamil Nadu has issued a Notification dated 04.03.2022, amending the Rules to the Tamil Nadu Regulation of Wood Based Industries Rules 2010. As per the amended Rule 3-A, the Government shall constitute a State Level Committee to perform the functions stipulated under Rule 3-B. Further, as per the amended Rule 3-B(b), only the said Committee has power to approve the name of wood based industries which may be considered for grant of fresh licence or enhancement of the existing licensed capacity, in case the Committee is satisfied that timber is available legally for the said new Wood Based Industries, such as trees outside forests, forests etc. Therefore,



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now, the issue with regard to granting license and extending Horsepower, has to be dealt with only by the State Level Committee constituted and the petitioner taking advantage of the no objection certificate already issued to increase the Horsepower, cannot ask the respondents not to reduce the Horsepower. However, it is well open to the petitioner to apply for fresh license for enhancement of Horsepower through the State Level Committee constituted under the amended Tamil Nadu Regulation of Wood Based Industries Rules, 2010 and only the State Level Committee has to get required clearance from the Central Empowered Committee and to take decision for granting license for 60 HP. Therefore, this Court do not find any fault on the impugned orders passed by the respondents and the same does not warrant any interference by this Court. Accordingly, the petitioner is directed to approach the State Level Committee, as per law.

11. At this juncture, the learned counsel for the petitioner submitted that, since the petitioner has imported timber to cut down into small pieces, getting license with increased 60HP is not required. The issue, whether licence is necessary or not for the imported timber, has to be decided only by the State Level Committee.



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WEB COPY 12. With the above observation, this writ petition is dismissed. No costs.

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Index: Yes/No

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