

C.N.RAMACHANDRAN NAIR &
P.S.GOPINATHAN, JJ.

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W.P.(C) Nos.9155 of 2007 &
18355 & 18587 of 2011
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Dated this the 15th day of July, 2011.

ORDER

• Ramachandran Nair, J.

W.P.(C) No.9155/2007 is filed raising allegations of pollution caused by the party respondents who are running plywood factories in Perumbavoor area. Besides the allegation of pollution, the main question to be considered is whether the plywood factories already functioning and those being set up are in accordance with the guidelines issued by the Honourable Supreme Court under various orders issued in T.N.GODAVARMAN THIRUMALPAD VS. UNION OF INDIA & ORS. reported in 2002(9) SCALE 81. The Honourable Supreme Court has passed orders periodically essentially to ensure protection of the forest and the environment. Learned Single Judge passed an order on 30.6.2011 directing the State authorities to close down all those plywood factories which have not obtained NOC from the Central Empowered Committee or the State Level Committee constituted pursuant to order of the Honourable Supreme Court in the above case. The follow up orders issued by the Government pursuant

to interim order issued by the learned Single Judge are under challenge in W.P.(C) Nos.18355 and 18587 of 2011. We have heard counsel for the petitioners in all the cases, Additional Advocate General appearing for the State authorities and Standing Counsel appearing for the Pollution Control Board.

2. The case of the plywood factories is that they are not involved in any violation apprehended by the Supreme Court in the interim orders issued in the case above referred pending before it because all these plywood factories are engaged in sawing rubber wood and processing rubber wood. They have specifically denied handling any forest timber in their factories. It is a well known fact that Kerala is the largest natural rubber producer in the country and in every cycle of 20-25 years plantation is felled and replantation is done systematically. Rubber wood of late is very valuable because it is the major raw material for making packing cases, veneers and it is even used for making plywoods. No one can have any doubt that the Supreme Court ever intended in their interim orders to prohibit plywood factories run to process rubber wood and so much so, we are of the view that the interim order issued by the Supreme Court has no application so far as plywood factories run exclusively to process rubber wood are

concerned. The Additional Advocate General appearing for the State also submitted that it is not the intention of the Government to close down all these industries which would in turn affect the plantation sector and the farmers selling rubber wood for replantation and the Government and the State Level Empowered Committee will consider issuance of NOC to all whose applications are pending. So far as the orders impugned in W.P.(C) Nos.128355 & 18587 of 2011 are concerned, Additional Advocate General submitted that the Government has only complied with the interim order of the court. We are of the view that saw mills and plywood factories processing rubber wood should be allowed to continue to function because rubber wood is a perishable item with short life and its stock will get deteriorated leading to heavy loss to those who have invested. Further, unless old and unyielding rubber trees are cut and removed, farmers and planters cannot proceed with replantation. Sale of old rubber trees is a major income for the planters; most of whom are small and marginal. Apart from all these, the plywood factories which have given commitments to outside State buyers for supply of veneers and packing cases will also suffer heavy loss and face consequence of breach of contract for supply. It is a well known fact and Additional Advocate General has

fairly conceded that rubber wood produced in Kerala is mostly transported outside after processing as the State is only a small consumer of the products made out of rubber wood. In short, closure of the industrial units processing rubber wood will have disastrous consequences for the State. We therefore do not think the immediate action taken by the Government to close down all the units pursuant to interim order issued by the learned Single Judge in W.P.(C) No.9155/2007 is justified. The Writ Appeals filed against the interim order issued by the learned Single Judge were also closed by us because we have called for the main writ petition and the connected cases filed for hearing and disposal by us. We have to certainly protect the forest and the environment but not by sacrificing essential industries, the closure of which will be disastrous for the State, the plantation industries and the large number of workers employed.

3. Counsel for the petitioner in W.P.(C) No.9155/2007 has complained that large number of unlicensed plywood factories have been set up even after filing the writ petition by the petitioners. He has alleged pollution of the level that affects even drinking water. Standing Counsel appearing for the Pollution Control Board submitted that even though pollution is not very acute, the industry causes pollution

particularly, when there is concentration of industries in the same area. We direct the Additional Advocate General to take views from the Forest Department, the State Level Empowered Committee and other agencies of the State as to the conditions on which these industries should be allowed to function and if there is any industry functioning very proximate to the Forest without approval, they are free to close down such industries. Considering the nature of allegations raised by the petitioner in W.P.(C) 9155/2007, we feel this court should engage a commission and get a proper report about the functioning of the factories atleast in and around Perumbavoor, Kothamangalam, Muvattupuzha where there is concentration of industries. We, therefore, appoint two Commissioners, Adv. Sri.S.Subhash Chand and Adv. Smt.Pinku Thaliyath, who will be given assistance by the petitioners and experts arranged by them as well as the technical staff engaged in production and processing in the plywood factories and the Environmental Engineer of the Pollution Control Board. Petitioners in W.P.(C) Nos.18355 & 18587 of 2011 together will deposit Rs.50,000/- before the Registrar General of the High Court for payment to the Advocate Commissioners. The amount will be shared equally by the individual petitioners in both the cases. The petitioners are free to get

any expert to assist the Advocate Commissioners and the Commissioners in any case will collect information about the processing involved, the chemicals, gum and other materials used in the manufacturing and processes involved, and take clarification from the technical staff of the plywood factories. Inspection should be carried out by Commissioners when production is on.

4. For the reasons stated above and since inspection of plywood factories have to be carried out by the Commissioners during working of the factories, we do not find any justification to suspend the operations of plywood factories and the saw mills which are allowed to continue until further orders from this court. There will also be direction to State agencies not to implement the interim order of the learned Single Judge in I.A. No.5102/2011 in W.P.(C) No.9155/2007 dated 30.6.2011 for a period of three weeks from now. Post after two weeks.

Sd/-
C. N. RAMACHANDRAN NAIR, JUDGE

Sd/-
P. S. GOPINATHAN, JUDGE

(True Copy)

Assistant Registrar

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