

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

OWP no. 739/2011

Dated: 26.08.2013

Sanjay Kumar Gupta
v
State of J&K and ors.

Coram:

Hon’ble Mr. Justice Bansi Lal Bhat-Judge

Appearing counsel:

For petitioner(s): Mr. C. M. Koul, Advocate
For respondent(s): Mr. G. S. Thakur, Advocate

i)	Whether to be reported in Press/Journal/Media	Yes/no
ii)	Whether to be reported in Digest /Journal	Yes/no

Through the medium of this writ petition, petitioner seeks the following reliefs:-

- (i) Mandamus commanding the respondents to provide/accord permissions to the petitioner to extract the minor forests produce from the forests predominantly for the reasons that:
- i. The ban imposed on the extraction of the minor forest produce vide Government order No. 290-FST of 2004 dated 14.07.2004 has already come to an end.

ii. The petitioner’s Unit is a registered Small Scale Industrial Unit entirely dependent on the minor forest produce in so far its

industrial activity is concerned i.e. to process the Minor Forest produce through various stages to make it fit for further utility/consumption including in medicines etc.

iii. The Small Scale Industrial Unit set up by the petitioner on the assurance of the respondents that the minor forest produce/basic input shall be made available to the petitioner's Industrial Unit uninterruptedly.

(ii) Mandamus commanding the respondents to revive the Small Scale Industrial Unit of the petitioner i.e. 'KASHMIR HERBAL INDUSTRY' as the same could not carry out any business/industrial activity in the face of the ban imposed on the extraction of the minor forest produce which has by now already come to an end.

(iii) Mandamus commanding the respondents to provide to the petitioner compensate in respect of the deterioration of the stocks that took place when the said material remained dumped on different places after removal from the demarcated forests as the petitioner could not process the same when the respondents caused considerable delay in allowing the petitioner to put the finished products in the market erroneously in the garb of the ban having been imposed on the extraction of the minor forest produce.

The case set up by the petitioner for entitling him to the relief claimed is that the State Government enabled the young entrepreneurs to establish Small Scale Industrial Units (for brevity SSIU) to which Minor Forest Produce (for brevity MFP) counterfitted the raw-

material for processing. The Government of Jammu and Kashmir enabled the petitioner to set up a Small Scale Industrial Unit styled as “KASHMIR HERBAL INDUSTRY” at village Panditgam Asrarabad Kishtwar. Upon completion of verification/inspection, the SSIU was provisionally registered on 16.12.2002. The registration was made permanent on 31.01.2004 after according permission for extraction/collection of MFP for the year 2003-04 from Kishtwar, Bhaderwah and Doda Forest Divisions on royalty basis vide Order No. PCCF/MFP/138/1351-57 dated 23.06.2003. Petitioner extracted/collected MFP, processed the same in its SSIU and refined/processed items became available for transportation to various places for marketing purposes. Petitioner claims to have collected a lot of MFP and dumped the same at different places for its further processing in the SSIU when Government Order No. 290-FST of 2004 dated 14.07.2004 came to be issued imposing complete ban on extraction of the MFP for a period of five years. Resultantly production activity in the SSIU of petitioner came to a grinding halt. Petitioner was not allowed to transport the already processed MFP in time, which forced him to file a writ petition before this Court. Petitioner claims to have suffered loss to the tune of Rs. one crore. Petitioner's grievance is that despite elapsing of a period of five years for which ban had been imposed, petitioner has not been granted permission for extraction/collection of MFP despite making representation to the Government.

Respondents have filed objections denying the allegations leveled by the petitioner. It is pleaded that the petitioner was already working as Forest Contractor for extraction of MFP on contract basis duly sanctioned by the competent authority. Petitioner is said to have set up the SSIU at its own will. The Unit was registered for processing of Medicinal herbs. Permission was granted to the petitioner for extraction/collection of MFP for the year 2003-04 from Kishtwar, Bhaderwah and Doda Forest Divisions on royalty basis, with the condition imposed in regard to extraction of MFP by end of December 2003 and transportation up to Factory by March 2004. Ban was imposed on extraction of MFP for a period of five years in terms of order No. 290-FST of 2004. This was in tune with the policy of the Government which took into account the wide scale destruction of medicinal forest flora over a period of time. Petitioner had filed an affidavit, forming annexure R2 to the objections, wherein he categorically accepted the above working period. The permission was only up to ending March 2004. The order of imposition of ban on extraction of MFP was issued on 14.07.2004. Petitioner was granted extension of time for transportation of MFP items from TDS to his factory premises Kishtwar up to ending July, 2004. Petitioner was also granted permission for transportation of finished material out side the State, though initially he was allowed to utilize the same only within the State. It was pleaded that delay in transportation of material and loss suffered by the petitioner, if any,

was only due to his mismanagement. Regarding imposition of Ban on extraction of MFP , it is submitted that same is the policy matter of the Government, and in its consideration, imposition of ban was in the interest and safeguard of MFP's which had been extracted heavily in the past years and there was no intention to cause loss to any unit holder.

Heard rival sides and perused the record.

From perusal of documents placed on record by the parties, it comes to fore that in terms of Order No. 462-FST of 1998 dated 01.12.1998, the Government issued orders for disposal of MFP from forest lands through open auction. Forest Department, accordingly, put MFP items on open auction for sale on royalty basis. The local unit holders too were issued raw material on royalty basis. It is in the year 2003 that the Pr. Chief Conservator of Forests made recommendation that the local SSI unit holders who have established their Units or wanted to establish their Units within the State need to be given preference for allotment of raw material. This was done to encourage the State based units rather than to allow movement of raw material outside the State. It is not in dispute that the petitioner established a SSIU styled as 'KASHMIR HERBAL INDUSTRY' at village Panditgam Asrarabad Kishtwar and the permission for extraction/collection of MFP was granted in his favour for the year 2003-04 from Kishtwar, Bhaderwah and Doda Forest Divisions on royalty basis in terms of order dated 23.06.2003 issued by the Pr. Chief Conservator of

Forests. Same forms annexure R-1 to the objections filed by the respondents. The said order contains details of items with quantity permitted to be extracted by the petitioner. It also specifies that working period for extraction of MFP shall be end of December, 2003 while for its transportation up to factory, the working period shall be end of March 2004. It is, therefore, clear that the terms of the order clearly specified the working period for extraction of MFP as well as its transportation up to factory. The MFP extraction activity had to be completed latest by end of December, 2003 while its transportation was to be completed by ending March, 2004. It is not in controversy that Government Order No. 290-FST of 2004 dated 14.07.2004 came to be issued imposing complete ban on extraction of MFP for a period of five years. Such ban, on the face of it, was imposed after the contract period was over. The ban was imposed in furtherance of a policy decision of the Government for survival of medicinal plants. It is, therefore, futile to contend that the ban imposed in terms of the aforesaid order was actuated by malafide and to defeat the legitimate expectations of SSI unit holders who had set up the Units making investment under the legitimate belief that the supply of raw material by extraction of MFP's would continue. On plain terms of annexure R1 to the objections it is manifestly clear that extraction of MFPs and the transportation of raw material was limited by time which in any case did not extend beyond March 2004. It is also not in dispute that even after expiry

of working period, petitioner was granted extension up to July 2007 for transportation of his extracted MFP stocks from TDS to Factory. Thus, it does not lie in the mouth of the petitioner that he suffered losses attributable to denial of permission for transportation on the part of respondents. Record further indicates that the petitioner was even granted permission for transportation of finished material outside the State though MFP extracted by the petitioner were to be utilized within the State as per the sanction order.

Now adverting to the aspect of ban on extraction of MFP items, be it seen that a complete ban on extraction of MFP items from demarcated forests was imposed vide Order No. 290-FST of 2004 dated 14.07.2004. This was based on cabinet decision No. 85/Cir dated 12.07.2004. Some items were exempted from the ambit of ban in terms of Govt. Order No. 221 of 2005 dated 25.05.2005 and Govt. order No. 148-FST of 2006 dated 24.08.2006. The ban was imposed only for a period of five years from 21.07.2004. The ban came to an end after efflux of time i.e. on 21.07.2009. From the documents placed on record by the respondents it is gathered that a Co-ordinate Committee was constituted to consider the issue of revision of policy for extraction of MFP. After considering the recommendation of the Committee extraction of MFP items was allowed under proper permission of the competent authority. It led to issuance of Government order No. 154-FST of 2013 dated 09.04.2013 in terms whereof sanction was accorded to the lifting of ban on

extraction of MFP from demarcated forests of the State for all those species not included in the Schedule-VI of the Jammu and Kashmir Wildlife (Protection) Act, 1978 with immediate effect. The extraction of MFP was, however, subjected to provisions of Biological Diversity Act, 2002 (as amended from time to time) Jammu and Kashmir Wildlife (Protection) Act, 1978 and any other laws in force. Thus the main prayer in the petition turned infructuous.

The only other aspect arresting attention is the effect of the order No. 154-FST of 2013 dated 09.04.2013, which, according to the learned counsel for the petitioner is of no consequence inasmuch as the ban imposed on extraction of MFP had already come to an end due to efflux of time and ceased to operate w.e.f. 21.07.2009. Petitioner is sore over the restriction on extraction activity during the period intervening between 21.07.2009 to 09.04.2013. While it cannot be denied that in absence of any order of renewal of ban after 21.07.2009, the ban imposed on extraction on MFP stood extinguished by efflux of time, the issue raised is merely of academic interest as in absence of sanction authorizing petitioner to extract and transport MFP from demarcated forest during such period he cannot claim infringement of any legal right, much less a Constitutional right.

There is no merit in this petition. Same is, accordingly, dismissed

(Bansi Lal Bhat)

Judge

Jammu
26.08.2013
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