

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.19898 of 2019

ORDER:

The order dated 19.07.2019 passed by the Conservator of Forests, Adilabad Circle, Adilabad, in Appeal Petition Rc.No.4547/2009-M4, is challenged before this Court.

Heard Sri Kondadi Ajay Kumar, learned counsel for the petitioner, and the learned Government Pleader for Forests.

The facts are not in dispute. The trade license granted in favour of the petitioner to run a timber depot (M/s Star Timber Depot) was cancelled by the Divisional Forest Officer, Adilabad, vide proceedings dated 22.07.2019 on the ground of certain alleged irregularities. The petitioner filed an appeal before the Conservator of Forests, Adilabad in Appeal Petition Rc.No. 4547/2009-M4.

During pendency of the appeal, the petitioner filed a writ petition before this Court, viz. W.P.No.11129 of 2009 assailing the action of Divisional Forest Officer, and Forest Range Officer, in not renewing his trade license in spite of his paying the prescribed fee through challan on 12.03.2009; and locking his Shop No.5-6-84/9/E, Near Girls High School Road, Adilabad, without there being any panchanama or seizure, and keeping the key with the Forest Section Officer, even though the petitioner is not doing business in the said Shop.

An interim order came to be passed in W.P.No.11129 of 2009 to consider the application of the petitioner dated 12.03.2009 and pass appropriate orders in accordance with law. Consequently, seizure was lifted and the lock and keys were returned to the petitioner. Thereafter, the writ petition came to be dismissed as infructuous on 20.08.2014.

In the impugned order dated 19.07.2019 passed by the 4th respondent-Conservator of Forests, in the Appeal Petition, the 4th respondent has taken into consideration the orders passed by this Court in W.P.No.11129 of 2009, dated 20.08.2014, and rejected the appeal, observing that W.P.No.11129 of 2009 has become infructuous, and further observing that the Divisional Forest Officer, Adilabad, had submitted remarks that the case does not contain any merits and valid points.

Now, it is the contention of the learned counsel for the petitioner that the impugned order dated 19.07.2019 is a non-speaking order and, at any rate, the appellate authority did not consider the merits of the matter; and hence the impugned order deserves to be set aside. It is also his contention that the relief claimed in W.P.No.11129 of 2009 was entirely different and there was no challenge laid against the order dated 22.07.2009 passed by the Divisional Forest Officer in the said writ petition.

Learned Government Pleader opposes the writ petition and submits that the petitioner himself had withdrawn the W.P.No.11129 of 2009, and hence the impugned order dated 19.07.2019 does not call for interference.

Having considered the respective submissions, a close reading of the prayer in W.P.No.11129 of 2009 would disclose that the grievance of the petitioner in the said writ petition was two fold. Firstly, with respect to non-renewal of his trade license pursuant to his application dated 12.03.2009, though he complied with the statutory requirement of paying challan; and secondly, with respect to lifting of seizure. Pursuant to the interim orders passed by this Court, the keys were handed over to the petitioner. Further, by 2014, as the time limit for applying for renewal of trade license had elapsed, the petitioner reported that the writ petition had become infructuous, and thus the writ petition came to be dismissed as infructuous.

Therefore, the dismissal of W.P.No.11129 of 2009 on having become infructuous, cannot be a reason for the appellate authority to not consider

the subject Appeal Petition on its own merits. In the impugned order dated 19.07.2019, while the appellate authority states that the remarks of the Divisional Forest Officer were taken into consideration, it is not evident as to what the remarks of the DFO are, and as to whether those remarks were put to the petitioner and whether the petitioner was given an opportunity. Remedy of appeal being a valuable remedy available to a person aggrieved of an order, a duty is cast upon the appellate authority to adjudicate such appeal in accordance with the procedure prescribed under law and pass a speaking order in the appeal. Inasmuch as the impugned order dated 19.07.2019 passed in the Appeal Petition by the Conservator of Forests, Adilabad, being a non-speaking order, the same is liable to be set aside.

In that view of the matter, the impugned order dated 19.07.2019 passed in the Appeal Petition Rc.No.4547/2009-M4, is set aside and the matter is remanded to the 4th respondent for *de novo* consideration, with a further direction to the 4th respondent to pass a speaking order in the said Appeal Petition, within a period of six (6) weeks from the date of receipt of a copy of this order, by affording an opportunity of hearing to the petitioner before passing the order, in accordance with law.

With the above direction, the writ petition is allowed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

16th September, 2019

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