

HIGH COURT OF ANDHRA PRADESH

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WRIT PETITION No. 41485 of 2017

Between:

The State of Andhra Pradesh, represented by its
Special Chief Secretary, Environment, Forest, Science &
Technology Department, Secretariat,
Velagapudi, Guntur District and 3 others.

.....PETITIONERS

AND

B. M. Chanakya Raju

.....RESPONDENT

DATE OF JUDGMENT PRONOUNCED: **25.07.2023**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE Dr. JUSTICE K. MANMADHA RAO**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

Dr. K. MANMADHA RAO, J

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! Counsel for the Petitioners: Sri G. V. S. Kishore Kumar, GP for Services-I

Counsel for the Respondent: Sri G. Venkata Krishnaiah

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> Head Note:

? Cases Referred:

1. 2002 (2) APLJ 286 (HC)
2. WP.No.1294/2011 of High Court of AP, Decided on 11.02.2011
3. WP.No.16900/2012 of High Court of AP, Decided on 15.03.2013
4. WP.No.20131/2012 of High Court of AP, Decided on 23.07.2015
5. (2002) 10 SCC 606
6. (2012) 11 SCC 565

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE Dr. JUSTICE K. MANMADHA RAO**

WRIT PETITION No. 41485 of 2017

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri G. V. S. Kishore Kumar, learned Government Pleader, Services-I, for the petitioners and Sri G. Venkata Krishnaiah, learned counsel for the respondent.

2. This writ petition under Article 226 of the Constitution of India has been filed challenging the judgment and order dated 15.02.2017 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad (in short 'Tribunal') in O.A.No.3069 of 2016.

3. By order impugned, the Original Application filed by the present respondent was allowed and the Charge Memo dated 10.07.2013, consequential letter No.600/2012-M3, dated 14.05.2014 and the final notice issued by the 2nd respondent therein in Ref.No.6166/2016/A&DC-I, dated 13.06.2016, issued by respondents No.2, 3 & 2 respectively in the O.A (the present petitioners) have been set aside.

4. Briefly stated the facts of the case as per the writ petition are that, the respondent-B.M.Chanakya Raju was working as Divisional Forest Officer (DFO) in Nellore District. While he was working as Forest Range Officer (FRO) in Kurnool District, as part of his duties he recommended for shifting of 4 saw mills within 5 kilometers radius of the nearest reserve forest boundary. On his recommendation, those 4 saw mills were ordered to be shifted from one

location to another, but it was later on found that relocation was within 5 kilometers from the nearest reserve forest area.

5. It is their case that as per the report submitted by the Conservator of Forests, Kurnool vide Office Rc.No.600/2012/M6, dated 17.02.2012 the Saw Mill owners of the 4 saw mills, viz., (1) M/s.Srinivasa Saw Mill, Kurnool, (2) M/s.Abdul Razak & Son's Saw Mill, Kurnool, (3) M/s.Madina Saw Mill, Kurnool, and (4) M/s.Bharathi Saw Mill, Kurnool, submitted applications for shifting of saw mills which were forwarded to the Forest Range Officer, Kurnool for inspection. The Forest Range Officer submitted the inspection reports to the Divisional Forest Officer, Kurnool, making recommendations for shifting of 4 saw mills to new locations, reporting that the distance of the new locations was outside 5 kms of the reserved forest, i.e., 5.1 km, 7.5 km, 5.48 km and 5.6 kms respectively. On such recommendations made to the Divisional Forest Officer, the saw mills were shifted to the new locations. Later on, as per the Divisional Forest Officer, Kurnool inspection and readings recorded and maps generated, the distances were found to be 4.6 km, 3.21 km, 3.31 km and 4.00 km respectively, which fell within the distance of 5.00 kms from the reserved forest boundary.

6. Considering that such shifting within 5 km of the reserve forest boundary was contrary to Rule 3 (2) of the Andhra Pradesh Saw Mills (Regulation) Rules, 1969 (in short 'Saw Mills Rules') and G.O.Ms.No.91, Environment Forests Science & Technology (FOR.III) Department, dated

11.07.2006, the charge memo dated 10.07.2013 was issued to the respondent after he was promoted to the post of Divisional Forest Officer.

7. The following is the article of charge:

“That he has committed irregularities in recommending for shifting of Saw mills within a distance of 5 kms from the nearest RF Boundary in violation to Rule 3 of Andhra Pradesh Saw Mills (Regulation) Rules 1969 and G.O.Ms.No.91, dated 11.07.2006.”

8. The charged officer submitted written statement of defence, dated 05.11.2013 to the charge memo. The Principal Chief Conservator of Forests (HoFF), A.P. Hyderabad being Disciplinary Authority, decided to hold enquiry. The Conservator of Forests, Kurnool was appointed as Enquiry Officer and the Divisional Forest Officer, Kurnool as Presenting Officer. The Enquiry Officer conducted the enquiry with the charged Officer on 10.10.2014 and 23.04.2014 and submitted a report of findings to the Disciplinary Authority vide Rc.No.600/2012/M3, dated 14.05.2014.

9. The Enquiry Officer recorded the findings on the charge as under:

“As an Forest Range Officer, the primary duty is to submit factual information to his superior officer on the distance of the saw mill from the Reserve Forest, which is a pre-requisite for considering the shifting permission and he has not submitted the factual information resulting irregular permission for shifting the saw mill within 5 Km from Reserve Forest submission of incorrect information by the then Forest Range Officer Sri B.M.Chanikya Raju and recommendation by him has resulted wrong permission of shifting of saw mill within 5 Km. Hence the charge that he has committed irregularities in recommending for shifting of saw mill within a distance of 5 Km the nearest Reserve Forest boundary in violation of Rule 3 of Andhra Pradesh Saw Mills

(Regulation) Rules 1969 and G.O.Ms.No.91, dated 11.07.2006. Hence, the charge is proved.”

10. The copy of the Enquiry Officer’s report was communicated to the Charged Officer to provide him an opportunity to submit his defence, if any, against the same, vide Rc.No.No.6166/2016/A&DC-1, dated 13.06.2016.

11. Challenging the aforesaid charge memo, the report of the Enquiry Officer and the notice to submit the defence statement, the 1st respondent filed O.A.No.3069 of 2016 before the Tribunal.

12. The Tribunal allowed the O.A and set aside all the impugned proceedings, vide judgment dated 15.02.2017.

13. Learned counsel for the petitioners submitted that the Tribunal legally erred in allowing the O.A. He submitted that the Tribunal has taken the view that the present was a case of shifting of existing saw mills within 5 kms and was not a case of setting up fresh saw mills within 5 kms from the reserved forest boundary, consequently, Rule 3 (2) of the Saw Mills Rules did not apply. Relying upon the Division Bench judgment of the High Court of Judicature, Andhra Pradesh at Hyderabad in ***Divisional Forest Officer Adilabad Dist. v. Sree Venkateswara Saw Mills (DB)***¹ which laid down the proposition of law that the said rule was applicable only for setting up fresh saw mills, the Tribunal held that the charge relating to shifting of the saw mills within a distance of 5 kms from the nearest reserve forest boundary, on the face of it, was unsustainable and deserved to be set aside and so the further proceedings.

¹ 2002 (2) APLJ 286 (HC)

14. Learned counsel for the petitioners submitted that the present, even if be a case of shifting of existing saw mill, but the new location being within 5 kms radius, the G.O.Ms.No.91, dated 11.07.2006 clearly prohibited shifting of saw mill within such radius of 5 kms. So, in view of G.O.Ms.No.91, dated 11.07.2006 the charge was rightly framed as it was on the recommendation of the respondent, the shifting was allowed.

15. Sri G. V. S. Kishore Kumar further submitted that as per the report of the respondent, in the case of all the 4 saw mills, the distance of relocation reported was beyond 5 kms, but actually it was found to be within 5 kms and therefore, the charge was rightly framed, as the respondent misrepresented the distance. He submitted that it was because of the report showing the distance to be outside 5 kms, the shifting was allowed, whereas the shifting at new location was actually got within 5 kms. Thus, he submitted that even though Rule 3 (2) of the Saw Mills Rules may not apply, but still in view of the G.O.Ms.No.91, dated 11.07.2006, there was dereliction of duty and the respondent failed to maintain absolute integrity, discipline etc., for which he was rightly charged and further proceedings held.

16. Learned counsel for the petitioners further submitted that the Tribunal ought not to have interfered with the charge memo at the initial stage, particularly, when the enquiry had been conducted, enquiry report had been received against the respondent, holding the charge as proved, and against which report the respondent was granted opportunity to file defence statement.

17. Sri G. Venkata Krishnaiah, learned counsel for the respondent, submitted that the Tribunal committed no illegality in passing the impugned order. He submitted that the distance did not matter and even if the shifting was within 5 kms, the same did not permit any ground to serve the charge memo as Rule 3 (2) of the Saw Mills Rules applies to grant of licence to the new saw mills and not to the relocation of the existing saw mill. He supported the judgment of the Tribunal on the strength of the judgment in ***Divisional Forest Officer Adilabad Dist.*** (supra).

18. He further submitted that the Tribunal has followed its previous judgments in O.A.No.3544 of 2014, dated 09.03.2016, in which also the similar charge was framed against some other official and the Tribunal had set aside those charge memos. He submitted that the O.A. of the present respondent was squarely covered by the judgment dated 09.03.2016 of the Tribunal and the same had not been challenged. Consequently, there is no case for interference with the impugned order of the Tribunal.

19. We have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

20. It is an admitted position between the parties that the present is not a case of grant of licence or setting up of fresh saw mill.

21. It is also admitted that it is a case of shifting of the location of the existing 4 saw mills.

22. The Tribunal held that Rule 3 (2) of the Saw Mills Rules 1969, applies to a case of setting up of a fresh saw mill, as held in the judgment of this Court in ***Divisional Forest Officer Adilabad Dist*** (supra).

23. It is apt to reproduce Rule 3 of the Andhra Pradesh Saw Mills (Regulation) Rules, 1969 as under:

“**Rule 3.**(1) No person shall install, erect or operate a Saw Mill for cutting, converting or sawing of timber without obtaining a licence for such installation from the licensing authority.

(2) No licence for setting up fresh saw mills within a distance of 5 Km. from the boundary of any Forest under the control of the Forest Department whether notified or not shall be granted, except when it is required for Departmental use.

(3) The distance of 5 Km. shall be computed from topo sheets as aerial distance as crow flies.”

24. Rule 5 of the Andhra Pradesh Saw Mills (Regulation) Rules, 1969 is reproduced as under:

“**Rule 5.** (1) Every licence granted under Rule 4 shall, subject to provisions of Rule 9, be effective from the date of issue or from the date of expiry of the period specified in the proviso to clause (a) of sub-rule (1) of Rule 4, as the case may be, to the 31st December of the year upto which licence is granted, both days inclusive.

(2) The licence granted under these rules for Saw Mills located within five kilometres of forest boundary shall not be transferable.

(3) The Saw Mill machinery and premises shall not be leased to any person without intimation of the licensing authority. For any acts of omission of lessee, licence holder shall be held responsible.

(4) In case the Saw Mill premises is to be changed, or when the machinery is to be shifted from one place to another within same forest division, such changes should not be done without prior approval of licensing authority”

25. In ***Divisional Forest Officer Adilabad Dist.*** (supra), the Division Bench of this Court held that undoubtedly, an existing saw mill could be shifted to another location within the same forest division but only after prior approval of the licensing authority, under Sub-rule (4) of Rule 5. It was held that the bar contained in Sub-rule (2) of Rule 3, that no licence for setting up fresh saw mill within a distance of 5 kms, from the boundary of any forest under the control of the Forest Department whether notified or not, shall be granted, except when it is required for departmental use, applies for setting up fresh saw mills. It was observed that if the argument of the learned Government Pleader for Forests that the said bar under Sub-rule (2) of Rule 3 applies also to the shifting of existing saw mill, then the word 'fresh' occurring in Sub-rule (2) of Rule 3 of the Rules would be rendered redundant and surplusage.

26. The law as laid down in ***Divisional Forest Officer Adilabad Dist.*** (supra) is that;

- (i) The bar contained in Sub-rule (2) of Rule 3 of the Rules 1969 applies only to the grant of licence for setting up fresh saw mills;
- (ii) The existing saw mill, could be shifted to another location within the same forest division, but only after prior approval of the Licensing Authority, and to such shifting the bar under Sub-rule (2) of Rule 3 shall not apply;

27. The judgment in ***Divisional Forest Officer Adilabad Dist.*** (supra) was delivered on 03.06.2002. Thereafter, G.O.Ms.No.91, Environment, Forests, Science and Technology (For.III) Department, was issued on 11.07.2006.

28. G.O.Ms.No.91, dated 11.07.2006 is reproduced as under:

“GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

FOREST DEPARTMENT – SAW MILLS – Transfer of ownership and
relocation of the Saw Mills – Certain Guidelines – Issued

ENVIRONMENT FORESTS SCIENCE & TECHNOLOGY (FOR.III)
DEPARTMENT

G.O.Ms.No.91

Dated: 11th July, 2006

Read the following:

1. Hon'ble Supreme Court order dt.30.10.2002
2. Minutes of the Central Environment Committee dt.30.05.2006
3. From Prl.CCF., Ref.No.13642/05/V3, dt.16.06.2006

In the Order 1st read above, the Hon'ble Supreme Court of India have delivered a judgment on 30.10.2002 in WP No.202/95 filed by Sri T.N.Godavarman Thirumalpad Vs. Union of India and others directing the State Governments to close down all unlicensed units established after 30.10.2002 forthwith and imposed moratorium that no State Government or Union Territory will permit the opening of any new Saw Mills, Veneer or Plywood Industry without prior permission of Central Empowered Committee (Constituted by the Supreme Court of India).

2. On a petition filed in this regard the matter relating to regularization of Wood Based Industries in Andhra Pradesh has been discussed in a meeting held by the CEC on 26.05.2006 with the State Forest Department Officials. The CEC have constited a 3 Member Committee among others, to examine various issues relating to Wood Based Industries and authorized the said Committee to take a final decision regarding the cases involving the transfer of ownership of the Wood Based Industries and or their locations. For this purpose the CEC directed the State Forest Department to issue transparent guidelines with the approval of the Government.

3. Accordingly in the reference 2nd cited above, after getting the approval of the three member Committee constituted by the CEC, the Chairman, Prl.Chief Conservator of Forests, Hyderabad has furnished the guidelines for shifting/transfer of the Saw mills to Government for approval.

4. Government after careful examination of the matter hereby approved the following guidelines in respect of shifting / transfer of the saw mills.

On ownership:-

The transfer of ownership by way of sale, inheritance, division of property, family arrangement, and dissolution of partnership or by lease of saw mill shall be allowed with the approval of the licensing authority.

On Relocation:

1. **No relocation shall be allowed into the area prohibited under AP Saw Mill Rules. It means no saw mill shall be shifted from outside of 5 Km radius from the forest area to within 5 Km of forest area. However, shifting will be allowed from within the 5 Km of forest area to outside.**
2. Total number of machines used before shifting (for example number of the horizontal saws, Vertical saws, peelers, sheer, and chipper) shall not be increased.
3. The annual capacity of saw mill or saw mill inside the wood based industry for conversion of timber shall not be increased.
4. The machine type should not be changed from one type to another. For example saw mill having the license for band saw cannot change to peelers or slicer etc.
5. Multiple licenses should not be given from a single license in splitting the licenses. For example, if the saw mill is having a license for 2 horizontal saw, it cannot be shifted to another place/places with 1 horizontal saw each.
6. **The shifting of saw mill should take place with the prior permission of the competent authority. For transfer of ownership or for shifting within the Division the DFO having the territory jurisdiction shall be the competent authority for transfer or shifting outside the Division and within the Circle, the Conservator of Forests having the jurisdiction shall be the competent authority. For transfer or shifting outside the Circle, the Prl.Chief Conservator of Forests, AP shall be the competent authority.**

Appeal for not allowing transfer:

An appeal against the order of the licensing authority for not transferring the ownership or for not allowing the shifting within the Division shall lie with the Conservator of Forests. Similarly, appeal against the orders of the CF shall lie with PCCF and an appeal against the orders of PCCF, will lie with Government and Government orders will be final.

5. The Prl.Chief Conservator of Forests, Hyderabad is directed to furnish necessary separate proposals indicating the guidelines for shifting of other wood based industries, such as Plywood, Veneer, MDF etc., in consultation with the respective departments duly getting the approval of the 3 member committee constituted by the Central Empowered Committee for issue of necessary orders.

6. The Prl. Chief Conservator of Forests, Hyderabad is requested to take necessary action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNMENT OF ANDHRA
PRADESH)

Sd/-JANAKI KONDAPI
PRINCIPAL SECRETARY TO GOVERNMENT”

29. The Government of Andhra Pradesh issued G.O.Ms.No.91, dated 11.07.2006 laying down the guidelines, in respect of, *inter alia*, relocation of saw mills. 'On relocation' it provided, under point-1, that no relocation shall be allowed into the area prohibited under the AP Saw Mill Rules. It means that no saw mill shall be shifted from outside of 5 Km radius from the forest area to within 5 Km of forest area. However, shifting will be allowed from within the 5 Km of forest area to outside.

30. Based on this G.O.Ms.No.91, dated 11.07.2006, learned counsel for the petitioners submitted that in the matters of relocation of existing saw mills also, the same shall not be allowed into the area prohibited under the A.P.Saw Mills Rules and as Rule 3 (2) prohibits grant of licence to fresh saw mills within 5 kms from reserve forest boundary, relocation of existing saw mills can also not be within such 5 kms.

31. As is evident from a plain reading of Rule 3 (2) and as held in ***Divisional Forest Officer, Adilabad Dist.*** (supra), the rule 3 (2) applies for setting up fresh saw mills only.

32. It is Rule 5 (4) of Saw Mills Rules that provides for change of the saw mill premises or shifting of the machinery from one place to another, within same forest division. Such changes, as per the rule, should not be done without prior approval of the licensing authority. Thus the rule making

authority, in its wisdom, with clear intendment has specified that the bar contained in Rule 3 (2) is applicable only to the setting up of 'fresh' saw mills. Such restriction as in Rule 3 (2) as regards the distance of 5 kms from the boundary of any forest under the control of the Forest Department whether notified or not, has not been made applicable in case of change of the saw mill premises. Rule 5 (4) of Saw Mills Rules is silent with respect to the distance in the matters of change of premises except that within the division. If the submission of the learned Govt. Pleader is accepted that the relocation of the existing saw mills cannot be made within 5 kms that would be applying Rule 3 (2) to Rule 5 (4), which the legislature in its wisdom did not intend to apply by not providing such distance as bar specifically in rule 5 (4) or by applying rule 3 (2) by any reference. Even the G.O.Ms.No.91 under point No.1, under the head 'on relocation', if it is divided into parts with respect to distance, it follows that, (i) No saw mill shall be shifted from outside 5 kms radius from the forest area to within 5 kms of forest area, and (ii) Shifting will be allowed from within the 5 kms of forest area to outside.

33. The G.O.Ms.No.91 does not specifically deal with the situations where a saw mill is already existing within 5 kms radius of the forest area but is to be relocated within 5 kms of the forest area at a different place. When point No.1 says that no relocation shall be allowed into the area prohibited under AP Saw Mills Rules, and the same is also explained in the next sentence, then the meaning would be as explained that it means that no relocation will be allowed within 5 kms radius of the forest area from outside of 5 kms radius from the

forest area. So, an existing saw mill originally located, at a distance outside of 5 kms radius from the forest area, cannot be relocated within 5 kms of the forest area. No other conclusion can be drawn. In other words, the G.O.Ms.No.91, dated 11.07.2006 does not bar relocation of the existing saw mill within 5 kms radius of the forest area, to a different location within 5 kms of such forest area.

34. Thus, neither Rule 3 (2) is attracted to the existing saw mills nor Rule 5 (4) read with the G.O.Ms.No.91, prohibits relocation of the existing saw mills within 5 kms radius of the forest area from their original location to a different location within the radius of 5 kms of the forest area. The prohibition under G.O.Ms.No.91 is that no saw mill shall be shifted from outside 5 kms radius from the forest area to within 5 kms of the forest area.

35. The point that now, necessarily arises for consideration is, as to whether those 4 saw mills for which the respondent made recommendation for relocation, upon which the relocation was permitted, were already existing within a radius of 5 kms of the forest area or were brought by way of relocation within 5 kms radius of the forest area (as is the case of the petitioners) though the report of the respondent, mentioned the distance beyond 5 kms. The moot point that requires consideration is, whether the existing saw mill was within 5 kms radius or it has been brought by relocation within 5 kms radius from outside 5 kms of the forest area.

36. The charge as framed in the charge memo is silent on the distance of those four saw mills' original location, from where the relocation was to be

made, i.e., their original place of existence within 5 kms radius or beyond that. If those saw mills were already existing within 5 kms and shifting was made, actually within 5 kms, as is the case of the petitioners, though pursuant to the recommendation showing different distance outside 5 kms, there would be no violation of G.O.Ms.No.91, dated 11.07.2006. But, if the relocation was got done actually within 5 kms, from a location outside 5 kms, showing incorrectly the new location to be outside 5 kms, the petitioners could proceed departmentally in view of G.O.Ms.No.91, dated 11.07.2006.

37. We made a specific query to the learned Govt. Pleader on the above aspect respecting the original location of the saw mills from where those were shifted / relocated. He submitted that there is nothing on record of the writ petition to point out such distance, but it is there that the saw mills were relocated/shifted within 5 kms of the forest area.

38. We have carefully perused the record before us. We find that neither in the writ petition or in Annexure-I to the statement of articles of charge, nor in the charge memo, the previous original location of the saw mills giving the distance from the forest area is disclosed. It is not mentioned that the saw mills were located within or outside 5 kms of forest area, though the location has been given. We, however, find that in response dated 06.06.2016, filed by the respondent to the report of the Enquiry Officer, it was submitted that ".....and only shifting of saw mills already located within 5 kms radius to another location....." The aforesaid appears to be only for the first time as we find that in the explanation to the charge memo it was not so stated, though it

was stated that as per G.O.Ms.No.91 there was no bar to accord permission for shifting of saw mills situated within 5 kms from the Reserve Forest area to within 5 kms. The Enquiry Officer in its report also did not record any finding on the point of original distance of the existing saw mills from forest area from where those saw mills were relocated. The finding recorded is only this much that the shifting was within 5 kms also not saying that it was from outside 5 kms.

39. In the counter affidavit, the respondent in para-14, stated that in fact the original location before shifting is within 5 kms from Reserve Forest line. Para-14 of the counter affidavit is reproduced as under:

“The area calculated by Computer operator of the Divisional Forest Office, Kurnool as the applicant has no knowledge on arch view technology. Further it is not possible to calculate the area by using chains as Ariel distance. The licensing authority has to come to a conclusion of area before accorded permission for shifting. So, the Divisional Forest Officer, Kurnool is responsible for issuing shifting permission without verifying the distance to his satisfaction. The D.F.O., Kurnool also renewed the licenses of the said sawmill for subsequent period. **The Divisional Forest Officer, Kurnool failed to disclose the distance of sawmills in question from RF line from its original place of set up ie., before shifting. In fact the original location before shifting is within 5 km from RF line.** The Divisional Forest Officer, Kurnool ought to reject the applications of all the sawmills instead of forwarding to the applicant as all the sawmills are situated within 5 kms. It is also not known that who test checked or certified the area calculated by the Divisional Forest Officer, Kurnool subsequent to granting shifting permission is a correct one.”

40. In ***M/s. Sri Srinivasa Wood Works v. Govt. of AP***², upon which the learned counsel for the respondent placed reliance, the saw mill of the petitioner therein was situated within 5 kms radius from Indrakeeladri protected forest and the proposed shifting of saw mill was also within 5 kms radius from the said protected forest. It was held by this Court that the rejection of shifting on the prohibition contained in G.O.Ms.No.91, dated 11.07.2006 was unsustainable, as the said G.O. prohibited shifting of saw mill from outside of 5 kms radius to within the said radius of forest area. This Court further held that it necessarily means that if a saw mill is already located within 5 kms radius of the forest area, there is no prohibition on its shifting to some other location within the same radius.

41. It is apt to refer the relevant part of the judgment in ***M/s. Sri Srinivasa Wood Works*** (supra) as under:

“In my opinion, the ground of rejection for shifting, purportedly on the prohibition contained in G.O.Ms.No.91, Environment, Forests, Science & Technology (For.III) Department, dated 11.07.2006, on the facts of the present case, is wholly unsustainable. As noted above, the said G.O. prohibits shifting of a saw mill from outside of 5 kms radius to within the said radius of forest area. This necessarily means that if a saw mill is already located within 5 kms radius of the forest area, there is no prohibition on its shifting to some other location within the same radius. On the own showing of respondent No.4, the petitioner’s saw mill is situated within 5 kms radius of Indrakeeladri protected forest and the petitioner is seeking to shift his saw mill to another place within the same radius on the ground that shifting has become inevitable in view of road widening. I am therefore of the opinion that the prohibition contained in

² WP.No.1294/2011 of High Court of AP,
Decided on 11.02.2011

G.O.Ms.No.91, dated 11.07.2006, on the basis of which the impugned rejection is made has no application to the petitioner's case. Accordingly, the impugned order is set aside. Respondent No.4 is directed to permit the petitioner to shift the saw mill to the proposed place within a period of one month from the date of receipt of this order.”

42. In ***Mahaboob Basha v. Govt. of AP***³ upon which also reliance was placed, the existing saw mill of that petitioner was situated within a distance of 1.90 kms from a reserve forest area and the proposed premises to which the shifting of saw mill to be made was within 2 kms from the forest boundary.

43. So, ***Mahaboob Basha*** (supra) is also a case where G.O.Ms.No.91 did not prohibit such shifting. This Court in ***Mahaboob Basha*** (supra) followed the judgment in ***M/s. Sri Srinivasa Wood Works*** (supra).

44. Similar is the position in ***M. Kareem Baig v. The Divisional Forest Officer, Kurnool Division***⁴ upon which also reliance was placed. There also it was undisputed fact that the saw mill was running within 5 kms from the periphery of the reserve forest boundary even before it was shifted to another location within 5 kms radius. This Court followed the judgment in ***M/s. Sri Srinivasa Wood Works*** (supra).

45. In the present case, as observed above, there is nothing to indicate that those four saw mills were already situated within the radius of 5 kms of the forest area. The very first opportunity to the respondent was to say so that it was existing within 5 kms, in his report/recommendation, but there is no

³ WP.No.16900/2012 of High Court of AP,
Decided on 15.03.2013

⁴ WP.No.20131/2012 of High Court of AP,
Decided on 23.07.2015

mention of distance except the location place. Even in reply to the charge memo, there is no such reply. For the first time, this plea was taken in the explanation to the Enquiry Officer's report and then in the counter affidavit. In view of what we have stated above, the stand taken by the respondent at such a later point of time, may be after thought and cannot be considered by us, being a question of fact, which cannot be determined at this stage in the exercise of writ jurisdiction, so as to apply ***M/s. Sri Srinivasa Wood Works*** (supra) to the facts of the present case, and in the circumstances mentioned above.

46. In ***Divisional Forest Officer Adilabad Dist.*** (supra), upon which the Tribunal placed reliance in its judgment, though it was held that Rule 3 (2) of the Saw Mills Rules does not apply to the shifting of the existing saw mills, but after the said judgment, the G.O.Ms.No.91 was issued and consequently, the Tribunal ought to have considered the effect of the G.O.Ms.No.91 on the point of relocation of the saw mills in the light of the bar imposed, which we find, was not considered by the Tribunal, though reference of G.O.Ms.No.91 finds mention in the order.

47. We now consider it apt to refer ***T.N.Godavarman Thirumalpad v. Union of India***⁵ in which the Hon'ble Apex Court elaborately observed and emphasized the importance and need of the environment protection and pollution control. It was observed that it is not only the duty of the State but also the duty of every citizen to maintain hygienic environment. Article 21

⁵ (2002) 10 SCC 606

protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. The Hon'ble Apex Court held that there is constitutional imperative on the Central Government, State Governments and bodies like Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measure to promote, protect and improve the environment man-made and natural environment.

48. In ***T.N.Godavarman Thirumalpad*** (supra), in para-20, the Hon'ble Apex Court observed and held as under:

“20. Since time immemorial, natural objects like rivers enjoyed a high position in the life of the society. They were considered as Goddesses having not only the purifying capacity but also self-purifying ability. Fouling of the water of a river was considered a sin and it attracted punishments of different grades which included, penance, out casting, fine, etc. The earth or soil also equally had the same importance, and the ancient literature provided the means to purify the polluted soil. The above are some of the many illustrations to support the view that environmental pollution was controlled rigidly in the ancient time. It was not an affair limited to an individual or individuals but the

society as a whole accepted its duty to protect the environment. The 'dharma' of environment was to sustain and ensure progress and welfare of all. The inner urge of the individuals to follow the set norms of the society, motivated them to allow the natural objects to remain in the natural state. Apart from this motivation, there was the fear of punishment. There were efforts not just to punish the culprit but to balance the ecosystems. The noteworthy development in this period was that each individual knew his duty to protect the environment and he tried to act accordingly. Those aspects have been highlighted by a learned author C.M. Jariwala in his article "Changing Dimensions of the Indian Environmental Law" in the book "Law and Environment" by P. Leelakrishnan."

49. In ***T.N.Godavarman Thirumalpad*** (supra) the Hon'ble Apex Court clearly held that to protect and improve the environment is a constitutional mandate. Every individual in the society has a duty to protect nature. The Constitution has laid the foundation of Articles 48-A and 51-A for a jurisprudence of environmental protection. The State and the citizen are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wildlife and to have compassion for living creatures.

50. The G.O.Ms.No.91, dated 11.07.2006 was issued pursuant to the judgment in ***T.N.Godavarman Thirumalpad*** (supra).

51. Consequently, it was the duty of the respondent being the citizen and also importantly the Forest Range Officer at the relevant point of time, to ensure that the shifting of the saw mills within 5 kms of the forest area was not contrary to G.O.Ms.No.91. While observing so, we be not understood as holding that the respondent violated G.O.Ms.No.91, but, *prima facie*, as per his report/recommendation, the shifting was at a distance shown to be outside 5 kms, whereas, as per the case of the petitioners, as per the measurement,

actually the shifting was within 5 kms, so the report was not correct. Though we reiterate that the original location distance-wise from the forest area to be within or outside 5 kms is not reflected in the charge memo or from the enquiry officer's report or for that purpose from the recommendation report and the explanation to the charge memo of the respondent, which ought to have been clearly disclosed.

52. Learned counsel for the petitioners placed reliance in ***Ministry of Defence v. Prabhash Chandra Mirdha***⁶ to contend that the law does not permit quashing of charge sheet in a routine manner, as also to contend that the charge sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. There is no dispute on such proposition of law.

53. In view of the judgment in ***Prabhash Chandra Mirdha*** (supra), we are of the considered view that quashing of the charge memo cannot be in a routine manner. Even if the charge was not very clear with respect to the shifting of the saw mills within 5 kms, as to whether from within 5 kms or from outside 5 kms, the Tribunal ought not to have quashed the entire proceedings, but ought to have granted opportunity to the petitioners to proceed from the stage of the service of the fresh charge memo. Considering the gravity of the

⁶ (2012) 11 SCC 565

issue for environmental protection, forests in particular, and the constitutional mandate.

54. We are not convinced with the submissions of the learned counsel for the respondent that when considering the explanation of Sri P. Ramakrishna, the then Divisional Forest Officer, Kurnool proceedings were dropped against him only giving him the warning to be careful in future, the proceedings cannot be held against the respondent. What we find is, without observing anything on the dropping of the proceedings against the then Divisional Forest Officer, Kurnool, as that is not a matter before us for adjudication, it was the basic duty and responsibility of the respondent to protect the environment of the forest by comply with the G.O.Ms.No.91 by submitting the complete report as it is on his recommendation that the shifting was permitted. Again, we may not be understood as holding the respondent liable or guilty of any violation, but what we say is that, in view of the judgment in ***T.N.Godavarman Thirumalpad*** (supra) on the point of environment and constitutional mandate, as also the duty of the citizen and in particular, the Officer incharge of the affairs, the matter cannot be left without due enquiry by the authorities. We are not inclined to accept the submission of the learned counsel for the respondent for dropping of the proceedings against the respondent.

55. In the result, the Writ Petition is allowed. The impugned judgment & order of the Tribunal is quashed, with the direction to the petitioners to take appropriate steps to serve charge memo, duly framing the charge, giving the complete particulars of the alleged violations of G.O.Ms.No.91, dated

11.07.2006 and proceed, in accordance with law, against the respondent and bring the proceedings to a logical end within a period of 6 (six) months.

56. No order as to costs. Pending miscellaneous petitions, if any, shall stand closed in consequence.

57. Let a copy of this judgment be sent to the Special Chief Secretary to Government, Environment, Forests, Science & Technology Department, Andhra Pradesh

RAVI NATH TILHARI, J

Dr. K. MANMADHA RAO, J

Date: 25.07.2023

Dsr

Note:

LR copy to be marked.

Furnish copy in two days

B/o

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