

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C) .No. 8041 of 2009 (A)

PETITIONER(S) :

M/S.WESTERN INDIA PLYWOODS LTD.
BALIAPATAM, CANNANORE 670 010,
REPRESENTED BY ITS MANAGING DIRECTOR, SRI.P.K.MOHAMED.

BY ADV. SRI.N.JAMES KOSHY.

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
FOREST AND WILDLIFE (D) DEPARTMENT, THIRUVANANTHAPURAM.
2. THE CHIEF CONSRVATOR OF FOREST (PROTECTION) ,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.
3. THE ASSISTANT CONSERVATOR OF FOREST,
KASARAGOD.

R1-3 BY SPECIAL GOVERNMENT PLEADER M.P.MADHAVAN KUTTY
R BY SRI.RENJITH THAMPAN, SPL.GP FOR FOREST

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS:

- EXT. P1 A TRUE COPY OF THE ORDER NO.C3-94/2005 DATED 15/01/2005
 OF THE 2ND RESPONDENT.
- EXT. P2 A COPY OF THE LETTER DATED 23/08/2005 OF THE 2ND
 RESPONDENT ADDRESSED TO THE 1ST RESPONDENT.
- EXT. P3 A TRUE COPY OF THE GOVERNMENT ORDER GO(RT)
 NO.387/06/F&WLD DATED 26/09/2006.
- EXT. P4 A TRUE COPY OF THE REPRESENTATION DATED 26/10/2006
 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE MINISTER
 FOR FORESTS.
- EXT. P5 A TRUE COPY OF THE ORDER NO.33754/G2/05/ID DATED
 13/12/2006 ISSUED BY THE 1ST RESPONDENT.
- EXT. P6 A TRUE COPY OF THE DECISION OF THE HIGH POWER COMMITTEE
 OF THE GOVERNMENT TAKEN IN THE MEETING HELD ON
 19/12/2006.
- EXT. P7 A TRUE COPY OF THE ORDER DATED 17/12/2007 OF THE 2ND
 RESPONDENT.
- EXT. P8 A TRUE COPY OF THE ORDER DATED 06/11/2007 ISSUED BY THE
 1ST RESPONDENT.
- EXT. P9 A TRUE COPY OF THE REPRESENTATION DATED 02/09/2008
 SUBMITTED BY THE PETITIONER BEFORE THE MINISTER FOR
 INDUSTRIES.
- EXT. P10 A TRUE COPY OF THE ORDER DATED 29/11/2008 ISSUED BY THE
 1ST RESPONDENT.
- EXT. P11 A TRUE COPY OF THE LETTER DATED 20/12/2008 ISSUED BY
 THE 3RD RESPONDENT TO THE PETITIONER.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

rvs.

C.K.ABDUL REHIM, J

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W.P.(C). No. 8041 OF 2009

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Dated this the 19th day of January, 2015

JUDGMENT

The petitioner is a Public Limited Company engaged in manufacture of Plywoods, Hardboards and allied products and is a very large wood based industry giving employment to so many workers. Issue involved in this writ petition pertains to fixation of the price of various species of raw materials supplied to the petitioner company by the Government, during the years 2004-05 and 2005-06. By virtue of Ext.P1 order issued by the 2nd respondent, notifying the Government decision to supply 55,000 Tonnes of raw materials to the petitioner, it was decided to allot quantity of 2,267/-Metric Tons of Casuarina Trees for extraction by the petitioner company from different plantations as detailed therein. In Ext.P1 it is stipulated that the petitioner shall execute an agreement to the effect that they will pay the price of the Casurina Trees at the rate fixed by the Government. But it is made clear that till such time the price is fixed by the Government, advance payment of

the value of Timber extracted at the rate of Rs.1,103 plus taxes applicable per Metric Ton will be realised from the petitioner. It is evident from Exts.P2 and P3 that on the basis of Ext.P1 the petitioner had collected 410 stacked Tonnes of Casurina during the year 2004-05 and 906.88 stacked Tonnes during the year 2005-06. It is further evident that, with respect to quantity of Casurina collected by the petitioner, the 2nd respondent had issued a proposal to the Government to fix the rates as fixed under the Kerala Forest Produce (Fixation of Selling Price) Act for various other species like, Accacia, Eucalyptus, Manjium etc. By virtue of Ext.P3 the Government have examined the matter and it was observed that there is no separate rate fixed for Casurina under the above said Act. Considering the recommendations of the 2nd respondent, the Government agreed to realise the rate fixed for Eucalyptus for the quantity of Casurina collected by the petitioner. Noticing this the petitioner had collected the Timber on entering into an agreement undertaking to pay the price fixed by the

Government. The Government fixed the price of Casurina collected by the petitioner during the years 2004-05 and 2005-06, with respect to the above said quantity, at the rate of Rs.1,700- per stacked Ton.

2. Against the Ext.P3 decision taken by the Government fixing the price of Casurina at Rs.1,700/- per stacked Ton, the petitioner had preferred representation as evidenced from Ext.P4, before the Hon'ble Minister for Forests. In the representation the petitioner had voiced their grievance with respect to other matters also. From Ext.P5 it is evident that, on the basis of Ext.P4 representation, a high level meeting was convened by the Government on 19.12.2006 in the presence of Ministers for Industries and Forest Departments. Ext.P6 is the minutes of the said meeting convened on 19.12.2006. It is evident from Ext.P6 that all the Forest Officials concerned as well as the representatives of the petitioner company had participated in the said meeting. Decision was taken in the meeting with respect to the representation seeking

reconsideration of the price of Casurina supplied, which is recorded in the minutes is as follows:-

“അസംസ്കൃത വസ്തുക്കളുടെ വില നിശ്ചയിക്കുന്നതിന് ഏറ്റവും ഒടുവിൽ ലേലത്തിൽകിട്ടിയ വില അടിസ്ഥാനമാക്കണമെന്നും, യൂക്കാലിപ്റ്റ്സ് വിലയ്ക്ക് തുല്യമായി കറ്റാടി മരത്തിന് വില നിശ്ചയിച്ചത് ന്യായമല്ലെന്നും യോഗത്തിൽ ചർച്ച ഉണ്ടായി. വിശദമായ ചർച്ചയ്ക്ക് ശേഷം 2004-2005 ൽ ലഭ്യമാക്കിയ കറ്റാടി മരത്തിന് (1316 സ്റ്റാക്ഡ് ടൺ) 1103 രൂപ/ സ്റ്റാക്ഡ് ടൺ വിലയായി അംഗീകരിക്കുകയും കമ്പനിയിൽ നിന്നും അധികതുക ഈടാക്കേണ്ടതില്ല എന്ന് തീരുമാനിക്കുകയും ചെയ്തു.”

3. After about one year from the date of Ext.P6 decision the 2nd respondent had issued Ext.P7 notice to the petitioner demanding payment of value of the Casurina Trees collected at the rate of Rs.1,700/- per stacked Ton. Along with Ext.P7 a letter issued by the Government addressed to the 2nd respondent was enclosed, wherein it is stated that, the Government have decided to withdraw from the decision taken in the meeting held on 19.12.2006, with respect to the revision of price allowed to the petitioner from Rs.1,700/- to Rs.1,103/-. By the said letter the 2nd respondent was requested to take further steps as per

Ext.P3.

4. Being aggrieved by Exts.P7 and P8 the petitioner again represented before the Government through Ext.P9 letter submitted to the Hon'ble Minister for Industries. But the request was declined stating that after the decision taken on 19.12.2006 the Government have examined the matter in detail and decided to implement Ext.P3. The letter further says that Ext.P10 representation was also examined and it was found that the petitioner has not presented any satisfactory evidence in order to revise the rate fixed by the Government and therefore the issue cannot be reconsidered. Pursuant to Ext.P10, Ext.P11 demand notice was issued by the 3rd respondent, requiring the petitioner to remit an amount of Rs.9,31,346/-. It is aggrieved by Exts. P8, P10 and P11 this writ petition is filed.

5. Contention of the petitioner is mainly that the 1st respondent is not legally justified in altering the decision taken as per Ext.P6, on 19.12.2006. It is contended that the Government is estopped from reviewing the decision already

taken, that too without assigning any reason and without affording any opportunity to the petitioner. It is contended that the Government is estopped from demanding a higher price than what was agreed upon in the decision taken on 19.12.2006.

6. In the counter affidavit filed on behalf of the 1st respondent it is mentioned that, the rate of forest produces are determined by the Government under the provisions of the Kerala Forest Produces (Fixation of the Selling Price) Act 1978, after consultation with the Expert Committee constituted under Section 4 of the Act, and after considering recommendations as required under Sub Section (3). But it is mentioned that the price of Casurina Trees is not separately fixed as per provisions of the above said Act. According to the 1st respondent Casurina is a pulpwood species as that of Eucalyptus and other plants and therefore Casurina is a species treated in par with Eucalyptus and other pulps species. According to the 1st respondent as per the Agreement executed by the petitioner based on Ext.P1,

they are bound to pay the revised rate for Casurina Timber already removed. A copy of the Agreement executed in this regard is produced as Ext.R1(a). It is stated that the Government have fixed the rate to be realised from the petitioner at Rs.1,700/- per stacked Ton of Casurina Trees, similar to the rate of other pulpwood species fixed on the basis of the recommendation by the 'Price Fixation Committee'. But it is conceded that, against Ext.P3 decision the petitioner had represented before the Government and that a joint meeting of the Ministers for Industries and Forest were held on 19.12.2006. It is conceded in the counter affidavit that the Government have taken a decision not to collect any excess amount from the petitioner than the rate fixed at Rs.1,103/- per stacked Ton. But it is mentioned that the Government have considered various aspects and decided to withdraw from the decision taken in the meeting held on 19.12.2006, as it will be against the larger interest of the Government and the Government could not alter the rate fixed under the provisions of the Act.

7. While considering the rival contentions it is evident that, with respect to Casurina Trees there was no price fixed under the Kerala Forest Produce (Fixation of Selling Price) Act 1978. It is further evident that the Timber was permitted to be collected by the petitioner subject to payment of advance amount at the rate of Rs.1,103/- per Metric Ton, on the undertaking that they will pay the price of the Timber as fixed by the Government. It is true that the Government as per Ext.P3 had fixed the price of Timber removed during the years 2004-05 and 2005-06 at the rate of Rs.1,700/- per stacked Ton. But the petitioner approached the Government seeking reduction in the price. It is after considering all the aspects of the matter that a decision was taken by the Government on 19.12.2006 to re-fix the rate at Rs.1,103/- itself, with respect to the quantity of the Casurina already removed by the petitioner during the years 2004-05 and 2005-06. Such a decision taken by the Government is admitted both in the subsequent proceedings as well as in the counter affidavit

filed.

8. Question remains as to whether the Government was justified reconsidering such a decision unilaterally by causing prejudice to the petitioner, without assigning any specific reasons. Contention taken in the counter affidavit that the Government was not authorized to fix the price of Casurina in view of the price fixation Act, cannot be countenanced in the light of the admission that with respect to Casurina there was no price fixed, complying the procedure contained under the Act. Hence it is evident that the Government was vested with power to fix the price with respect to Casurina Timber, which is already removed. Once the Government have taken such a decision with respect to the price, they are estopped from revising or reviewing such a decision, without assigning any justifiable reasons, that too in unilateral manner. Going by terms of Exts.P8 and P10, this court do not find any specific reasons alleged for the Government to reconsider its earlier decision or to take a different stand. This court is of the considered

opinion that the Government is estopped from taking such a decision, even if it is assumed that the reduction in the price as decided in the meeting held on 19.12.2006 was given as a concession to the petitioner, without any specific reasons for reviewing or reconsidering such a decision. The Government is estopped from withdrawing such concession in a manner prejudicial to the interest of the petitioner company.

9. Under the above mentioned circumstances this court is inclined to accept the contentions raised against the impugned orders. Accordingly the writ petition is allowed and Exts.P7, P8, P10 and P11 are hereby quashed.

Sd/-

C.K.ABDUL REHIM, JUDGE.

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