

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.12054 OF 2019

ORDER:

The writ petition is filed seeking to call for the records in proceedings Rc.No.79/2019/F5, dated 18.05.2019, of respondent No.5, affirmed by respondent No.3 in proceedings Rc.No.1944/2019/M9, dated 07.06.2019, and quash the same.

2. Brief facts of the case are that the petitioner is a sawmill (represented by its Proprietor) doing business in teak logs for the last 18 years. While so, on 20.10.2019, respondent No.5 inspected the sawmill and found that 7 round teak logs and therefore seized the sawmill on the ground of irregularities and violation, apart from registering a case in POR No.11/128 under Section 29 of the Telangana State Forest Act, 1967 (for short, the Act) and Rule 9(12), (2), (3) (a) & (b) of the Telangana Wood Based Industries (Regulations) Rules, 2016, (for short, the Rules). Thereafter, respondent No.5 issued a Show Cause notice to the petitioner on 25.01.2019 directing him to explain why his sawmill license should not be revoked apart from confiscating the forest produce and machinery implements. The petitioner submitted his explanation on 01.02.2019. Thereafter, yet another Show Cause notice dated 02.03.2019 came to be issued, this time alleging that the teak logs found in the sawmill are in excess of the ground stock; and the petitioner submitted his explanation on 16.03.2019 denying the allegations made in the notice. Thereafter, the petitioner filed W.P.No.7562 of 2019 challenging seizure of sawmill. This Court, by

order dated 08.04.2019 in I.A.No.1 of 2019, directed the respondents to release the seized machinery.

3. It is the averment of the petitioner that similarly situated sawmills filed separate writ petitions and obtained similar orders whereunder the respondent authorities were directed to release their sawmills. Pursuant to the said orders, respondent No.5 compounded the offences in respect of one Bilal Sawmill (which is a similarly situated sawmill as that of the petitioner herein) in proceedings in Rc.No.79/2019/F5, dated 03.05.2019, by collecting fine, confiscating the seized timber and released the sawmill along with machinery. However, in the case of the petitioner, the respondent No.5, by order dated 18.05.2019, revoked the business license, instead of compounding the offences as was done in the case of Bilal Sawmill. The petitioner went in appeal before respondent No.3 requesting similar relief of compounding the offense as was done in the case of Bilal Sawmill.

4. During the pendency of the appeal, the petitioner filed W.P.No.10626 of 2019 before this Court challenging the order dated 18.05.2019 of respondent No.5 and sought a direction to respondent No.3 to compound the offences as was done in the case of Bilal Sawmill. This Court, by order dated 29.05.2019, disposed of the writ petition by directing respondent No.3 to consider the case of the petitioner and dispose of the appeal, after issuing notice to the petitioner and also consider the request of the petitioner for compounding of the offences as was done in the case of Bilal

Sawmill. Pursuant to the said order, the petitioner made a representation to respondent No.3 on 31.05.2019 requesting him to compound the offences. In response to the representation, respondent No.3 issued a notice dated 31.05.2019 to the petitioner for oral enquiry on 07.06.2019, for which, the petitioner appeared with necessary documents and sought to consider its case on par with Bilal Sawmill, as its case is identical. However, respondent No.3 passed orders dated 07.06.2019 rejecting the appeal of the petitioner, thereby affirming the order of respondent No.5.

5. Sri G.K.Krishna Murthy, learned Senior Counsel appearing on behalf of the petitioner, submits that though this Court, by order dated 29.05.2019 in W.P.No.10626 of 2019, directed respondent No.3 to consider the case of the petitioner for compounding the offences as was done in the case of Bilal Sawmill, respondent No.3 did not consider the request for compounding, rather affirmed the revocation of license of the petitioner Sawmill. Learned Senior Counsel further submits that respondent No.3 did not assign any reasons for not considering the case of the petitioner on par with Bilal Sawmill and further did not bring out as to how the petitioner's case is different from that of Bilal Sawmill. Learned Senior Counsel would further submit that there is not much variation in the value of the stocks on ground of the petitioner Sawmill vis-à-vis the value of stocks on ground in the case of Bilal Sawmill and hence, respondent No.3 ought to have considered the request of the petitioner for compounding. Learned Senior Counsel

therefore assails the action of respondent Nos.3 and 5 as illegal, discriminatory, biased and against the spirit of the order dated 29.05.2019 in W.P.No.10626 of 2019. He, therefore, prays to set aside the impugned orders and remand the matter to respondent No.3 for compounding the offences of the petitioner as was done in the case of Bilal Sawmill. He relied on a decision of the Apex Court in **Rattan Lal Sharma V. Managing Committee**¹ and a decision of this Court in **Divisional Forest Officer V. Laxman Pratap Ray**².

6. Smt. Pramada Reddy, learned Government Pleader for Forests, submits that the stocks found on ground in Bilal Sawmill were less than the invoice, whereas the stocks found on ground of the petitioner were more than the invoice and hence, respondent No.3 rejected the request of the petitioner for compounding of offences. She further submits that under Rule 9 of the Rules, the competent authority might refuse the request for compounding the offences without assigning any reason, and therefore, the petitioner cannot find fault with respondent No.3 in rejecting his request for compounding the offences on par with Bilal Sawmill. She further submits that in the case of Bilal Sawmill, its Proprietor approached the competent authority seeking to compound the offences, but the petitioner instead of doing so, filed writ petitions, as such, the stage of compounding the offences is elapsed and hence, respondent No.3 rightly rejected the request of the petitioner to compound the offences. On the aforesaid submissions, she prays to dismiss the

¹ (1993) 4 SCC10

² 1991 (1) ALT 304

writ petition. She relied on decisions of the Apex Court in **Madanlal Sethi V. State of M.P³** and **U.P.State Sugar Corpn. Ltd. V. Sant Raj Singh⁴** and a decision of this Court in **Shaik Hussain V. Divisional Forest Officer, Proddatur⁵**.

7. It is to be noted that if the argument of the learned Government Pleader that under Rule 9 of the Rules, the competent authority might refuse compounding without assigning any reason is accepted, it would amount to giving an arbitrary power to that authority. The competent authority must act fairly and reasonably and it is obligatory on his part to record reasons in his file as to why he is not inclined to compound the offences. Giving him an arbitrary discretion in this behalf might indeed lead to an unfair procedure being adopted by denying compounding in simple cases where the offences are trivial and accepting to compound grave and serious offences, thus enabling shielding the arbitrariness from the reach of the Court. Therefore, the said contention of the learned Government Pleader is rejected.

8. Coming to the decisions relied on by the counsel for both sides, the facts in the said cases are different from the facts of the present case and they do not help the parties herein.

9. It is clear from the above facts that during the pendency of appeal before respondent No.3, the petitioner filed W.P.No.10626 of 2019 before this Court, whereupon this Court directed respondent

³ AIR 1997 SC 2264

⁴ (2006) 9 SCC 82

⁵ AIR 2002 AP 1

No.3 to consider the case of the petitioner on the same footing as Bilal Sawmill and permit compounding of offences. Pursuant to the said order, the petitioner made a representation dated 31.05.2019 requesting respondent No.3 to compound the offences. Thereafter, in pursuance of the notice of respondent No.3, the petitioner attended oral enquiry on 07.06.2019, with documents to show that its case is identical to that of Bilal Sawmill. However, respondent No.3 passed orders dated 07.06.2019 rejecting the appeal of the petitioner thereby affirming the revocation order of respondent No.5.

10. It is to be noted that in the order dated 07.06.2019, respondent No.3 did not refer to the order dated 29.05.2019 in WP.No.10626 of 2019 and did not state any reason as to why the petitioner is not entitled for compounding of offences as per with Bilal Sawmill. When this Court specifically directed respondent No.3 to consider the case of the petitioner for compounding of its offences, ignoring the same and passing a rejection order is nothing but violating the rights of the petitioner under Article 14 of the Constitution of India and such action is discriminatory and biased. Hence, the impugned orders of respondents Nos.3 and 5 are liable to be set aside and the petitioner is held entitled to compounding of offences on par with Bilal Sawmill.

11. Accordingly, the writ petition is allowed setting aside the orders of respondent Nos.5 and 3 in proceedings Rc.No.79/2019/F5, dated 18.05.2019, and proceedings

Rc.No.1944/2019/M9, dated 07.06.2019, respectively. The matter is remanded to respondent No.3 for compounding the offences of the petitioner as was done in the case of Bilal Sawmill. Miscellaneous petitions pending, if any, in this writ petition shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 18.12.2019
TJMR

