

2
M 14/2001Order No. 2, dated 17.4.2001 at 4.00 P.M.

The applicant in this case has approached the Tribunal with an unusual prayer. In view of this, after hearing the learned counsel for the petitioner, Shri Aswini Kumar Mishra on the question of admission and had the prayer for interim relief, we/indicated to him that before passing orders on the question of admission, we would like to go through the voluminous annexures running to more than 150 pages enclosed by the petitioner to his OA. As court work was suspended today because of a death reference, we had the opportunity to go through the O.A. and its annexures in detail. Before proceeding further it is necessary to record that nothing said by us in this order should be construed as being in favour of or against the case of the applicant or any other person in respect of matters referred to by the applicant in the petition and its annexures. Besides Shri Mishra, we have heard Shri J.K.Nayak, the learned Additional Standing Counsel appearing for Government of India on whom a copy of the petition has been served. We have not been able to get the assistance of Shri K.C.Mohanty, the learned Government Advocate representing Government of Orissa on whom a copy of the petition has been served as it was mentioned at the Bar that he was indisposed and hence was absent.

2. In this application the petitioner has prayed for quashing the report of Task Force at Annexure-11. By way of interim relief

SJM

applicant has prayed for restraining the State of Orissa represented through Commissioner-cum-Secretary to Government, Forest & Environment Department from taking any coercive action against the applicant as per the report of the Task Force at Annexure-11.

3. The applicant's case is that he worked as Conservator of Forests, Koraput Circle from November 1995 to July 2000. In order dated 12.1.1998 at Annexure-1 Government entrusted the work of salvaging of wind fallen and uprooted trees from the forest to the Orissa Forest Development Corporation. The above order had several conditions mentioned including the stipulation that salvage operation would not cover timber logs etc. in the forest originating from illicit felling of trees and no felling of any tree, even if dead or dry, would be resorted to in the name of salvaging operation. After about two years, in order dated 23.12.1999 the Forest & Environment Department appointed M/s Keshari Traders as Raw Material Procurer (hereinafter referred to as "R.M.P.") for such salvage operation ~~as~~ in Balimela and Chitrakonda Ranges of Jeypore Division. In this order at Annexure-3 it has been mentioned that M/s Keshari Traders have applied to Orissa Forest Development Corporation for being appointed as R.M.P. for those two ranges. From the report of Shri Dukhishyam Patnaik, the then Principal Chief Conservator of Forests (Wildlife) at Annexure-10 it appears ~~as~~ that an und

✓ JAM

4
04/11/2001

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Department to the Principal Chief Conservator of Forests and the Managing Director, Orissa Forest Development Corporation Ltd. It further appears that in the meeting of the Board of Directors of Orissa Forest Development Corporation Ltd. held on 12.12.1998 the Secretary and the Special Secretary, Forest Department advised against appointment of R.M.P. All these facts are being mentioned only as a background to the prayer of the applicant. It also appears from the papers filed by the applicant that in course of such salvage operation the R.M.P. cut and removed large number of green trees along with some wind fallen trees. In some areas checked up subsequently by different officers as large as 50 to 100% of the wood removed were from induced felling. Large part of these woods so extracted were sent to Andhra Pradesh and on 19.5.2000 Divisional Forest Officer, Kakinada, informed the Principal Chief Conservator of Forests, Orissa, about large scale movement of timber from Orissa to Andhra Pradesh. Thereafter several officers enquired into the matter and their reports have been enclosed by the petitioner to his O.A. Ultimately, Shri D.S. Patnaik, the then Principal Chief Conservator of Forests (Wildlife) submitted his report in which he mentioned specifically about roles of different officers and lapses on their part in the whole episode. This report also mentioned about alleged lapses of the petitioner. It further appears that

file prosecution against all those who are found guilty including the R.M.P. The applicant's prayer in the O.A. is to quash the report of Task Force on the ground that in several reports submitted by different officers earlier, no lapse on his part has been noticed and the Government had constituted a Task Force only to find fault with him. We have already noted that ^{the} in/report of Shri D.S.Patnaik, certain alleged lapses in respect of the applicant were noticed and the Task Force was constituted in order to get evidence for filing prosecution against the officers responsible.

4. From the above recital of facts it is clear that the report of the Task Force is for the purpose of gathering evidence with a view to file prosecution. The applicant has stated and this has also been mentioned in his representation enclosed to the O.A. that he has not been given any opportunity by the Task Force to place his version of the facts before them.

5. In the context of the above, the sole point for consideration for the present is whether the Tribunal has any power to quash a report of a group of officers with regard to certain facts and the alleged lapses on the part of different officers connected therewith. It is always open for Government to constitute committees or direct officers to enquire into a certain matter for the purpose of submitting a report to Government. Such a report may be of may not.

J. J. M

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

report and pass appropriate orders giving adequate opportunity to the officers against whom action is proposed, observing the principles of natural justice. It also appears from Annexure-11 that the report of the Task Force was for the purpose of initiating prosecution against the officers/persons responsible. The Tribunal has no power to put an embargo on the Government preventing it from prosecuting any officer. This has been laid down by the Hon'ble Supreme Court in the case of State of Punjab v. Kailash Nath, AIR 1989 SC 558. Of course, that decision came in the context of a specific rule in Punjab Civil Service Rules. But the principles laid down by the Hon'ble Supreme Court in the above case apply in full force to the facts of the present case before us. In paragraph 7 of the judgment their Lordships of the Hon'ble Supreme Court have mentioned broadly what could be classified as "conditions of service" and have held that whether or not a Government servant should be prosecuted for an offence committed by him cannot be treated to be something pertaining to conditions of service. Moreover, the applicant has not made the officers who have prepared the Task Force Report as parties to this O.A. In view of the above, we hold that the Tribunal prima facie has no power to quash a report of a group of officers set up by the Government to enquire into a particular matter, in the instant case the report at Annexure-11. In prayer of the applicant is not

J.W.M.

M 14/1/2001

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Application is dismissed at the stage of admission. It is, therefore, not necessary to pass any order with regard to the prayer for interim relief.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH SOM
(SOMNATH SOM)
VICE-CHAIRMAN
17.4.2001

AN/PS

Copies of order
H. 17.4.01 issued
to counsel for law
notes.

AN/PS
17.4.01

17.4.01.