

GOVERNMENT OF NCT OF DELHI
DEPARTMENT OF FORESTS & WILDLIFE,
'A' BLOCK, 2ND FLOOR, VIKAS BHAWAN,
IP ESTATE, NEW DELHI-110002

Dated: 12.04.2016

F No. 11(3)/CF/DPTA/THL/15-16/3073-74

To,

✓ The Dy. Inspector General of Forests,
Ministry of Environment, Forests & Climate Change,
Forest policy Division,
Indira Paryavaran Bhawan,
Vayu Bhawan, 6th Floor,
Jor Bagh Road, Aliganj,
New Delhi- 110003

Sub: Guidelines for felling and transit regulation for tree species grown on Non- forest/
private lands - reg.

Kindly refer to your letter dated 08.03.2016 addressed to Chief Secretary (All States/ UTs)
on the subject cited above. The felling of Trees in Delhi is governed through Delhi (Preservation)
of Tree Act, 1994. The comments are furnished below:

Department of Forests and Wildlife, GNCTD undertakes plantation for increasing the green
cover in Delhi and not for production forestry. Since land is a premium commodity in Delhi, So
the agro-forestry models are not generally practiced by farmers in Delhi. To encourage agro-
forestry in Delhi, the following measures are under consideration;

- 26/4
21/4/16
- As per provisions under section 29 of DPTA, ~~species like Eucalyptus, Poplar and Kikar~~
grown on Non- Forest land/ private lands is being proposed for exemption.
 - A system of pre-registration of farm forestry areas is also being considered.
 - Regarding Para 4 of the Guidelines, there is no transit rule in Delhi for transportation of
timber. A proposal is being mooted to Government for movement of Timber under
provisions of issuing transit challan.

Yours Faithfully,

Anandil
12/04/2016
Dy. Conservator of Forests (P&M)

| |
|----------------|
| O/o DIG (FPD) |
| Dy. No. 560 |
| Date 26/4/2016 |

Copy to:

- Secretary (E&F), Govt. of NCT of Delhi, 6th level, 'C'- wing, Delhi Secretariat, IP Estate,
New Delhi- 110002.

not for IFS Div.
CPD
19/4

BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Original Application No. 805 of 2017
(M.A. No. 65 of 2018 & M.A. No. 229 of 2018)

IN THE MATTER OF:

Kshitij Agnihotri

Vs.

Ministry of Environment, Forest and Climate Change &Ors.

CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Present: Applicant:

Mr. Arvind Kumar Shukla, Mr. Alok shukla, Mr. Nihal Ahmad, Ms. Neena Shukla and Mr. Kunal Yadav, Advs.
Mr. Kumar Abhishek and Mr. Amit, Advs.

Respondents:

Mr. Sanjay Upadhyay and Mr. Bhanwar Pal Singh and Ms. Sharmishtha Shukla, Advs. for State of Uttar Pradesh
Mr. Vivek Gupta, Adv.
Mr. Pradeep Misra and Mr. Daleep Dhyani, Advs.

| | Date and Remarks | Orders of the Tribunal |
|--|---|---|
| | Item No. 11 September 11, 2018 dv | 1. Challenge in this application is to the Notification dated 31.10.2017, issued by the State of Uttar Pradesh under Section 21 of the Uttar Pradesh Trees Protection Act, 1976. The Notification purports to grant exemption to all categories of trees other than those specified in the Notification from the operation of the regulatory provisions of the Act. 2. According to the applicant, the impugned Notification has been issued to encourage the saw mills. The impugned Notification will have adverse impact on the |

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and at one point in the future, the level of fresh water resources available will become scarce. Plants absorb Carbon Dioxide CO₂ (a greenhouse gas) from the atmosphere and use it to produce food (carbohydrates, fats etc. that make up trees) and in return, it gives Oxygen. Destroying the forests mean CO₂ will remain in the atmosphere and in addition, destroyed vegetation will give off more CO₂ stored in them as they decompose. This will alter the climate of that region. Cool climates may get a lot hotter. With less trees, humans would not be able to survive because the air would be rendered unsuitable for breathing. If anything, people would have to wear gas masks that filter the air. Big cities like Delhi NCR are facing crisis in winters and the condition of other big cities like Kanpur, Agra, Lucknow are not better. Instead of taking corrective measures, the State is issuing new license to wood-based industry without having availability of timber. This will only encourage illegal cutting of trees. Trees are a crucial part of the Carbon cycle, a global process in which carbon dioxide constantly circulates through the atmosphere into organism and back again. Carbon is the second most valuable element to life after water. Anyway, trees take Carbon from the atmosphere through photosynthesis in order to make energy. This carbon is then either transferred into Oxygen and released

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pollutants like Carbon monoxide, Sulfur dioxide and Nitrogen dioxide. Cutting of trees on large number will dry the atmosphere and arid conditions will surface. Trees regulate and anchor the dirt by releasing water. In short they maintain the ecological balance.

3. Reply has been filed on behalf of the State of Uttar Pradesh, defending the impugned Notification. According to the State, the impugned Notification will result in plantation of more and more trees and increase of green cover in the State. The exemption will encourage planting of trees which can be cut without any regulatory regime. The existing regulatory regime discourages the farmers from planting more trees. It is stated that national goal is to have 33% of the geographical area under the forest and tree cover (as per National Forest Policy, 1988). National Agro Forestry Policy, 2014 provides for liberalization of restrictive regulation particularly with regard to agro forestry species. The Regulatory bottlenecks have also been identified in Arun Kumar Bansal Committee Report in the year 2011. The Ministry of Environment, Forest and Climate Change (MoEF&CC) has issued guidelines for Liberalization Felling and Transit Regime for Tree Species Grown on Non-Forest/Private Land on 18.11.2014. Restrictions should only be on felling and transit of timber species and not to agro forestry tree species like

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The State of Uttar Pradesh has only 8.9% forest cover as against goal of 33%. The guidelines by the Central Government dated 11.11.2016 and 11.09.2017 have been issued in pursuance of order of the Hon'ble Supreme Court dated 05.10.2015 in '*T.N. Godavarman Thirumalpad vs. Union of India & Ors.*' in I.A. No. 1137 with 1319 in WP (c) No. 202/1995 (2016) 13 SCC 586 and the impugned Notification is consistent with the said guidelines.

5. The MoEF&CC in its reply has responded only with regard to the averments concerning the said Ministry. It is stated that the forest cover in the country is 24.16% of the geographical area as against target of 33%. Nine percent forest cover is required outside the forests in the government and private land. Species under agro forestry by farmers should be exempted from transit, permit and felling regulations.

6. We have heard the learned Counsel for the parties and perused the record.

7. Main contention raised on behalf of the applicant is that the impugned Notification has no nexus to the increase of the forest cover. There is no material to support that the impugned Notification dated 31.10.2017 will have any positive impact on increase of forest cover. The exemption applies even to twenty years old trees and not mere to agro forestry trees. Uncontrolled felling of

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promoting wood based industries at the cost of environment. The Notification is contrary to the legislative mandate under the Act.

8. Learned Counsel for the State of Uttar Pradesh, supported the stand in the affidavit of the State. He submitted that this Tribunal has no jurisdiction to go into the merits as the 'Trees Act' is not in the Schedule to the National Green Tribunal Act, 2010.

9. Question for consideration is whether the Tribunal can go into the question and whether the impugned Notification can be sustained as being consistent with the object of the environment protection and the legislative policy underlying the Trees Protection Act.

10. As regards the jurisdiction of this Tribunal, it may be noted that the Tribunal is a special forum for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forest and other natural resources. The National Green Tribunal Act, 2010 has been enacted in the wake of UN Conference on the Human Environment held at Stockholm in June, 1972 to which India is a party and the UN Conference on Environment and Development held at *Rio de Janeiro* in June, 1992 to which also India is a party. This objective is clearly reflected in the statement of objects and reasons of the Act. The long title of the Act states that the object of

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The definition of 'environment' under Section 2(c) of the NGT Act is wide enough to include the issue of cutting of trees. The Schedule to the Act include Forest (Conservation) Act, 1980. The State Act needs to be read with law declared by the Supreme Court in T. N Godavarman vs. U.O.I (1997) 2 SCC 267 and directions issued against cutting of any trees. Thus, cutting of trees is an issue open to be gone into by the Tribunal even if the State Act is not in the Schedule. Reference may also be made to further directions in the said case, including in (2006) 1 SCC 1 laying down procedure required to be followed for diverting any forest for any other purpose.

11. As regards the merits, we are unable to find any nexus in the object of encouraging agro forestry to exempting the cutting of all the trees, except few, from the purview of the regulatory regime under the UP Trees Protection Act. It is well known that naturally growing trees cannot be termed as 'agro forestry' which refers to the trees grown by the agriculturists. There may certainly be need to encourage agro forestry and relax regulatory regime for such species. Such species have to be so specified. Omnibus exemption of all species, except few, can hardly be said to be promotion of agro forestry. Reference to the provisions of UP Trees Protection Act shows that no tree is allowed to be felled except a tree

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valid reason. Even without the Uttar Pradesh Trees Protection Act, 1976 felling of trees indiscriminately is not permitted as it violates Article 21 of the Constitution.

12. It is well settled that an exemption provision has to be applied to an exceptional situation. General exemption without creating defined category of exception results in defeating the main statute, by arbitrary exercise of power. The legislative mandate is to provide strict regulatory regime with regard to the subject matter covered by the statute. In fact, the agro forestry is not even shown to be covered by the regulatory regime. The definition of tree under Section 3(xi) of the Act is as follows:

"3(xi) "tree" means any woody plant whose branches spring from and are supported upon an trunk or body and whose trunk or body is not less than five centimeter in diameter at a height of thirty centimeters from the ground level and is not less than one metre in height from the ground level, and the expressions "timber trees" and "fruit trees" means respectively the trees of the species specified in Schedule I and Schedule III, respectively."

13. In any case, the agro forestry could be specifically defined in the exemption granted for the purpose. Omnibus exemption from the Act requiring regulation of cutting of trees, with regard to every species of trees, except few, cannot be held to be advancing the need of environment. The impugned notification does not merely restrict the exemption to agro forestry and goes much

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remained stayed. If at all there is any increase in the forest cover, as claimed, it cannot be said to be result of the impugned Notification. There is no safeguard in the impugned Notification against destruction of naturally grown trees, outside the forest area.

15. There is no impact assessment with regard to the impact of exemption of species of trees covered by the impugned Notification which was a must before such Notification was issued. If the exemption is granted in respect of all the trees in the non-forest areas, it is obvious that the forest cover will get reduced. The plea that impugned Notification will result in increasing the forest cover is without any basis and is an argument only in air.

16. Thus, following points emerge from the discussion:

(i) Unregulated cutting of trees without limitation of specific species of agro forestry is in violation of Forest Conservation Act read with the law laid down in T.N Godavarman (supra).

(ii) The Tribunal has jurisdiction to consider challenge to un-regulated cutting of trees.

(iii) The impugned notification is not merely restricted to agro forestry, as claimed.

(iv) The State of UP has no power to permit unregulated cutting of trees, in violation of law laid down by Hon'ble Supreme Court.

arbitrary exercise of power, adversely impacting the environment.

17. We may note that while issuing the impugned Notification was stayed on 15.12.2017 and the stay has been operative till date.

18. Accordingly, we allow this application and quash the impugned Notification dated 31.10.2017. However, we leave it open to the State of Uttar Pradesh to carry out a proper impact assessment and thereafter grant any exemption after making inventory of all the agro-forestry produces specifying species of agro forestry. This may be consistent with the requirements of Forest Conservation Act as interpreted in *T.N. Godavarman Thirumalpad vs. Union of India & Ors. (supra)*

....., CP
(Adarsh Kumar Goel)

....., JM
(Dr. Jawad Rahim)

....., JM
(S.P. Wangdi)

....., EM
(Dr. Nagin Nanda)

11.09.2018