

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.18075 OF 2011

ORDER:

The Writ Petition is filed questioning the order dated 31.08.2010 passed by the fourth respondent as confirmed by respondents 2 and 3 vide orders dated 10.01.2011 and 21.04.2011 respectively.

By order dated 31.08.2010, license granted in favour of the petitioner for running a saw mill, which was originally granted in the year 1999 and renewed from time to time, was cancelled on the ground that there is a violation of conditions of license, particularly there is violation of Rule 5(3) of the Andhra Pradesh Saw Mill (Regulation) Rules, 1969 ("the Rules" for brevity). It is an admitted fact that the petitioner leased out the saw mill to one Sri V.Kondala Rao and the said V.Kondala Rao had in turn sub-leased the saw mill to one B.Hari Krishna at Vijayawada on 09.02.2008. The said persons were involved in transporting teak wood into the saw mill premises and converting the same into sizes by using fabricated colour Xerox Form-II permit. The compounding application filed by the sub-lease holder, B.Hari Krishna, was allowed directing him to pay a sum of Rs.4,00,210/- and further confiscating 520 numbers of cut teak wood pieces. Thereafter, a show cause notice was issued to the petitioner as to why the saw mill license not be cancelled under Rule 5(3) of the Rules. The explanation offered by the petitioner was not accepted and the license came to be cancelled by order dated 31.08.2010. The petitioner preferred an appeal to the second respondent, which also ended in dismissal and further appeal to the third respondent also met with the same fate.

One of the contentions raised by the petitioner is that he had in fact, intimated by his letter dated 03.01.2007 about his leasing out the saw mill enclosing a copy of the lease agreement. Inasmuch as

Rule 5(3) of the Rules contemplates only giving of intimation to the licensing authority, there is no violation of the Rules and cancellation of the license as bad. It is further contended that for the acts of the sub-lessee, the petitioner cannot be penalized. The petitioner, by placing reliance on the letter dated 03.01.2007, would submit that intimation as required under Section 5(3) of the Rules has already been made and further in the very impugned order, he had accepted that he was not aware of the clandestine manner in which the sub-lessee carried out the business. It is further contended that when an offence has been compounded, there cannot be any penalization of the said offence again. Learned counsel for the petitioner would also submit that the petitioner paid renewal fee for the period 2010-11 and for 2011-12 as well and in that view of the matter, the license which was granted in favour of the petitioner is deemed to be valid and the application made by the petitioner seeking renewal could not have been rejected. Learned counsel for the petitioner seeks a direction to the respondent-authorities to consider the petitioner's application for renewal.

A detailed counter affidavit has been filed by the respondent-authorities. It has been categorically denied in the counter affidavit that letter dated 03.01.2007 was not received. On the contrary, the respondents have placed on record a letter written by the petitioner on 14.06.2010 wherein petitioner had admitted the factum of granting lease on 15.06.2005 in favour of Sri V.Kondala Rao and sought be excused on the ground of ignorance of rule position. It is further contended that the very letter dated 14.06.2010 would falsify the contention of the petitioner that the petitioner had intimated about the sub-lease to the authorities. With regard to the contention of the learned counsel for the petitioner that the renewal may be granted, it is stated that the renewal of the cancelled license cannot

be granted, as it was not in existence at all. However, it is further stated that it is open for the petitioner to make a separate application seeking grant of fresh license, strictly complying with the guidelines laid down by the Supreme Court by approaching the Central Empowered Committee.

Perused the record. Having considered the rival submissions and the facts of the present case, the contention of the petitioner that he had intimated the respondent-authorities about sub-leasing of saw mill cannot be accepted, as it is contrary to the facts on record. Cancellation of license was effected on the ground of violation of Rule 5 (3) of the Rules.

Rule 5 (3) of the Rules reads as under:-

“The saw mill machinery and premises shall not be leased to any person without intimation of the licensing authority. For any acts of omission of lessee, licence holder shall be held responsible”.

In the present case, not only there was leasing out of the saw mill to V.Kondala Rao without intimation and without prior permission of the licensing authority but the saw mill was further sub-leased to one Hari Krishna, who indulged in clandestine activity. The Rule itself casts a responsibility and liability on the license holder for any acts and omissions on the part of the lessee. In that view of the matter, cancellation, which was effected for violation of Rules, cannot be found fault with.

However, one important question, which arises for consideration in this case, is that the offence alleged against the sub-lessee is that of creating certain fake documents for transportation of teak wood, which was admitted to have procured from a private source. The offence of transportation without proper documentation was compounded by levying penalty and further confiscating the seized wood. In other words, the necessary penal action, both by way of penalty and confiscation has already been

effected on the sub-lessee. Cancellation of license cannot be said to be for mere non-intimation of the sub-lessee but it also could be attributed for violation of other conditions. A person who has violated the terms of the license in a given circumstances may not be entitled to continue as a licensee. However, this would depend on the gravity of violations. Each case has to be decided on the merits of the case. Even if the business is being carried out by the sub-lessee, the liability is fastened on the licensee. In those circumstances, even for that reason it cannot be said that cancellation was not justified. It is the contention of the petitioner that there cannot be cancellation of license once offence alleged is compounded. This does not apply to this Court. However, in the light of the stand taken by the respondent-authorities, it is open for the petitioner to approach the authorities with an application for fresh license and considering the fact that the petitioner was issued with license for running a saw mill in the year 1999, liberty is given to the petitioner to approach the authorities for making an application by fulfilling the necessary conditions. As and when such application is made, the respondent-authorities shall take necessary steps including forwarding the application to the Central Empowered Committee for consideration of granting of fresh license.

Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(CHALLA KODANDA RAM, J)

15th December 2015
RRB