

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14385 of 2023

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Maheshwar Mishra, Son of Late Punyadev Mishra, Resident of At and P.O.-
Bijdhari Nizamat, P.S.-Kesariya, District-East Champaran, Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Environment, Forest and Climate Change, Government of Bihar, Patna.
2. The Union of India, Ministry of Environment, Forest and Climate Change, Government of India, having office at Indira Paryavaran Bhawan Jorbagh Road, New Delhi-110 003.
3. The Secretary, Ministry of Environment, Forest and Climate Change, Government of India, having office at Indira Paryavaran Bhawan Jorbagh Road, New Delhi-110 003.
4. The Secretary, Department of Environment, Forest and Climate Change, Government of Bihar, Patna.
5. The Principal Chief Conservator of Forest (HoFF), Bihar, having its office at-Aranya Bhawan, Sheikhpura, Patna.
6. The Principal Chief Conservator of Forest (Development) Bihar having its office at Aranya Bhawan, Sheikhpura, Patna.
7. The Regional Chief Conservator of Forest, Muzaffarpur, District-Muzaffarpur.
8. The Regional Chief Conservator of Forest, Patna, District-Patna.
9. The Regional Chief Conservator of Forest, Bhagalpur, District-Bhagalpur.
10. The Director, Ecology and Environment, Patna.
11. The Divisional Forest Officer, Motihari Forest Division Motihari having its office at Kachhari Chowk, Irrigation Campus, Motihari-845 401.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Alok Kumar Agrawal, Advocate

For the Respondent/s : Mr.P.K. Verma, AAG 3
Mr. Saroj Kumar Sharma,AC to AAG-3
Mr. Gopal Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-02-2024

The writ petition filed in public interest by the petitioner, who is a retired Professor engaged in both social work and plantations, seeks implementation of the directions issued by the Hon'ble Supreme Court in *T.N.Godavarman Thirumulpad v. Union of India & Ors.* in *W.P(Civil) No. 202/1995*; from time to time. The petitioner also seeks constitution of an Expert Committee for assessment of availability of timber for Wood Based Industrial Units (for brevity 'WBIs') by carrying out a survey within the State of Bihar to estimate the annual potential production of timber from Trees Outside Forest (TOF), as per the resolution dated 11.11.2016 issued by the Ministry of Environment, Forest and Climate Change, Government of India. The petitioner also seeks that till the report of the Expert Committee is obtained, the memo issued dated 08.06.2023 revising the earlier memo dated 30.08.2010 enhancing the number of wood based industries, be stayed. The objectionable memo is produced as Annexure-3 to the writ petition.

2. At the outset, we have to observe that the decision of the Hon'ble Supreme Court has to be complied with by all the authorities under Article 141 of the Constitution of



India and there can be no separate directions issued by the High Court. If there is non-compliance, definitely the same can be brought to the notice of the High Court also. But, as of now, vague averments are made without any specifics and as revealed from the counter affidavit, without verifying the totality of the facts leading to enhancement of the number of wood based industries within the State of Bihar.

3. We notice that a very detailed counter affidavit is filed which needs to be extracted to put the matter in the proper perspective. Para 6 to 32 of the counter affidavit are extracted hereunder:-

“6. That by provisions made under para 5 of the resolution, the Assessment of availability of timber for Wood Based Industrial units is required to be made by commissioning study, preferably in collaboration with institutes / universities of repute, once in five years. The study shall take into account the saw material that may be sustainably harvested from the forest areas as per the working plan, saw materials available from trees outside forest areas (ToF), inter-state import of timber and international import of timber.

7. That in accordance with the decision taken by the State Level Committee at its meeting held on 26.04.2017 as notified by office order no. 100 dated 20.07.2017 of the Principal Chief Conservator of Forests, Bihar a committee under the chairmanship of Additional Principal Chief Conservator of Forest, working Plan, Training and Extension, Bihar was constituted for assessment of availability of timber in the state and for



fixation of number of wood based units in the light of said amendment.

8. That it is stated and submitted that the letter no. 259 dated 03.10.2017 of Additional Principal Chief Conservator of Forests, Working Plan, Training and Extension, Bihar the Director General, Forest Survey of India, was requested to undertake the study of availability of timber for wood based industries.

9. That by letter no. 1093 dated 20.11.2017 of Forest Survey of India it was informed that they were busy in finalization of India State of Forest Report 2017 and after publication of the report they will hold a meeting with Bihar Forest Department regarding assessment of trees outside Forest (ToF).

10. That by Resolution dated 11.09.2017 of the Ministry of Environment, Forest and Climate Change, Government of India amendment has been made in Wood Based Industries (Establishment and Regulation) Guidelines, 2016 issued by resolution dated 11.11.2016 (Annexure 1 of this writ application). By the said amendment provision regarding Assessment of availability of timber for wood based unit in para 5 of resolution dated 11.11.2016 has been omitted.

11. That by the resolution dated 11.09.2017, the provision made in para 4 of guidelines issued by resolution dated 11.11.2016 has also been amended and the State Level Committee (SLC) has been empowered to assess the availability of timber in the state by way of appropriate study on demand and supply as and when it decides. The state level committee has been empowered to devise suitable mechanism for sustainable use of timber in a way that does not affect the forests of the area adversely.

12. That the Hon'ble Supreme Court vide order dated 12.12.1996 passed in WP (C) 202 of 1995 [AIR 1997



SC/228] directed the State Government to constitute an Expert Committee to assess the sustainable capacity of the forests of the State qua saw mill and timber based industry and determine the number of existing saw mills which can safely be sustained in the State.

13. That in compliance of order passed by Hon'ble Supreme Court, the estimation of availability of timber in the State was done by an expert committee under the chairmanship of Principal Chief Conservator of Forest, Bihar and a report was submitted to the State Govt. on 25.08.2004 followed by a revised report was submitted to the State Government on 31.07.2006.

14. That from both reports of the Expert Committee it is evident that the availability of timber in the State was calculated on the basis of report of the Forest Survey of India, timber imported from other States and timber imported from abroad.

15. That the report of the Expert Committee was filed before Hon'ble Supreme Court in WP (c) no. 202 of 1995 which was referred to the Central Empowered Committee for examination, [a] report was submitted by Central Empowered Committee before Hon'ble Supreme Court on 11.06.2008. [after examination of the reports of the Expert 13 Committee). In Para 6 of the report, the Central Empowered Committee has observed that they broadly agree with the report of the Expert Committee about assessment of timber availability in the State and number of units which may be permitted on sustainable basis.

16. That the Hon'ble Supreme Court vide order dated 04.09.2009 passed in WP (c) no. 202 of 1995 accepted the recommendation made by the Central Empowered Committee in its report dated 11.06.2008 and directed the State Government to prepare the seniority list of the Wood Based Units as suggested by the Central



Empowered Committee.

17. That in Para 6.5 of chapter 6 of India state of Forest Report, 2017 it has been mentioned in para 6.5 that the Forest Survey of India for the first time calculated the Annual Potential Production of timbers from trees outside Forest (ToF) for every States in India in State of Forest Report, 2011 after taking into consideration the requirement of issuing new license and expansion of existing licenses for Wood Based Industries as per the directives of the Hon'ble Supreme Court.

18. That in chapter 6 of India State of Forest Report 2017 the methodology adopted, the procedure adopted for calculation of Annual Production of Timber from ToF and Results have been explained in detail. To estimate the annual production of timber from ToF, inventory data of ToF for last three cycles pertaining to the period 2010-2016 has been used. Estimates were generated statewide and for each State the estimates of growing stock were arranged according to species which were further arranged according to timber and other species. For Calculation of production, only timber species were considered. Using estimates of growing stocks and rotation period of the species, annual potential production has been calculated for each state by applying Von Mental's formula.

19. That in India State of Forest Report 2019 the growing stock in Trees outside Forest (ToF) in state of Bihar has been calculated as 40.46 million cubic meter. With the help of Von Mental's Formula ($I=2GS/R$, I-increment, GS-Growing stock, R=Rotation) the Committee under the Chairmanship of Additional Principal Chief Conservator of Forests, Working Plan, Training and Extension, Bihar Calculated that the Annual Potential Production to Timber from ToF is 2.095 million cum, ie, 20.95 lakh cubic metre.



20. That reports from various States were made available to the Committee under Chairmanship of Additional Principal Chief Conservator of Forests. From perusal of the reports, it was found that 00.773 lakh cub meter of timber was made available to the State of Bihar from other states and 00.101 lakh cubic meter of timber was made available to the State of Bihar from outside country. Hence the total quantity of timber found in the state of Bihar was calculated to be 21.824 lakh cub meter. Since the information about import of timber from outside country through Bengal and timber made available from Utter Pradesh State was not made available to the committee they were not taken into account for calculation of the timber availability in the State.

21. That a report was submitted by the committee to the Principal Chief Conservator of Forests, Bihar on 08.07.2020 with recommendation to allow the operation of 3400 saw mills and 450 composite Units in the state.

22. That the recommendation made by the committee under the Chairmanship of Additional Principal Chief Conservator of Forests, Working Plan, Training and Extension, Bihar was considered by the State Level Committee at its meeting held on 21.07.2020. Taking into consideration the process adopted in making recommendation made by Expert Committee on 25.08.2004 and 31.07.2006 (Annexure E and E/1 of this counter affidavit), the recommendation of Central Empowered Committee (Annexure F of this counter affidavit) and orders passed by Hon'ble Supreme Court on the said recommendations, the State level committee took decision to reduce the calculated timber amount by 10% + 5% due to reasons that part of timber may be used for other purposes and for crude fashioning. On the basis of remaining quantity of timber, ie, 1865952 cub meter of



timber, the number of saw mills in State has been fixed at 3200 and the number of composite units has been fixed at 450.

23. That on the basis of recommendation made by the State level committee, the state Govt. vide resolutions contained in annexure 3 and 4 of this writ application has fixed the number of saw mills in state at 3200 and that of the composite unit at 450, respectively.

24. That statement made in Paragraph No. 1 of the writ petition is stated that the facts stated in the foregoing paragraphs it is evident that calculation of timber availability in the State has been done on the basis of report published by Forest Survey of India which has a long experience and expertise in carrying out surveys and making inventory in the forest areas. Earlier also the calculation of timber availability in the State had been done on the basis of report published by the Forest Survey of India (FSI) which was accepted by the Central Empowered Committee and the Hon'ble Supreme Court, as has been stated in the foregoing earlier paragraphs of this counter affidavit. Hence this writ is fit to be dismissed, in limine.

25. That statement made in Paragraph No. 2 of the writ petition requires no comment.

26. That statement made in Paragraph No. 3 and 4 of the writ petition are the matter of record.

27. That statement made in Paragraph No. 5 of the writ petition is stated that on comparison of reports of Forest Survey of India published in the year 2017 and 2019 it is apparent that growing stock of ToF has increased from 37.471 million cum to 40.46 million cum.

28. That in reply to the statement made in Paragraph No. 6 and 7 of the writ petition are stated that in Para-4 of the Guidelines has been amended by the resolution dated 11.09.2017 of Govt. of India (Annexure D of this



counter affidavit). The petitioner has not annexed any document in support of claim made in para 7 of this writ application.

Before publication of state of Forest Reports, the Forest Survey of India conducts all the exercises mentioned by the petitioner and on the basis of exercises carried out the growing stock of Forest area and ToF are calculated and declared in the report for every State. Calculation of availability of timber in the State has been done on basis of reports published by Forest Survey of India.

29. That with regard to the statement made in Paragraph No. 8 of the writ petition is stated that the resolution contained in Annexure 2 of this writ application has been issued on the basis of report of expert committee contained in Annexure E and E/1 which is based on report of Forest Survey of India. This report of expert committee was accepted by the Central Empowered Committee and the Hon'ble Supreme Court as has been stated in the foregoing paragraphs.

30. That the statement made in Paragraph No. 9 and 10 of the writ petition it is stated and submitted that it reiterated that the resolution dated 11.11.2016 of the Govt. of India has been amended by resolution dated 11.09.2017 (annexure D of this counter affidavit) and the calculation of quantity of timber has been done on the basis of report published by Forest Survey of India, timber imported in the State from other States and other countries.

31. That in reply to the statement made in Paragraph No. 11 of the writ petition is stated that the para 7: 2: 1 of the India State Forest Report 2019 (Annexure I of this counter affidavit) it has been explained that the Forest Survey of India switched over to a grid based sampling design from a district based design since 2016. The new



design is based on country wide uniform grids of size 5km x 5Km. In the said para the new national Forest Inventory design has been explained in detail. Further in para 7: 2: 2 of the methodology adopted for ToF inventory has been explained in detail, from perusal of which it is clear that Forest survey of India has calculated the Growing stock of every state in a very precise and scientific manner.

32. That statement made in Paragraph No. 12 of the writ petition is stated that the report contained in Annexure 5 of writ application cannot be said to be more authentic than the report of the Forest Survey of India. It do not explain the method adopted for the inventory. Explanation, regarding the findings recorded in the report and their basis has not been explained. Thus on comparison it is not reliable as the report of Forest survey of India.”

4. Noticing the facts, as brought out in the counter affidavit, we are of the opinion that there is nothing further to be done in the matter and the writ petition would stand closed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	20.02.2024
Transmission Date	

