

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 21272 of 2006 (G)

PETITIONER(S):

- 1. VIJAYA SUKUMARAN,
MANOOKADAN HOUSE, CHEMBUCHIRA, NOOLUVALLY,
MUKUNDAPURAM TALUK.**
- 2. SUKUMARAN,
MANOOKADAN HOUSE, CHEMBUCHIRA, NOOLUVALLY,
MUKUNDAPURAM TALUK.**

BY ADV. SRI.M.C.JOHN

RESPONDENT(S):

- 1. THE DIVISIONAL FOREST OFFICER,
CHALAKKUDY.**
- 2. THE FOREST RANGE OFFICER,
VELLIKULANGARA, PADY P.O., KODALY.**
- 3. THE SECRETARY,
MATTATHUR GRAMA PANCHAYAT, MATTATHUR P.O.,
PIN-680 692.**
- 4. P. DHANESHKUMAR,
FOREST RANGE OFFICER, VELLIKULANGARA.**
- 5. THE FOREST RANGE OFFICER,
PALAPPILLY RANGE, PALAPPILLY.**

**R1,R2 & R5 BY SR GOVERNMENT PLEADER SRI.K.K.SAIDALAVI
R3 BY ADV. SRI.P.G.SURESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE SSI REGISTRATION**
- P2 COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE 1ST RESPONDENT UNDER G.O.(P) NO.44/92/F & WLD DATED 11/11/1992**
- P3 COPY OF THE PANCHAYAT LICENCE NO.62/1998-99 DATED 21/7/98**
- P4 COPY OF THE NOTICE DATED 12/7/2005 ISSUED BY THE 2ND RESPONDENT**
- P5 COPY OF THE COMMISSION REPORT DATED 1/9/2005**
- P6 COPY OF THE COMMUNICATION NO.CA3.3542/2005 DATED 27/10/2005 OF THE FIRST RESPONDENT**
- P7 COPY OF THE O.R.NO.1/2005 DATED 25/1/2005**
- P8 COPY OF THE O.R.NO.7/2005 DATED 3/8/2005**
- P9 COPY OF THE STATEMENT RECORDED BY THE 2ND RESPONDENT**
- P10 COPY OF THE CONFESSION STATEMENT OF THE 2ND PETITIONER DATED 6/7/2006**
- P11 COPY OF THE MEDICAL REPORT DATED 1/7/2006 OF THE 2ND PETITIONER.**
- P12 COPY OF THE SCAN REPORT OF THE 2ND PETITIONER.**
- P13 COPY OF THE COMPLAINT DATED 7/8/2006 FILED BEFORE THE KERALA STATE HUMAN RIGHTS COMMISSION AGAINST THE 4TH RESPONDENT**

RESPONDENT'S EXHIBITS AND ANNEXURES:

- R2(A) COPY OF THE STATEMENT GIVEN BY THE CO-ACCUSED.**
- R2(B) COPY OF THE REMAND ORDER OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE, CHALAKKUDY IN OR .1/2005**
- R2(C) COPY OF THE REMAND ORDERS OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT, CHALAKKUDY IN OR.7/2005**
- R2(D) COPY OF THE PRODUCTION WARRANT ISSUED BY THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT, IRINGALAKUDA.**
- ANNEX R5(A) COPY OF THE JUDGMENT DATED 9/9/2005 IN WP(C).NO.21083/2005**
- ANNEX R5(B) COPY OF THE ACKNOWLEDGMENT DATED 28/10/2005 SIGNED BY THE PETITIONER.**

WP(C).NO.21272/2006

- ANNEX R5(C) COPY OF THE FORM I IN OR 14/97 OF PALAPPILLY RANGE
- ANNEX R5(D) COPY OF THE MAHAZAR IN OR 14/97 OF PALAPPILLY RANGE DATED 30/07/1997
- ANNEX R5(E) COPY OF THE CONFESSION STATEMENT IN OR 14/97
- ANNEX R5(F) COPY OF THE FORM I IN OR 5/95 OF VELLIKULANGARA RANGE
- ANNEX R5(G) COPY OF THE MAHAZAR IN OR 5/95 OF PALAPPILLY RANGE DATED 27/02/1995
- ANNEX R5(H) COPY OF THE CONFESSION STATEMENT IN OR 5/95
- ANNEX R5(I) COPY OF THE ORDER NO.WL3-57/96 DATED 24/2/1996 OF THE CHIEF CONSERVATOR OF FORESTS (WILDLIFE)
- ANNEX R5(J) COPY OF THE FORM I IN OR 1/2004 OF PALAPPILLY RANGE
- ANNEX R5(K) COPY OF THE FORM I IN OR.03/2004 OF PALAPPILLY RANGE
- ANNEX R5(L) COPY OF THE COMBINED SEIZURE MAHAZAR DATED 6/7/2006
- ANNEX R5(M) COPY OF THE CONFESSION STATEMENT DATED 6/7/2006
- ANNEX R5(N) COPY OF THE FORM I IN OR.01/05 OF VELLIKULANGARA RANGE DATED 25/01/05
- ANNEX R5(O) COPY OF THE FORM IN OR.7/05 VELLIKULANGARA RANGE DATED 03/08/05
- ANNEX R5(P) COPY OF THE SEIZURE MAHAZAR PREPARED ON 01/07/2006 IN OR 1/2005 & OR.7/2005
- ANNEX R5(Q) COPY OF THE CONFESSION STATEMENT DATED 1/7/2006
- ANNEX R5(R) COPY OF THE MAHAZAR DATED 04/08/2006 IN OR 12/2006
- ANNEX R5(S) COPY OF THE CONFESSION STATEMENT OF VARKEY ONE OF THE ACCUSED IN O.R.12/06.

/TRUE COPY/

P.A.TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.21272 of 2006

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Dated this the 4th day of November, 2015

JUDGMENT

The first petitioner is the licensee of a furniture unit which is being run under the name and style “Akhil Furniture Works”. The unit is registered as S.S.I Unit. It was started with the No Objection Certificate issued by the first respondent as well as with the licence issued by the third respondent. On account of the prohibitory orders issued by this Court in a common judgment dated 15.11.1999 in O.P No.6696/1996 and connected cases, the Forest Department did not renew the NOC through out the State. The judgment was set aside by the Division Bench on 25.1.2005. Thereupon the first petitioner submitted an application for renewal of the NOC before the first respondent. The second respondent in connection with the application for renewal, inspected the premises and issued Ext.P4 which was under challenge in W.P(C) No.21083/2005.

2. The petitioners pointed out that this Court was pleased to depute an Advocate Commissioner who submitted a report and the reasons stated in Ext.P4 were found to be incorrect. This Court, therefore, directed the first respondent to pass orders on the renewal application by Ext.P6. Based on the report of the second respondent that the second petitioner is involved in forest offenses, the application was rejected by the first respondent. Without prejudice to the rights of the petitioner to challenge the order passed by the first respondent declining renewal, W.P(C) No.21083 of 2005 was disposed of.

3. The petitioners further allege that the O.R cases mentioned in Ext.P6 never ended in conviction against the second petitioner. Therefore, the second respondent in his attempt to implicate the second petitioner in most forest cases apprehended in connection with certain offenses registered against identifiable persons and elicited confession statements. The petitioners further allege that he

was brutally manhandled and was admitted in the hospital with very serious injuries. The second respondent lost his hearing partially and suffered other neurological injuries. The petitioners further allege that the second respondent is now asking the second petitioner to appear before him and to put his signature in some documents. The second petitioner has filed a private complaint against the second respondent and the human rights activists also have taken the issue. The second respondent is impleaded in his personal capacity as the fourth respondent. Ext.P6 order was kept unserved to prevent the petitioners from challenging the same before this Court. It is with this background, the petitioners have approached this Court.

4. Today when the matter came up for hearing, the learned counsel for the petitioners invited my attention to the Kerala Forest (Regulation of Sawmills and Other Wood-based Industrial Units) Rules, 2012 published on 19.4.2012. Rule 4 of the said rules reads as follows:

4. Restriction on issuance of licence to sawmill and wood based industrial unit within five kilometres from the boundary of forest owned by Government.- (1) No Authorized Officer shall grant licence to sawmill and other wood based industrial unit established within a radial distance of five kilometres from the boundary of any forest owned by Government, except for those saw mills and other wood based industrial units which were established and running on or before 30th October, 2002.

(2) The Authorized Officer may grant licence to a sawmill and wood based industrial unit which are functioning and existing under a licence issued by the Local Self Government Institution within a radial distance of five kilometres from the boundary of the forest owned by Government, on or before 30th October, 2022, subject to the following conditions, namely:-

(a) such sawmill and other wood based industrial unit shall be allowed to continue in the present location only if they satisfy the general and special conditions specified under these rules for grant or renewal of licence;

(b) such sawmill and wood based industrial unit shall adhere to the directions issued from time to time by the Central Empowered Committee or the State Government;

(c) such sawmill and other wood based industrial unit shall be subjected to half-yearly inspection by an officer not below the rank of a Range officer;

(d) such sawmill and other wood based industrial unit shall pay Inspection Fee annually at the rates specified in Schedule A;

(e) such sawmill and other wood based industrial unit shall maintain the registers and documents specified under these rules.”

5. Rule 8 reads as follows:

“8. General conditions for grant of licence.- (1) The grant of any licence under these rules shall be subject to the following general conditions, namely.-

(i) The applicant shall not be a persons convicted of any offence punishable under the Kerala Forest Act, 1961 or the Wildlife (Protection) Act, 1972 or any other enactment relating to protection of environment or conservation of biological diversity or the rules made thereunder.

(ii) The applicant shall be in lawful possession of the land wherein the sawmill or other wood based industrial unit situates.

(iii) The sawmill and other wood based industrial unit shall be subjected to periodic inspection, at least

once in a year, by the Authorized Officer or by any Forest Officer not below the rank of a Forest Authorized by him.

(iv) Every sawmill and other wood based industrial unit shall keep and maintain registers, documents and accounts in the form as required by these rule and the electricity bills paid in respect of such unit shall be produced on demand to the Forest Officers for inspection.

(v) The period of licence granted under these rules shall be for only three years from the date of issuance of the same and shall be renewed for every three years.

(vi) The application for renewal of licence shall be preferred at least three months from the date of expiry of the licence.

(vii) The sawmill or other wood based industrial unit shall function in a building having building number issued by the Local Self Government Institution or in a portion thereof.

(viii) A sawmill or other wood based industrial unit licenced for a particular category shall not be converted into any other category without obtaining a fresh licence.

(ix) *The capacity of sawmill and other wood based industrial unit shall not be enhanced or any new machinery other than those mentioned in the licence shall not be installed without the written permission of the Authorized Officer under rule 12.*

(x) *The location or building of a sawmill or other wood based industrial unit mentioned in the licence shall not be shifted without the written permission of the Authorized Officer under rule 13.*

(xi) *The name and style of a sawmill or other wood based industrial unit mentioned in the licence shall not be changed without the written permission of the Authorized Officer under rule 14.*

(xii) *The licence or ownership of sawmill or other wood based industrial units shall not be transferred without the written statement permission of the Authorized Officer under rule 15.*

(xiii) *The building and the properties mentioned in the licence of sawmill or other wood based industrial unit shall not be leased or mortgaged without the written permission of the Authorized Officer under rule 16.*

(xiv) *The sawmill and other wood based industrial unit and their premises shall always be made accessible to the Forest Officers for inspection.*

(xv) The licensee shall not engage in any activity causing health hazard to the local people.

(2) The sawmill or other wood based industrial unit shall not function without a licence and shall be closed down on the expiry of the period of licence or on cancellation or suspension of the licence.”

6. As the grievance projected by the petitioner is taken care of the aforesaid rules, the petitioner has submitted a subsequent application which is under process.

Therefore, the writ petition is closed permitting the petitioner to have the benefit of the orders to be passed on the fresh application in accordance with the aforesaid rules.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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P.A to Judge