

THE HIGH COURT OF SIKKIM : GANGTOK

WRIT PETITION (C) NO. 5 OF 2005

In the matter of an application under Article 226 of
the Constitution of India

and

in the matter of

Indian Council of Agricultural Research,
ICAR Research Complex for NEH Region,
Sikkim Centre, Tadong,
Gangtok - 737 102,
Represented by its Joint Director
Dr. Lakshmi Shankar Srivastava **Petitioner**

Versus

1. State of Sikkim
Represented by the Chief Secretary,
Government of Sikkim,
Gangtok.
2. The Secretary-cum-Principal Chief
Conservator of Forests,
Forests Secretariat,
Government of Sikkim,
Deorali,
Gangtok - 737 102.
3. The Conservator of Forests,
Territorial Circle,
Office of the Conservator of Forests,
Government of Sikkim,
Gangtok - 737 102.
4. The Assistant Conservator of Forests (T),
Office of the Assistant Conservator of Forests,
Forests Environment and Wildlife Department,
Government of Sikkim,
Gangtok - 737 102.
5. The Divisional Forest Officer (T),
Forests Environment and Wildlife Department,
Government of Sikkim,
Gangtok - 737 102.

6. The Forest Range Officer,
Forest Range Office,
Baluakhani,
Gangtok.

..... Respondents

For the petitioner : Mr. K. N. Chowdhury, Mr. A. K. Upadhayaya, Senior Advocates, Mr. I. Chowdhury and Ms. Manita Pradhan, Advocates.

For the respondents: Mr. S. P. Wangdi, Advocate General, Mr. J. B. Pradhan and Mr. Karma Thinley, Government Advocates.

**PRESENT: THE HON'BLE MR. JUSTICE N. S. SINGH, CHIEF JUSTICE (ACTING).
THE HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE.**

Last date of hearing : 9th September, 2005.

DATE OF JUDGMENT : 20TH SEPTEMBER, 2005.

J U D G M E N T

A. P. Subba, J

By this writ petition filed under Article 226 of the Constitution of India, the petitioner, Indian Council of Agricultural Research (ICAR), Research Complex for NEH region, Sikkim Centre, Tadong seeks to challenge the order dated 24th December, 2004 passed by the Conservator of Forests (T) directing the petitioner to pay compensation of Rs.1,00,000/- for alleged illegal felling of trees.

2. The facts relevant and sufficient for deciding the present writ petition are that the petitioner, Indian

y →

Council of Agricultural Research, i.e., ICAR Complex for NEH Region, Sikkim Centre, Tadong, Gangtok was established in the year 1976 under the Directorate at Shillong with the object of conducting and organising research in agriculture, keeping in view the agro-based economy of the country. The complex was established at Tadong, Gangtok on a piece of land made available to it by the State Government by acquiring some lands belonging to different farmers. After the land was allotted to the petitioner by the State Government, the records of rights were duly transferred and the land was mutated in the name of the petitioner thus transferring ownership of the said land to the petitioner. After its establishment, the petitioner entered into possession of the said land and has been conducting research on agro-forestry on the said land.

3. In February, 2004 six security personnel deputed by Regional Headquarter, Barapani, Meghalaya reported for duty on 1st March, 2004 and they were deployed for watch and ward duty in the complex. On the very night of taking over charge by the new batch of security personnel, some damage was found to have been done to some research plants including vegetables. An Enquiry Committee immediately constituted on 6th March,


y

2004 found that the watch and ward who were on duty on the relevant night were responsible for the damage done to the crops and accordingly submitted its report. In the meantime, on 4th March, 2004 the new batch of security personnel who were deployed on duty on and from 1st March, 2004 complained that they were being threatened by the security personnel who were earlier on duty and whose contract term had been terminated. Apprehending breach of peace in the complex, the petitioner reported the matter to the District Magistrate, East. Keeping in view the disturbing situation that had developed after the new security personnel took over charge, the petitioner extended the term of contract of the previous security personnel till 31st May, 2004 and both the groups were deployed for duty as security personnel in the same complex.

In the meantime, on 8th March, 2004 at around 6/6.30 p.m., Mr. S. Verma, Senior Technical Assistant and Mr. Maheswar Singh, Field Man, ICAR were forcibly taken by the Forest Range Officer (respondent no.6) to the Forest Range Office on the allegation of illegal felling of trees in the complex. Since the two persons including the Joint Director, i.e., the petitioner herein were totally unaware of any alleged felling of trees in absence of any



report from the security personnel deployed in the area, the Joint Director requested the Divisional Forest Officer (T) (respondent no.5) and Forest Range Officer (respondent no.6) to allow him two day's time to conduct an internal enquiry. However, only 24 hours time was allowed and accordingly, the Joint Director constituted a Committee comprising of five officers to conduct an enquiry into the alleged incident and to submit a report. The Enquiry Committee so constituted hurriedly conducted the enquiry and submitted the report to the effect that apart from the pollarding of trees done for research purposes about 10 number of trees had been found to have been cut down about 4/5 days ago. However, the office of the Joint Director had no information regarding the matter since no report was received from the security personnel deployed in the complex. On the same day, i.e., on 9th March, 2004 the respondent nos. 5 and 6 again forcibly took Mr. S. Verma and Mr. Maheswar Singh along with the Joint Director to their office where they were threatened and forced to sign a compounding statement on which the Joint Director was forced to put his signature as a witness. Under the compounding order issued by the respondent no.5, Mr. S. Verma and Mr. Maheswar Singh were directed to pay a compensation of Rs.1,00,000/-.



4. Being aggrieved by above order, Mr. S. Verma and Mr. Maheswar Singh preferred appeal before the Conservator of Forests, Territorial Circle (respondent no.3). who is the appellate authority. The appellate authority vide order dated 11th March, 2004 passed in the appeal upheld the amount of compensation but modified the order to the extent that the said compensation shall be paid by the Organisation, i.e., ICAR who is the petitioner herein. Pursuant to this order, the respondent no.5 issued letter dated 16th March, 2004 directing payment of the compensation within five days from the date of issue of the compounding order. Against this order of the appellate authority, i.e., respondent no.5, the Joint Director preferred further appeal before the Secretary-cum-Principal Chief Conservator of Forests (respondent no.2) and the Conservator of Forests, Territorial Unit (respondent no.3) for waiving and/or reducing the amount of compensation. However, he was informed by the Conservator of Forests, Territorial Unit (respondent no.3) that there was no justification and any ground to waive the amount of compensation. Being dissatisfied with the said order, the Joint Director preferred an appeal before the Chief Secretary, Government of Sikkim (respondent no.1) and also before the Secretary-cum-Principal Chief

Conservator of Forests (respondent no.2) since the earlier appeal addressed to him was pending consideration. However, before the appeals filed by the petitioner were considered and decided, the respondent no.4 on 7th May, 2004 again directed the ICAR to pay the compensation within five days failing which charge-sheet shall be filed in the Court of Chief Judicial Magistrate, Gangtok. Thereafter, the Joint Director, ICAR filed a writ petition being Writ Petition (C) no. 5 of 2004 before this Court challenging the impugned order of the Forest Authorities. This Court on being satisfied that the ICAR was not given any opportunity of hearing before the passing of the impugned order, set aside the impugned order and directed the Conservator of Forests to hear the appeal preferred by the writ petitioner afresh within a period of one month and also allowed the writ petitioner to file a recast memo of appeal. The Joint Director, ICAR accordingly submitted his recast memo of appeal before the appellate authority who, as stated above, upheld the amount of compensation but modified the order directing the petitioner to pay the compensation.

5. In the counter-affidavit jointly filed by the respondents it was stated that the Conservator of Forests (T) (respondent no.3) in the morning of 8th March, 2004




received a telephonic information to the effect that trees had been felled at ICAR complex, Tadong. On receipt of such information, the Conservator of Forests deputed one Mr. Mahadev Gurung, Head Forest Guard (T) and other subordinate staffs to proceed to the complex of ICAR at Tadong to enquire into the matter. The said Head Forest Guard and the accompanying subordinate staff found twenty-five number of trees of different species cut down and removed from the spot. They also found that the felled trees had been converted into logs and fire woods and the same were found in possession of four persons living in the periphery of the ICAR complex. They recorded the statement of the four persons and submitted their report to the Range Officer (T). On receipt of the report, the Range Officer (respondent no.6) visited the place of occurrence and seized the logs and the fire wood found in the possession of the four persons. Since two persons, namely, Mr. S. Verma, Firm Manager and Mr. Maheswar Singh, Field Man, ICAR were found to have been involved in the illegal felling and disposing of the trees, they were directed by the Range Officer to attend his office at Baluakhani on the same day. The said two persons attended the office of the respondent no.6 along with Mr. R. K. Awasti, Senior Scientist and Dr. L. S. Srivastava,



Joint Director, ICAR. Dr. Srivastava, Joint Director requested for time till 9th March, 2004 to conduct an departmental enquiry and submit a report. As undertaken by him, the petitioner, Dr. L. S. Srivastava submitted a report prepared by five Member Committee set up by him to enquire into the matter wherein it was found that pollarding of Alnus trees were done to undertake studies of shade loving crops like ginger for experimental purposes. However, the purpose of felling another ten number of trees was said to be unknown. Since the Divisional Forest Officer (T) (respondent no.5) did not find the report satisfactory in view of information he had collected to the effect that the accused person were involved he enquired from the accused persons as to whether they were agreeable to compound the case. On being so asked the accused Mr. S. Verma, Firm Manager, Mr. Maheswari Singh, Field Man, ICAR admitted their guilt and agreed to compound the case and accordingly, a compounding statement was made which was duly signed by accompanying officers, namely, Mr. R. K. Awasti, Senior Scientist and Dr. L. S. Srivastava, Joint Director. It was on the basis of such compounding statement that the respondent no.6 issued compounding order vide memo no.663/ED/T dated 9th March, 2004. It was, therefore,



denied that any force was used by the respondents against the accused persons and the petitioner. It was contended that the compounding order was issued after recording the statement of the accused persons in Form 'D' appended to Rule 6 of Compounding Rule, 1998 and after the accused persons had expressed their willingness to compound the offence under section 74 of the Sikkim Forests, Water Courses and Road Reserve Preservation and Protection Act, 1988 (for short 'Act of 1988'). Thus, it was further contended that the compensation was imposed in accordance with the provisions contained in section 74(1)(a) of the Act of 1988 as amended by the Amendment Act of 2000. It was also contended that it was after giving due opportunity of hearing to the petitioner in the appeal that the respondent no.3 had modified the compounding order to the extent that the said amount of fine was payable by the Organisation, i.e., ICAR and not by the individuals and it was in accordance with the modified order that the fresh compounding order in the name of the petitioner, i.e., Joint Director, ICAR, Sikkim Unit was issued. It was, therefore, specifically denied that no opportunity of hearing was given to the Organisation, i.e., ICAR *inasmuch* as Dr. L. S. Srivastava, Joint Director of ICAR represented the Organisation in all



the proceedings and had preferred appeal pursuant to the order of this Court dated 26th November, 2004. It was accordingly contended that the writ petition was liable to be rejected and dismissed.

6. Mr. K. N. Chowdhury, Mr. A. K. Upadhyaya, both learned senior counsel assisted by Mr. I. Chowdhury and Ms. Manita Pradhan, learned counsel for the petitioner and Mr. J. B. Pradhan, learned Government Advocate for the respondents were heard.

7. The principal submission made by Mr. Chowdhury is that the Divisional Forest Officer (T) and Chief Conservator of Forests (T) invoked provisions of law which were not applicable to the facts of the case and as such, the entire impugned action and all consequent action taken thereto are illegal, arbitrary, *mala fide*, discriminatory and capricious and hence, liable to be set aside and quashed. In support of his submission the learned counsel highlighted several irregularities and illegalities that allegedly crept into the impugned proceedings and vitiated the impugned order. The following are the various infirmities pointed out by the learned counsel :-

- (i) That the area of land in occupation of the ICAR, Sikkim does not fall in the category of private



forest as envisaged in Chapter V of the Act of 1988 and as such, the compounding statement dated 9th March, 2004 obtained by the respondent no.5 from S. Verma and Shri Maheshwar Singh in purported exercise of power under sections 34(1) and 37 falling chapter V of the Act are without jurisdiction and are, therefore, *void ab initio*;

- (ii) that the provisions of Section 41 of the Act of 1988 and that of Sikkim Private and other Non-Forest Land Tree Felling Rules, 2001 unilaterally invoked by the appellate authority (respondent no.3) for modifying the impugned order have no application to the facts of the present case;
- (iii) that the impugned orders were passed without giving any opportunity of hearing to the petitioner which led to violation of the well established principle of natural justice and the fundamental and other legal rights guaranteed to the petitioner under Article 14 of the Constitution of India.

In addition to the above, it was also submitted by the learned counsel that the land in question is under the control and management of the ICAR which is an

M

institution and as such, as per Section 41 of the Act of 1988 the provisions contained in Chapter III of the Act would apply. Further, the provisions contained in Section 24(i) (e) (f) & (h) falling under chapter III of the Act envisage a settled procedure to be followed for imposing penalty in respect of offence relating to forest produce and trees grown in lands under the control and management of local authority and institution like ICAR, but such a procedure was never followed in the impugned proceedings before the respondent nos.3 and 5. It was also submitted that no rules had been framed by the State Government to carry out the purposes of chapter III.


8. Mr. J. B. Pradhan, learned Government Advocate in his submissions in reply conceded that the State Government had not yet framed rules under section 27(1) of the Act of 1988 to carry out the purposes of chapter III. It was also very fairly conceded that the appellate authority had fallen in the error of adjudicating the case of the petitioner within the provisions of law which were not applicable to the instant case. It was, however, contended that citing of a wrong provision of law in any proceeding was not fatal to the validity of the proceedings and as such, the appellate authority may be taken to have passed the impugned order under the



provisions of chapter III of the Act of 1988 in the interest of justice. Thus construed, the impugned order, according to the learned Government Advocate, will not be found to be legally infirm on any account.

9. This Court is, therefore, to see and examine if the impugned proceedings and the impugned order stand vitiated by the alleged omissions and commission and if so whether they are sustainable in law.

10. Admittedly, the area of land where the alleged illicit felling of trees took place stands recorded in the name and occupation of the petitioner, i.e., the ICAR. There can, therefore, be no dispute that it is a land under the control and management of a local authority and institution within the meaning of section 41 of the Act of 1988 and as per this section it is the provision contained in chapter III of the Act which should apply in respect of all forest produce, and trees grown thereon. As already noted above, the alleged recital of wrong provision of law by the concerned authority and non-framing of rules to carry out the purposes of chapter III of the Act of 1988 have been very fairly conceded by the learned Government Advocate. Thus, if the provision of chapter III were to be applicable to the present case, as is the admitted position, it is obvious that the authorities of the



Forest Department were clearly in error in invoking provisions of sections 34(1) and 37 falling under chapter V of the Act of 1988 instead of the provisions of sections falling in chapter III of the Act. Therefore, it is obvious that the impugned proceedings are vitiated on account of application of wrong provisions of law. Therefore, the question is whether on this account the impugned order is rendered inoperative and *non-est*.

11. The contention of the learned Government Advocate as already noted above is to the effect that quoting wrong provisions of law does not *ipso facto* make an order inoperative. Reliance was placed by the learned counsel on the following decisions of the Apex Court -

- (i) (1983) 2 SCC 422
Municipal Corporation of the City of Ahmedabad
vs. Ben Hiraben Manilal
- (ii) (1985) 1 SCC 196
State of Karnataka vs. Muniyalla
- (iii) (2003) 6 SCC 175
Superintendent of Police, C.B.I. and others vs.
Tapan Kumar Singh

We have perused the above decisions. These decisions no doubt, lay down that a wrong reference to the power under which action is taken by the authority will not per se vitiate that action if it can be justified under some other power under which the authority could lawfully do

y →

that act. The decisions also make it clear that mere recital of a wrong provision of law does not have the effect of invalidating an order which is otherwise within the power of the authority making it.

12. It thus follows from the above decisions that the impugned order, as contended by the learned Government Advocate, need not be invalidated merely for recital a wrong provision of law. However, we are afraid that even if the impugned order is held to have been passed under the provisions contained in chapter III of the Act of 1988 and the impugned order to be the one passed under that chapter, it would be an exercise in futility for the following reasons.

13. It is borne out by record and is also undisputed that the appellate authority apart from reciting of a wrong provision of law also failed to give a fair opportunity to the petitioner, i.e., the ICAR to meet the case against it under the new provisions of law invoked by it in order to fix liability to pay compensation amount on the petitioner in modification of the impugned order. It, therefore, follows that the concerned authorities failed to follow the minimum of fair procedure and for this reason the proceedings in which the impugned order has been passed suffers from non-adherence to the well-established

principles of natural justice and such irregularity in the procedure followed by the concerned authorities, to say the least, strikes at the root of the matter. It is thus obvious that the impugned order suffers from more than one infirmity. It is needless to say that it is well-established that some minimum procedure consistent with the principles of natural justice must be followed by the tribunals exercising quasi-judicial function. It has been made absolutely explicit by the Apex Court in Hindustan Petroleum Corporation vs. H. L. Trehan reported in (1989) 1 SCC 764 that even when the authority has statutory power to take action without hearing, it would be arbitrary to take action without hearing and would be violative of Article 14 of the Constitution of India. In a later decision rendered in State of U.P. vs. Vijay Kumar Tripathi reported in (1995) Supp. (1) SCC 552 the Apex Court further held that the principles of natural justice must be read into the provision of a law even where the rules exclude, whether expressly or by necessary implication, the application of the principles of natural justice.

14. Therefore, it is obvious that the concerned authorities failed to maintain the minimum procedural standard in terms of the principle of law as enunciated by

the Apex Court in the cases cited above, while passing the impugned order.

15. In view of the above, we are of the considered opinion that even if we adopt the course of action as suggested by the learned Government Advocate, no useful purpose would be served for the simple reason that recital of a wrong provision of law is not the only defect the impugned order is found to suffer from.

16. As regards matters falling under chapter III of the Act, section 27(1) falling within the said chapter stipulates that to carry out the purposes of the chapter, necessary rules would be required to be framed and notified by the State Government. It is, however, noticed that no such rules have been framed by the State Government thus far.

17. For the above reasons, we are of the view that there is no escape from the conclusion that the impugned order which is found to suffer from more than one legal infirmity is unsustainable in law. We are, therefore, left with no option but to quash the impugned order.

18. It was, however, stated at the bar that a Forest Criminal Case under the relevant provisions of law against the petitioner and his subordinate staff, namely, Mr. S. Verma and Mr. Maheswar Singh along with the other co-

M

accuseds has already been filed in the Court of the learned Chief Judicial Magistrate (East) and the matter is sub-judice. It is clear that all the issues relating to the liability of the concerned person for the alleged forest offences raised in the present writ petition can also be canvassed in the said proceedings before the learned Court of the Chief Judicial Magistrate (East).

19. In the result, the writ petition is allowed and the impugned order is quashed.

20. The learned Court of the Chief Judicial Magistrate (East) is directed to proceed with the Criminal Complaint filed by the Forest Authority according to law and dispose of the same as expeditiously as possible.

(A. P. Subba)
Judge
20-09-2005

21. I agree.

(N. S. Singh)
Chief Justice (Acting)
20-09-2005