

Environment Awareness Forum

Vs

State of J&K and Others

IAs Nos. 12, 14, 15, 13 & 16 and Contempt Petition (C) No. 539 of 1996 in Writ Petition (C) No. 171 of 1996

(Dr. A. S. Anand, B. N. Kirpal, V. N. Khare JJ)

05.05.1998

ORDER

IA No. 16

1. We have heard Mr Dipankar Gupta, learned Senior Counsel appearing for the officials of the State Government who have filed their counters in response to the notice issued by this Court. We have also heard Mr T. R. Andhyarujina, learned Senior Counsel representing Mr B. A. Karimi, the Managing Director of M/s Bekay Katha Pvt. Ltd., who has filed an affidavit in this Court on March 1998.

2. Mr Dipankar Gupta, in response to the directions issued to him by us on 4th of May, has brought to our notice various steps which are taken by the Administrative Department and the Forest Department of the State of Jammu & Kashmir after the orders of this Court dated 10-5-1996, 12-12-1996 and 4-3-1997.

3. From a perusal of the office nothings, it appears that M/s Bekay Katha Pvt. Ltd. represented to the State Government vide letter dated 18-3-1997 that this Court had exempted "minor forest produce from the ban on fellings" vide order dated 4-3-1997. On the basis of that representation, an office note was prepared in which para 65 reads thus :

"'Katha' is a minor forest produce. The katha is manufactured from the khair wood. In pursuance of the order dated 4-3-1997, there is now no ban on the felling of khair trees from the forest areas as per the working plan."

4. This note was put up before Mr S. R. Bhagat, the then Additional Secretary, Forest, who on 20-3-1997 directed the forwarding of the representation of M/s Bekay Katha Pvt. Ltd. to the Principal Chief Conservator of Forest for necessary action, "keeping in view the Supreme Court orders and the contractual obligations". The file was then put up before Mr Vijay Bakaya, Additional Chief Secretary, Forest who recorded in para 68 of the noting as follows :

"This is a matter of interpretation whether 'khair' can be treated as minor forest produce. Let us discuss on 25-3-1997 at 3 p.m. with Pr. CCF, MDSFC, Conservator working plan."

Opinion was thereafter sought from ICFR&E, Dehradun as to whether "khair" tree was an MFP.

5. After the matter was referred to the Indian Council for Forestry Research & Education, another note appears to have been prepared by the office and submitted to Shri Bhagat, Additional Secretary, Forest. In para 70 of the noting it is recorded :

"In view of the above opinion of the Indian Council for Forestry Research & Education, khair is a minor forest produce and in terms of the order dated 4-3-1997 passed by the Supreme Court of India, there is now no ban on extraction of MFPs from the forest areas."

6. Mr Vijay Bakaya, the Additional Chief Secretary, Forest in para 75 of the note observed :

"This issue was discussed at length with all the officers of the Department. They were of the view that as per the books on the subject, only katha is MFP and khair tree is timber and therefore, Supreme Court's directive on MFP is not applicable."

7. However, in spite of the above observation, we find that directions were issued to allow khair trees to be felled for extraction of katha to M/s Bekay Katha Pvt. Ltd.

8. The noting in para 65 (supra) to the effect that katha is a minor forest produce and that it is manufactured from khair wood read with the noting in para 75, in which it is categorically recorded that even as per the books on the subject, it is only katha which is MFP while khair is timber go to show that the distinction was very much present to the minds of the officials and they were also conscious of the fact that the order of this Court dated 4-3-1997 was not applicable to khair trees as vide orders of this Court dated 10-5-1996 and 12-12-1996 ban was placed on felling of various trees including khair tree. The order dated 4-3-1997 did not lift the ban on the felling of khair trees and yet the State Government officials allowed the felling of khair trees. Prima facie, we are satisfied that there has been a deliberate attempt to circumvent the order of this Court and there has been a wilful breach of the orders of this Court. We, therefore, consider it appropriate to issue notice to M/s S. R. Bhagat, Vijay Bakaya and B. A. Karimi, Managing Director of M/s Bekay Katha Pvt. Ltd. to show cause why contempt proceedings be not initiated against them. (At this stage, we refrain from issuing any notice to M/s P. P. Sharma, M. A. Bukhari and Bharathi who are present in court.) The notices shall be returnable within six weeks. All the three alleged contemners shall be personally present in the Court on 28th July at 2 p.m. The State Government shall produce the file (which has been shown to us) relating to the subject which contains the nothings referred to by us in our order as also the letter of M/s Bekay Katha Pvt. Ltd. dated 18-7-1997, available on the next date.

9. Mr Harish N. Salve, learned Senior Counsel, Mr U. U. Lalit, learned counsel and Ms Shabnam Lone, learned counsel are requested to assist the Court in the contempt proceedings. Learned counsel are present and accept this assignment. Advance copy of the reply affidavits of M/s Bhagat, Bakaya and Karimi shall be served on Mr Lalit. The contempt proceedings shall be separately numbered under the title :

"In re S. R. Bhagat & Ors."

10. List on 28-7-1998 at 2 p.m.

IA No. 13

11. The prayer in this application is to direct the State Government to implement the directions of this Court and to relocate the band-sawmills in the specified sawmills zone and to pass such other

and further orders.

12. We have heard learned amicus curiae, Mr Harish Salve and the learned Advocate General of Jammu and Kashmir, Mr S. A. Salaria.

13. Mr Salaria submits that he would furnish a status report supported by the affidavit of a competent officer of the State Government, to indicate how the directions of this Court, with regard to relocation of the band-sawmills have been carried out and to what extent. He is granted six weeks' time to furnish the status report along with the affidavit with an advance copy to Ms Shabnam Lone, who assists the learned amicus curiae in this case.

14. We clarify that the directions regarding the relocation of band-sawmills is only in respect of such band-sawmills which are licensed. These directions would not apply to the unlicensed or illegally set up band-sawmills. The State Government shall be at liberty to remove/demolish or stop the unlicensed and/or illegally set up band-sawmills in accordance with law.

15. Mr Salaria submits that the list of band-sawmills attached to the application is vague and essential details are wanting. Ms Shabnam Lone is directed to furnish a list of the applicants together with their licence numbers and the electric connection numbers of the band mills to the learned Advocate General of the State to enable him to identify the sawmills zone and furnish the status report. The needful shall be done by her within two weeks.

16. List on 28-7-1998 at 2 p.m.

IA No. 12

17. On 12-12-1996, we gave the following directions :

"6. The movement of trees or timber (sawn or otherwise) from the State shall, for the present, stand suspended, except for the use of DGS&D, Railways and Defence. Any such movement for such use will -

(a) be effected after due certification, consignment-wise made by the Managing Director of the State Corporation which will include certification that the timber has come from State Forest Corporation sources; and

(b) be undertaken by either the Corporation itself, the Jammu and Kashmir Forest Department or the receiving agency."

18. The State of Jammu and Kashmir was directed to file within one month a detailed affidavit specifying the quantity of timber held by private persons purchased from State Forest Corporation Depots for transportation outside the State (other than for consumption by the DGS&D, Railways and Defence). That affidavit has not so far been filed. We cannot, therefore, make any progress insofar as this application is concerned. The learned Advocate General of the State of Jammu and Kashmir who is present, submits that a detailed affidavit clarifying the entire position shall be filed within six weeks. We allow him to do the needful. An advance copy shall be served on Mr Lalit.

19. We find from the record of IA No. 12 that an additional affidavit has been included in the paper-book which was filed by the applicants on 19-3-1998. Its copy has not been served on Mr Lalit, assisting the learned amicus curiae. (The registry is directed not to receive any affidavit or

application from any private party unless its copy has been served in advance on Mr Lalit assisting the learned amicus curiae.) Mr Altaf Naik, submits that he shall serve a copy of the additional affidavit on the learned Advocate General for the State of Jammu & Kashmir and Mr Lalit, within one week.

20. List on 28-7-1998 at 2 p.m.

IAs Nos. 14 and 15

21. These IAs which have been filed for impleadment and directions by some private parties do not require any consideration by us. These petitions are rejected and consigned to the records.

Court Masters