

A IN RE:
T. N. GODAVARMAN THIRUMULKPAD ETC.

v.

UNION OF INDIA AND ORS. ETC.

B (Interlocutory Application No. 3840 of 2014 in
Writ Petition (Civil) No. 202 of 1995)

FEBRUARY 16, 2018

[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

C *Environment – Forests – Felling of trees – Directions issued*
by Supreme Court on 12.12.1996, to a large number of States
including State of Himachal Pradesh, inter alia that there will be no
felling of trees in any forest, public or private – However, there
were reports that State of Himachal Pradesh had passed orders
lifting ban on felling of trees – Supreme Court, while issuing notice
D to State of Himachal Pradesh on 14.02.2000, also made it clear
that such orders, if passed, operation of the same were stayed and
no felling of trees be done – Application by State of Himachal
Pradesh that it may be permitted to carry out silviculture felling
including thinning and other cultural operations in Chil Pine, Khair
E and broad-leaved forests only – After the application was filed,
Central Empowered Committee (CEC) directed to file its report –
Held: As per affidavits filed by State of Himachal Pradesh, some
amount of silviculture felling is necessary, because if no felling is
done then regeneration of trees is not as fast as it should be and
once the mature trees die after reaching their maximum life span,
F there will be very few young trees to replace the old trees – With a
view to protect forests, felling of trees in India has been banned by
Supreme Court for more than two decades – However, on an
experimental basis silviculture felling of trees is permitted to a very
limited extent – Such felling should be monitored very carefully to
see whether it actually helps in the regeneration of forests or not –
G In addition to the conditions laid down by CEC for felling of trees,
further conditions laid down to be strictly complied with – Principal
Chief Conservator of Forests shall be liable to ensure that felling is
done strictly in accordance with the orders of Supreme Court – To
this limited extent, orders dated 12.12.1996 and 14.02.2000 are
H modified as far as the State of Himachal Pradesh is concerned.

CIVIL ORIGINAL JURISDICTION : Interlocutory Application A
No. 3840 of 2014 in Writ Petition (Civil) No. 202 of 1995.

Under Article 32 of the Constitution of India.

J. S. Attri, Sr. Adv, A. D. N. Rao, (AC.), Siddhartha Chowdhury, (AC), Sudipto Sircar, Ms. Tulika Chikker, S. Wasim A. Qadri, Ravindara Bana, Ms. Gargi Khanna, D. L. Chidanand, Zaid Ali, Ritesh Kumar, G. S. Makker, Varinder Kumar Sharma, Chandra Nand Jha, Ms. Pragati Neekhra, Advs. for the appearing parties. B

The Order of the Court was delivered by

DEEPAK GUPTA, J. 1. By means of this application the State of Himachal Pradesh has prayed that it may be permitted to carry out silviculture felling including thinning and other cultural operations in accordance with the Working Plan approved by the Government of India up to an elevation of 1500 metres above Mean Sea Level (MSL) in Chil Pine, Khair and broad-leaved forests only. C

2. On 12.12.1996, this Court issued directions to a large number of States. The relevant directions with regard to the State of Himachal Pradesh read as follows: D

“1. There will be no felling of trees permitted in any forest, public or private. This ban will not affect felling in any private plantation comprising of trees planted in any area which is not a forest; and which has not been converted from an earlier “forest”. This ban will not apply to permits granted to the right holders for their bonafide personal use in Himachal Pradesh. E

2. In a ‘forest’, the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber from areas other than those notified under Section 18 or 35 of the Wild Life Protection Act, 1972 or any other Act banning such felling or removal of trees. F

3. For this purpose, the State Government is to constitute an expert committee comprising a representative from MOEF, a representative of the State Government, two private experts of eminence and the MD of the State Forest Corporation (as Member G

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A Secretary), who will fix the qualitative and quantitative norms for the felling of fallen trees and diseased and standing timber. The State shall ensure that the trees so felled and removed are in accordance with these norms.

B 4. Felling of trees in any forest or any clearance of forest land in execution of projects shall be in strict conformity with the Forest Conservation Act, 1980 and any other laws applying thereto. Moreover, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency is to be involved in any aspect thereof.”

C 3. Despite such order having been passed, the amicus curiae on 14.02.2000 submitted before this Court that there were reports in the press that the State of Himachal Pradesh had passed some orders lifting the ban on felling of trees. This Court, thereafter, issued notice to the State of Himachal Pradesh and also made it clear that if any such orders have been passed, the operation of the same were stayed and no felling

D of trees be done. In the affidavit filed by the State of Himachal Pradesh, in response to the order dated 14.02.2000, it was pointed out that the intention of the State was to resume silviculture operations consisting of regeneration, felling and thinning of the trees as per the Working Plan duly approved. The State of Himachal Pradesh also informed this Court

E that though the State had intended to do silvicultural felling but in actual fact this decision has not been given effect to. It was clearly mentioned that no felling of trees has taken place except of those allowed by this Court specifically. It is also pertinent to mention that the Government of India vide G.O. dated 11.10.2002 suspended the Working Plan for various States including the State of Himachal Pradesh. The State then

F approached the Central Empowered Committee (for short ‘the CEC’), which advised the State to approach this Court for modification or vacation of the earlier stay order. This led to the filing of the present application.

G 4. After this application was filed, this Court directed the CEC to file its report. The CEC, in its report dated 06.07.2017 has made the following recommendations:

H “i) the permission for silvicultural fellings including thinning in the State of Himachal Pradesh be limited to only three working circles of Chil, Sal and Khair occurring below 1500 MSL to encourage regeneration of the forests aimed at achieving mixed species

forests with multi layered canopy having more efficient carbon sequestration capability; A

ii) no felling of broad leaved species be permitted in the compartments to be taken up for regeneration fellings of the above three working circles or in the miscellaneous/broad leaved working circle irrespective of the recommendations in the Working Plan; B

iii) 764 ha. of Eucalyptus trees proposed for felling as per Working Plan prescriptions be permitted to be felled and the same area regenerated with native broad leaved species;

iv) rotation of Sal and Chil to be 120 years and are worked under irregular shelterwood system; C

v) rotation age of Khair be kept at 30 years with minimum dia of 25 cms. at breast height;

vi) there will be total ban on burning of debris including after seeding or over wood felling in order to encourage natural regeneration of broad leaved species and reduce soil erosion; D

vii) no felling to be undertaken in Ban oak forests and other broad leaved forests other than Sal and Khair;

viii) planting component in Assisted Natural Regeneration shall include more than 50% seedlings of native broad leaved and multipurpose use species other than that of the principal species; E

ix) the removal of Lantana weed to be an integral component of regeneration felling and the removal of Lantana has to be completed before the felling operations commence, so that the regeneration of the felled area is taken up forthwith; F

x) in Khair working circle a minimum of 50 healthy trees per ha. are identified in advance, at least two years prior to the proposed felling in the compartment and labelled as mother trees or standards and these trees are not permitted to be lopped thereafter;

xi) the size of the compartment to be taken up for regeneration felling in a given year shall not exceed 20 ha.. If any compartment is more than 20 ha. in area, it can be sub-divided into two or more units so as to avoid creation of large gaps in canopy of forests in a given location; G

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- A xii) the felling operations in the adjoining forest area/compartiment of the already felled area/compartiment be taken up only after five years of regeneration felling in the given compartment and after ensuring that the regeneration is established in the already cleared forest area;
- B xiii) adequate soil and moisture conservation measures are to be undertaken in regeneration area;
- xiv) no green fellings are to be carried out in steep slopes and along streams and nallas as per the standard prescription in the Working Plan code and in the forest areas falling under Protection cum Rehabilitation Working Circle;
- C xv) State Government shall prepare three separate comprehensive management plans one each for Chil, Sal and Khair respectively covering the entire forest area falling below 1500 MSL incorporating revised set of prescriptions as detailed in this report as one time exercise and after obtaining approval of MoEF&CC, integrate the same with the Working Plans of respective forest divisions for operational purposes; and
- D xvi) State Government shall submit an undertaking in the form of an Affidavit before the Hon'ble Supreme Court ensuring sufficient budgetary provisions for undertaking regeneration of the felled area in the financial year following the felling year.”
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5. The report filed by the CEC was considered by this Court on 12.09.2017 when learned counsel appearing for the State of Himachal Pradesh submitted that he would file an affidavit identifying three working circles in different areas of the State. After this affidavit was filed, we realised that circles covered a large area and the State was directed to file an affidavit giving the areas covered by each circle and also the area of each range/beat in the circle. On perusal of the affidavit it was found that each forest circle comprises of a very large area covering more than one district in the State, which would entail felling of large number of trees. Thereafter, on 04.12.2017, the State was directed to identify two or three ranges where the process of silviculture felling may be carried out, the area of each of those ranges, the number of beats in each range and the area of each beat.

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6. Affidavit has been filed and in this affidavit it has been pointed out that for felling of Khair (*Acacia Catechu*) trees, Nurpur Forest Range of Nurpur Forest Division (Dharamshala Forest Circle) of District Kangra, Himachal Pradesh has been identified. Khair wood is used commercially in making *katha* and, therefore, the wood of this tree is in great demand. It has been proposed that 80% of trees of 25 cms. diameter and above would be felled and remaining 20% of trees of 25 cms. diameter and above would be retained to act as mother trees. It is also stated that no other broad-leaved tree shall be felled. Details have been given and it is proposed to carry out felling in the year 2018-2019 in an area of 903.14 ha. and an area of 706.30 ha. has been earmarked for silviculture felling for the year 2019-2020.

7. As far as Chil Pine (*Pinus Roxburghii*) trees are concerned, the State of Himachal Pradesh has proposed an area of 49.05 ha. for the year 2018-2019 and an area of 23.95 ha. for the year 2019-2020 for silviculture felling in the Bharari Forest Range of Bilaspur Forest Division (Bilaspur Forest Circle) of Bilaspur District of Himachal Pradesh. As far as Chil is concerned, it is proposed that at least 20-25 mother trees per hectare shall be retained.

8. As far as Sal (*Shorea Robusta*) trees are concerned, the range identified is Paonta Forest Range of Paonta Sahib Forest Division (Nahan Forest Circle) of District Sirmour of Himachal Pradesh and an area of 176.01 ha. for the year 2018-2019 and an area of 120.12 ha. for the year 2019-2020 have been earmarked for silviculture felling.

9. This Court, with a view to protect the forests, had totally banned felling of trees. As per the affidavits filed by the State of Himachal Pradesh, some amount of silviculture felling is necessary, because if no felling is done then regeneration of trees is not as fast as it should be and once the mature trees die after reaching their maximum life span, there will be very few young trees to replace the old trees. Felling of trees in India has been banned for more than two decades. We are of the view that on an experimental basis we may permit silviculture felling of trees to a very limited extent and such felling should be monitored very carefully to see whether such silviculture felling actually helps in the regeneration of forests or not. We may also note that the CEC, in its report, has also permitted felling of trees subject to certain conditions. We may further note that the CEC has recommended that the size of the compartment

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- A taken up for regeneration in a given area shall not exceed 20 hectares and we reiterate that the State shall be bound by all the conditions laid down by the CEC including the condition that no compartment of more than 20 hectares shall be felled at one go. In addition to the conditions laid down by the CEC, the following conditions shall be strictly complied with by the State of Himachal Pradesh:
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1. The felling should be done directly by the Forest Department or by the Himachal Pradesh State Forest Corporation and the work of felling should not be handed over or given on contract to any private agency;
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2. The Forest Department should ensure that videography of each beat where felling is to be done, is done separately at regular intervals to clearly indicate the condition and state of the forest before felling, during felling and after felling;
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3. As far as Khair trees are concerned, the State shall ensure that at least 25% of mature Khair trees are retained as mother trees and these should be marked and numbered as trees not to be felled, which should be clearly reflected in the videography. The trees to be felled can be marked by a separate colour. The number, size and girth of the trees should be clearly spelt out;
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4. As far as Chil Pine and Sal trees are concerned, the State shall ensure that at least 40 mature trees are retained per hectare and the other conditions will be the same as applicable to Khair trees;
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5. In addition to the conditions laid down in the Working Plan and those laid down by the CEC, the State of Himachal Pradesh shall ensure that adequate funds are made available and re-forestation is done either simultaneously or if it is not possible, immediately after felling is complete in each block of 20 hectares.
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6. It should also be ensured that these forest areas are kept free from grazing and are protected;
 7. The State should also ensure that sufficient number of healthy saplings are planted so that there is proper regeneration of the forest.
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8. This entire programme of experimental silviculture felling shall be done under the supervision and guidance of a two-Member Committee headed by Shri V.P. Mohan, IFS (Retd.), former Principal Chief Conservator of Forests, Himachal Pradesh. The second member of this Committee shall be nominated by the Vice Chancellor, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, Solan, Himachal Pradesh. The second Member shall be a Professor of Silviculture. A B

10. The Principal Chief Conservator shall be liable to ensure that felling is done strictly in accordance with the orders of this Court. To this limited extent, the orders dated 12.12.1996 and 14.02.2000 are modified as far as the State of Himachal Pradesh is concerned. C

11. The Committee should submit its report to this Court every 6 months. The State of Himachal Pradesh shall provide all facilities to the committee including transport and boarding facilities. The remuneration to be paid to the members of the committee shall be determined when the committee submits its report. D

12. Registrar Judicial to send the copy of this order to Shri V.P. Mohan, IFS (Retd.), former Principal Chief Conservator of Forests, Himachal Pradesh, Sunny Villa, Nigam Vihar, Shimla-171002 and Dr. Y.S. Parmar, University of Horticulture and Forestry, Nauni, Solan, Himachal Pradesh-173203. E

13. Accordingly, I.A. is disposed of.