

HON' BLE Dr.JUSTICE B.SIVA SANKARA RAO

Writ Petition Nos.19550 of 2017 and 3471 of 2018

COMMON ORDER

W.P.No.3471 of 2018

This Writ Petition is filed by the Petitioner-Ambica Saw Mill, Prakasham District, represented by its Proprietor B. Hari Lal Hansraj Patel against two respondents viz; Deputy Conservator of Forests, Forest Department, Markapur(WL)Division (for short, 'the DCF'), and State of Andhra Pradesh represented by its Principal Secretary with the prayer as follows:-

“to issue a Writ or Order or Direction more particularly one in the nature of Writ of Mandamus declaring proceedings Rc.No.2369/ 2004/ S4 dt.29.12.2017 passed by the first respondent is illegal, arbitrary, without jurisdiction and violative of Rule 9(1) of the A.P.Saw Mills(Regulation) Rules, 1969 (for short, 'the Rules, 1969') and set aside the same and consequentially direct the respondents to allow the petitioner to run the Saw Mill after renewing the license and pass such other order or orders”

2. The averments of the supporting affidavit of the petitioner are that he is the owner of Saw Mill and has been running it from 2013 and he got transfer of license of saw mill from one Kishore Amba Lal, who obtained the same in the year 2000 and also renewed by the Divisional Forest Officer (WL), Markapur (for short, 'the DFO') vide proceedings Rc.No.239/ 2004/ A3 dated 04.03.2015 up to 31.12.2017. While so on 01.06.2016 at about 3:30 p.m. the Forest Range Officer, Flying Squad Division(for short, 'FRO, FSD'), Atmakur on the directions of the DFO, FSD, Atmakur inspected premises of the petitioner Saw Mill and found 6 Nos. of left over pieces of Red Sanders after sawing comprising of bark and sap wood near the band saw. The D.F.O, FSD issued show cause notice on 01.06.2016 to the petitioner to submit explanation within 24 hours, stating in what way he should not be made responsible for the irregularities committed within his premises and the deposit and machinery along with forest produce should not be forfeited, and the Saw Mill should not be seized and why should he not be prosecuted. Without receipt of the explanation, said DFO vide orders dates

03.06.2016 informed the petitioner Saw Mill that as per Rule 9(2)(a) of the Rules, 1969, the forest produce together with machinery, implements and equipment are seized, against which on 16.06.2016 the petitioner filed an appeal before the Chief Conservator of Forests & Field Director, Project Tiger Circle, Srisaillam (for short, 'the CCF&FD'), who rejected the appeal without giving proper opportunity and appreciation vide orders dated 02.05.2017, by relying upon the reports of DFO FSD, Atmakur, and DFO (WL), Markapur. Said orders were questioned by the petitioner in W.P.No.19550 of 2017 which was allowed on 19.06.2017 and said orders were set aside in W.A.No.1021 of 2017 filed by the official respondents before the Division Bench of this Court on the ground that the official respondents have not got proper opportunity of filing a counter affidavit in the writ petition (WP No.19550 of 2017) and remanded the writ petition and restored to file and the same is pending for consideration. While the matter stood thus, the R.1-the DCF vide proceedings in Rc.No.2369/ 2004/ S4 dated 29.12.2017 cancelled the license of the petitioner Saw Mill stating violated the Rules, 1969 by keeping unauthorizedly Red Sanders. The Petitioner states that the R.1 cannot cancel the license of the petitioner by coming to a conclusion that the petitioner had unauthorised kept Red Sander wood, especially when the writ petition concerned is pending for consideration. According to the petitioner, the passing of orders by the R.1-DCF without giving opportunity of hearing, except calling for an explanation is unjust and the R.1-DCF cannot cancel the license. The petitioner further submits that on 29.11.2017 it had paid necessary amounts through challan and on 08.01.2018 submitted Form No.1 for renewal of license as the license was expiring by 31.12.2017 but the R.1 did not pass any orders on the renewal. The Petitioner further submits that in the impugned orders dated 29.12.2017, the R.1 held that the petitioner violated the AP Forest (Amendment) Act, 2016 for illegal possession of Red Sander wood and is liable u/ sec.32 (A)&(C), 44(1), 62(A) (1) (2)&(3) framed u/s.68 and punishable u/ sec.36(a) of the A.P. Forest (Amendment) Act 2016. In this regard,

the Petitioner states that after Section 32 of the A.P. Forest Act, 1967, Sections 32 A to 32 E was added by A.P. Forest (Amendment) Act, 2016 (Act 15 of 2016) w.e.f. 25.05.2016. The petitioner further states that, As per Section 32D (1) of the A.P. Forest Act, 2016 private persons possessing Red Sanders above 20kgs are required to inform their stocks to the concerned DFO within 180 days from the date of commencement of the A.P. Forest (Amendment) Act, 2016 and the petitioner was not given opportunity to utilize 180 days as prescribed to inform the possession if any of Red Sander wood more than 20 kgs from 25.05.2016, i.e., the date of effect of the Amended Act. The petitioner further submits that the impugned orders, dt. 29.12.2017 passed by the R.1 is not only contrary to Rule 9 (1) of the A.P. Saw Mills (Regulation) Rules but also contrary to Section 32D (1) of Act 15 of 2016. The petitioner further states that, as per the above rules, the R.1 can only revoke the license but not cancel and the R.1 has no power or jurisdiction to pass the impugned orders of cancellation of license.

W.P.No.19550 of 2017

3. The present writ petition was filed by the self same petitioner B.Hari Lal Hamsraj Patel in his individual capacity against 5 respondents viz; State of Andhra Pradesh rep. by its Principal Secretary to Government, The Principal Chief Conservator of Forests (for short, 'the CCF&FD'), the Chief Conservator of Forests (for short, 'the CCF'), the Divisional Forest Officer (for short, 'the DFO') and the Divisional Forest Officer, Flying Squad (for short, 'the DFOFS), Atmakur Division, Kurnool District, with the following prayer:-

“to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus to set aside the impugned proceedings in Pc.No.1339/2016/ PT.5, dated 2-5-2017 issued by the 3rd respondent by as illegal, arbitrary, and in violation of Article 14 and 19(g) of the Constitution of India and consequently direct the respondents to restore the same and permit the petitioner to run the saw mill and to pass such other order or orders”

4. The affidavit of the petitioner in addition to the facts shown in the affidavit of the W.P.No.3471 of 2018 shows that he is only exempted from

country wood species like Neem, Thumma and Sababul etc., for cutting purpose only in Saw Mill premises but not dealing with business of non-exempted timber like, teak, non-teak and other valuable timber. He submits that 4 days prior to the alleged incident, he went to Bangalore to see his daughter and returned to Podili on 31-5-2016 early morning and on 1-6-2016 when he went to his Saw Mill, he found firewood scattered here and there in the entire premises and so instructed the workers to lot the fire wood properly at one place. In the meantime, the R.5-DFOFS, Atmakur along with staff entered the Saw Mill, straightaway searched at the band saw and found four small pieces of Paratas with bark and two pieces without bark, when asked about this, he replied that he did not know the species of that Paratas. He further submits that as he did not know the species of sapwood found in his sawmill, he had not informed the matter to the nearest forest officers and further submits that as the said sapwood does not pertain to his sawmill, the question of affixing hammer mark does not rise. Then the DFO informed that the Paratas and bark pertains to Red Sander wood and forcibly recorded his confession statement under pressure and obtained his signature. The petitioner submits that the informants might have kept the alleged 3 tonnes of country wood paratas fit for fuel wood in his Saw Mill with malafide intention of his rival Saw Mill owners to harass him and to degrade his business in his absence. The petitioner further submits that the pieces were kept separately at the band saw and given information to the officers about Red Sandal wood paratas specifically at the particular place in his Saw Mill and particularly at band saw only. On 1-6-2016, the R.5-DFO issued notice supra (as mentioned in WP No.3471 of 2018) for which the petitioner submitted that he is a 72 year old person and is suffering from ailment and not physically fit to move and therefrom not submitted any explanation within stipulated time. On 2-6-2016, due to severe blood pressure when he went to Bangalore for treatment. The petitioner further submits that a statement and signature was obtained forcibly from him, on 1-6-2016 and on 3-6-2016 he came

to know that the DFO FSD, Atmakur served a notice to the petitioner's son and on the same day seized the machinery, implements and equipments of the Saw Mill and instructed not to take up any activity/operation in the saw mill till further orders from the competent authority but the seizure of saw mill is without proper procedure and following rules. The Petitioner submits that he never committed any irregularity in his saw mill in contravention of provisions of the Act, 1967 and Rules, 1969 as alleged and the licensee should be given an opportunity of being heard and the officers must record a finding of violation of law before seizure is made under Rule 9 of A.P. Saw Mill Rules. The Hon'ble High Court while deciding the case of Khaja Raheemuddin vs. Divisional Forest Officer, Karimnagar (2006 (1) ALD 844 and 2006(1) APLJ 77 (SW) held as per the Rule 10 of the Saw Mill Rules, any person aggrieved by the DFO may file appeal within 30 days from the date of service of the order to the Conservator of Forests having jurisdiction who shall hold or cause to hold such enquiry as he deems fit and after giving an opportunity of making a representation to the appellant, pass a speaking order which shall be a final order. The petitioner submits that on 16-6-2016 he preferred an appeal to the R.3 within 15 days against the orders passed by the R.5, dt. 3-6-2016. He filed WP No. 11289 of 2017 before this Hon'ble Court seeking a direction, declaring the inaction of the respondents not disposing the appeal of the petitioner dt. 16-6-2016 as illegal, arbitrary, and in violation of Article 14 and 19(g) of the Constitution of India and consequently direct the respondents to permit the petitioner to run the sawmill till the disposal of the appeal, dt. 16.06.2016 pending before the R.3. The Hon'ble Court was pleased to dispose the above WP on 30.3.2017 with a direction, to the R.3 to pass appropriate orders on the appeal, dt. 16-6-2016 filed by the petitioner against the order, dt. 03-06-2016, of R.5 within a period of one month from the date of receipt of a copy of the order in accordance with law. The petitioner further submits that the petitioner made a representation to the R.3 along with the order copy dt. 30.3.2017 in WP No. 11289 of 2017. The R.3 issued the impugned

proceedings in Rc.No.1339/ 2016/ PT.5 dated 2-5-2017 by rejecting the appeal of the petitioner on the ground that basing on the reports of the DFO FSD, Atmakur and the DFO WL Markapur, the appeal petition filed by the petitioner was rejected for violation of Rules, 1969 and the action of the R.3 in rejecting the appeal was without even referring to the Hon'ble High Court orders,dt.30.03.2017 and that the present impugned order was passed by the R.3 without any application of independent mind only on the basis of the reports of R.5 who inspected the Saw Mill and seized the Saw Mill on 3-6-2016 without any enquiry and also the Hon'ble Courts categorically held that the authority should exercise his power by passing an order with an independent mind. In the instant case, the same was not followed by the R.3 and is contrary to the dictas laid down by the Hon'ble Courts in catena of decisions. Issuance of show cause notice,dt.1.6.2016 asking the petitioner to submit explanation within 24 hours is not permissible under law and clearly violation of Saw Mill Rules. The notice dt.3.6.2016 is against the Rules, 1969, as no time is given to prefer an appeal and not mentioned the address of the appellate authority. No Panchanama was drafted at the time of seizing the sawmill implements and equipments on 3-6-2016. hence, to set aside the order of the R.3.

5. This Court, after hearing both sides and perusing the material on record, by order dt.19.06.2017 disposed of the Writ Petition (W.P.No.19550 of 2017) by setting aside the seizure order and permitting the petitioner to run the saw mill subject to his written undertaking of not to allow either directly or indirectly without permitting any such activities in future in the mill and when the same was challenged by the respondents in W.A.No.1021 of 2017, the DB of this Court disposed of the said appeal by setting aside the order in W.P.No.19550 of 2017 and restored the writ petition to file and directed the respondents/ appellants to file their counter-affidavit within two weeks from today (date of WA order i.e. 24.07.2017) and also given liberty to the petitioner herein to request the learned Single Judge to take up the matter for admission on any day after two weeks.

6. The counter affidavit filed in W.P.No.19550 of 2017 by the R.4-the DFO on behalf of the respondents shows that based on the inspection report of the FRO, Markapur, vide Rc.No.341/ 2004/ FRO Mrk,dt.31.12.2014, the R.4 granted license No.8/ 2001 dt.04.03.2015 vide the DFO(WL),Markapur proceedings No.2369/ 2004/ A3,dt.04.03.2005 for the period from 2015 to 2017 for permitting to cut to store and trade teak and miscellaneous only. No license was granted to the petitioner for sawing and possession of Red Sanders wood but the petitioner without intimation to the Forest Officials sawing the Red Sanders illegally by violating the Rules, 1969. At the time of inspection of the premises of the petitioner, on identity of the species, the petitioner reported that it is chandan/ Red Sander and immediately panchas were summoned and the Red Sanders were caught and weighed at Sri Veeranjaneya weigh bridge, Viswanadhapuram, Podili and found it 35kgs, and when enquired about transit permit, the petitioner failed to show, therefrom the petitioner is accused of offences under the Act, 2016 supra and u/ sec.378 r/ w 379 and Sec.120-A of IPC r/ w sec.120-B IPC a case was registered against the petitioner and produced before the authorized officer-cum-DFO FSD, Atmakur. They never recorded the statement of the petitioner forcibly under pressure and obtained his signature but it was voluntarily. The DFO FSD, Atmakur issued notice dt.01.06.2016 itself to the petitioner asking to show cause otherwise prosecuted, and the case file was also submitted before the JFCM, Podili, Prakasam district but not produced the petitioner since not available due to he was admitted in hospital at Bangalore. Keeping more than 20 Kgs. of Red Sander in the saw mill premises is an offence u/ sec.32-A of Act, 1967 as amended by Act,15 of 2016. It is the responsibility of the petitioner being the saw mill owner to see that no illegal wood would be transported to his saw mill and without valid transit permit and hammer marks, no such illegal timber shall be allowed for cutting in the saw mill and he should not cut without informing to the concerned officials. If the petitioner is not guilty, he should not have buried the Red Sander pieces in the

sawn dust, which clearly speaks about his involvement in the cutting of the Red Sanders in his saw mill. The petitioner failed to discharge his burden as per Sec.32-C of the Act, 1967 as amended by Act 15 of 2016. As per saw mill Rules and Regulations whatever timber received into his saw mill should be entered in Form-III-A and whatever sawn timber disposed off should be entered in Form-IIIB which has not been maintained by the saw mill owner. As per the conditions of license, the Red Sanders is not included under either of the categories. Even in the saw mill accounts produced upto December, 2015, there is no mention of Red Sanders and no property mark on the identified material made and not produced any permit for transit. He made violation of Rules, 1969 and provisions of Act, 1967 by not proving his innocence either by revealing the identity of the person who brought the material to his saw mill or by giving prior intimation on the possession of Red Sanders to the nearest Forest Officer. As per the saw mill Rules, sawn timber, un-sawn timber, side reapers and sawn dust should be stacked separately and the same is to be accounted for, disposed off and for sawn waste and should maintain the records but the petitioner failed to do so. The petitioner to the notice, dt.01.06.2016 issued by the R.5-DFO FSD, Atmakur to show cause by way of explanation within 24hours, the petitioner neither submitted nor pleaded time but disappeared suddenly after 01.06.2016 even his son gave statement expressing his willingness to represent his father in saw mill stock enumeration and subsequent seizure operations but not gave any written representation. By the above acts of the petitioner, it was construed that he had no explanation to offer inspite of being provided an opportunity to do so and therefrom he was found guilty of illegal possession of Red Sanders as per Rules, 1969 and provisions of Act, 1967. and the DFO FSD, is competent to seize and confiscate forest produce together with whole or portion of the plant, machinery, implements and equipment that are used in the commission of the offence and seized accordingly by conducting panchanama on 03.06.2016 in the presence of Revenue, Police and Forest officials and kept in the safe custody of

the DFO, Podili. Since the petitioner was not available during seizure, his son was informed the same. The petitioner intentionally not requested for more time to submit his explanation in proving his innocence. Even the appellate authority satisfied that the primary authority followed due procedure. Hence, to dismiss the W.P.No.19550 of 2017.

7. Heard both sides in both the writ petitions and perused the entire material on record.

8. The provision invoked in W.P.No.19550 of 2017 from the date of visit on 01.06.2015 by the DFO FS, Atmakur Division-R.5 with staff of the saw mill having searched at the band saw and found small pieces of parakas with bark and two pieces without bark and when questioned stated by the petitioner of he does not know species of paratas, in saying the same is contrary to Section 32(a) of the Act 1967 amended by the Act 15 of 2016 came into force w.e.f. 25.05.2016 the amended Act is by incorporating Section 32-A to 32-E to the State Forest Act, 1967 and Section 32-A amended provision speaks keeping more than 20kgs. of red sander in the saw mill premises is an offence. Section 32-D speaks of private persons possessing red sanders above 20kgs. are required to inform their stocks to concerned DFO within 180 days from the date of commencement of the Act i.e. 25.05.2016 of such stock above 20kgs. Section 32-C speaks of the penal consequences of any illegal possession of red sander.

9. The counter affidavit of the DFO-R.4 speaks that originally licence of the petitioner granted w.e.f. 04.03.2015 for two years is valid for about two years till 31.12.2017. The impugned cancellation of the licence before its expiry was on 29.12.2017 for said violation by keeping unauthorizedly said red sander pieces of 35kgs. which are the subject matter of the two writ petitions challenging the impugned proceedings of R.3, dt.02.05.2017 against the order of DFO-R.5 in W.P.No.19550 of 2017 of seizure of the machinery, implements and equipment of the saw mill on 13.06.2016, the other is the cancellation of the licence of

29.12.2017 by R.1-DCF instead of renewal despite sought for renewal having paid the necessary fees by challan by 29.11.2017 and submitted Form-1 for renewal on 08.01.2018 to renew w.e.f. 01.01.2018. Needless to repeat once the very provision of the amended Act came into force on 25.05.2016 particularly from 32-D speaks of in possessing of above 20kgs. red sander after coming into force of the Act, within 180 days therefrom said possessor shall inform to the concerned DFO and in violation of the same is an offence and herein the so called seizure was on 01.06.2016 which is within 5 days after the amended Act came into force i.e. on 25.05.2016 and not even after expiry of 180 days to explain of any possession meantime and so far as W.P.No.19550 of 2017 therefrom concerned as referred supra, this Court earlier allowed the writ petition on 19.06.2017 setting aside the seizure order and permitting the petitioner to run the saw mill subject to undertake in writing of not to allow either directly or indirectly without permitting any such activities in future in the mill. Even the same was challenged in W.A.No.1021 of 2017 that was allowed on 24.07.2017 by setting aside the order restoring W.P.19550 of 2017 directing the respondents/ appellants to file counter with an opportunity in participation of the proceedings to give fresh disposal from what the counter referred supra so far as that provision particularly of Section 32-D out of the amended 32-A to E of the Act 15/ 17 w.e.f. 15.05.2016 concerned provides 180 days time to comply to explain any possession and the non-compliance of the same constitutes an offence, therefrom the order passed by this Court referred supra on 19.06.2017 holds good by reiterating the same the W.P.No.19550 of 2017 is allowed.

10. Now coming to W.P.No.3471 of 2018 impugning the cancellation of the licence proceedings dt.29.12.2017 of R.1 for alleged violation of Rule 9(1) of the A.P. Saw Mill Regulations Rules 1969, the same is without proper opportunity and without even considering the order in W.P.No.19550 of 2017 earlier passed on 19.06.2017, leave about the same was even set aside by writ appeal order(W.A.No.1021 of 2017) by relegating back for fresh disposal at least without

waiting for its disposal thereby the same is set aside now with a direction to R.1 to give fresh disposal after opportunity to the petitioner and the petitioner is directed to file his explanation or counter within 15 days from the date of the receipt of the order and therefrom after passing a detailed and reasoned order with reference to the counter and hearing on own merits including if necessary to refer the matter for renewal of the licence to the State Level Committee.

11. Accordingly and in the result, both the writ petitions are allowed. Consequently, miscellaneous petitions pending, if any, in both the writ petitions shall stand dismissed.

Dt.01.05.2018

vvr



Dr. B. SIVA SANKARA RAO, J