

HIGH COURT FOR THE STATE OF TELANGANA
THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH
CHAUHAN
AND
THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION No. 24532 OF 2019

Date: 28.11.2019

BETWEEN

M/s. Zitan Trading Corporation.

... PETITIONER

AND

Union of India,
Ministry of Environment, Forests & Climate Change
(SU Division), Jal Wing, 6th Floor,
Indira Paryavaran Bhavan, Jorbagh Road, Aliganj,
New Delhi and others.

...RESPONDENTS

Counsel for the Petitioner : Mr. V. Srinivas

Counsel for the respondents : Smt. Pramada – R3
Smt. Lalitha Gayathri Devi – R4

The Court made the following:

ORDER: (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

The petitioner has challenged the legality of the communication dated 26.10.2019, received from the Principal Chief Conservator of Forests, State of Telangana, the respondent No.3, whereby the respondent No.3 has directed the petitioner to (a) furnish the information in the prescribed proforma (Proforma C) along with details of RS (RS: for short) wood lots converted, furniture sizes, planks and other value added products obtained from each RS wood lot and photographs of the materials so obtained (b) arrange the RS wood logs in Lot Wise and T.P wise, enabling for inspection by the officials of Andhra Pradesh in ease manner, and (c) furnish copies of the transit permits through which he has transported the above RS logs from various depots of AP to his RS storage depot located at Yadadri district, date on which said RS logs were received in the said depot, after its receipt in the depot, whether he has entered the same in the register and got verified by the concerned DFO, Yadadri-Bhuvanagiri.

2. Briefly, the facts of the case are that the petitioner is engaged in the business of purchasing RS in the auctions held by the Forest Department, and exporting the same outside India. According to the petitioner, RS grow only in South India, and it is an endangered tree species. Mostly, the RS grows in the States of Andhra Pradesh, Karnataka and Tamil Nadu. Moreover, the export of RS is governed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("the CITES" for short). The CITES is an international body, which controls the trade in RS throughout the world. It allots quotas to different Governments for export of RS from time to time. In India, the competent authority is the Director General of Foreign Trade, Ministry of Commerce and Industry, the respondent No.2.

3. Furthermore, according to the petitioner, on 17.03.2011, he was allotted 1067.751 MTs of C-Grade and Non-Grade RS by the Forest Department of the then Government of Andhra Pradesh. The petitioner claims to be a licensee for storing RS issued under the Telangana Red Sanders Wood Possession Rules, 1989 ("the Rules" for short). He has a licence which was issued on 04.02.2019. The said licence is valid till 31.12.2019. According to the petitioner, the said stock, which was granted to him in 2011, is being stored in plot Nos.6 and 7 of Toopranpet Village, Yadadri-Bhuvanagiri District. This storing of the said allotment has been informed by the petitioner to the Telangana Forest Department.

4. Moreover, according to the petitioner, on 25.10.2018, the Ministry of Commerce and Industry, Government of India, had issued the procedure for obtaining export authorization for export of restricted items under Schedule 2 ITC(HS) Classification of Export and Import Items, 2018. The said schedule includes the export of RS. According to the said procedure, online application process was permitted by the Department of General Foreign Trade ("DGFT" for short). However, the online application has to be accompanied with the Certificate of Origin.

5. On 11.10.2018, the Ministry of Environment, Forests and Climate Change, Government of India, had clarified to the Principal Chief Conservators of Forests of all the States with regard to the issuance of Certificate of Origin in respect of RS under the custody of private individual. According to the said clarification *"if RS is exported from a State other than Andhra Pradesh, the Certificate of Origin of the material, whether it is of "confiscated origin" or "artificially propagated", must be issued by the Principal Chief Conservator of Forests (PCCF) of the State from where the export is to take place*

based on the documents of procurement and custody of stocks available with the applicant”.

6. Further, according to the petitioner, on 29.07.2019, the respondent No.2, Director General of Foreign Trade, has issued a notification, wherein time for export has been allotted to those dealing with in RS. According to the said notification, the export is permitted only till 31.12.2019. Therefore, the petitioner has to export his stock of RS on or before 31.12.2019. Since the export had to be made outside the State of Andhra Pradesh, since the petitioner's stock was lying in the State of Telangana, the petitioner filed several representations before the respondent No.3 on 22.08.2019, 28.08.2019, 05.09.2019, 16.09.2019 and 23.09.2019, requesting the respondent No.3 to issue the Certificate of Origin with respect to the stock maintained by the petitioner. However, despite the repeated representations, the respondent No.3 has maintained a studied silence.

7. Due to the omission on the part of the respondent No.3, the petitioner had earlier filed W.P.No.21397 of 2019 before this Court. Since the respondent No.3 had informed this Court that the process has already been initiated with the respondent No.4, the Principal Chief Conservator of Forests, State of Andhra Pradesh, by order dated 30.09.2019, this Court has merely directed the respondent No.3 to complete the process and communicate its decision to the petitioner within a period of four weeks. Once the order dated 30.09.2019 was brought to the notice of the respondent No.3, the respondent No.3 has issued the impugned communication to the petitioner. Hence, this writ petition before this Court.

8. Mr. V. Srinivas, learned counsel for the petitioner, has raised the following contentions before this Court:-

Firstly, according to the procedure prescribed for applying for permission to export RS, the petitioner is required to submit a Certificate of Origin. Despite his repeated requests for the same, the Certificate of Origin has not been issued so far to him. Meanwhile, the petitioner is faced with a deadline i.e. 31.12.2019 for exporting the stock lying with him.

Secondly, by letter dated 24.10.2019, the Principal Chief Conservator of Forests, Andhra Pradesh had requested for consent from the Principal Conservator of Forests, Telangana to permit his team to come and inspect the stock lying with the petitioner. However, so far no permission has been given. According to the learned counsel for the petitioner, until and unless the said stock is inspected, the Certificate of Origin may not even be issued by the Telangana Forest Department.

9. On the other hand, Smt. Pramada, learned Government Pleader appearing for the third respondent, submits that according to the contract entered into by the petitioner and the State of Andhra Pradesh, the petitioner is not permitted to export the RS as logs, but is permitted only to export the RS as Value Added Products ('VAP' for short).

Secondly, certain information has to be furnished by the petitioner which has been enumerated in the impugned communication dated 26.10.2019.

Thirdly, it is unclear as to whether the Certificate of Origin is to be granted by the State of Telangana or the State of Andhra Pradesh.

10. In rejoinder, Mr. V. Srinivas, learned counsel for the petitioner, submits that unless and until the inspection is carried out, the Certificate of Origin cannot be issued. Moreover, according to the clarification already given by the Ministry of Environment, the Certificate of Origin has to be given by the State Forest Department under whose jurisdiction the stock is presently kept. Lastly, it is not for the Forest Department of the State of Telangana or the State of Andhra Pradesh to decide whether the RS can be exported in the form of logs or as VAP. The said decision, necessarily, has to be taken by the Central Government. However, due to the omission on the part of the respondent Nos.3 and 4, the petitioner is not even in a position to submit his application to the Government of India for seeking permission to export the RS.

11. Heard the learned counsel for the parties and perused the impugned order and the record.

12. A bare perusal of the procedure published for obtaining export authorization, dated 25.10.2018, clearly reveals that an applicant has to file the Certificate of Origin along with his application. Until and unless the said certificate is filed along with the application, the permission cannot be granted.

13. Admittedly, the petitioner has repeatedly represented to the respondent No.3 to grant the Certificate of Origin. But despite his representations, no action has been taken by the respondent No.3, so far.

14. By letter dated 24.10.2019, the respondent No.4 had written to the respondent No.3 for seeking consent for sending a team from the Forest Department of Andhra Pradesh to visit and inspect the stock kept by the petitioner. Moreover, a request was made to keep the

concerned Field Officers ready for extending necessary cooperation to the visiting team. However, despite the request made by the Principal Chief Conservator of Forest, Andhra Pradesh no reply has been given to the said letter. Therefore, until and unless the Officers of the Andhra Pradesh were to come and verify the legality of the stock kept by the petitioner, the Certificate of Origin cannot be issued.

15. Therefore, in order to resolve the difficulty being faced by the petitioner, this Court directs the respondent No.4 to send his team of officers for inspection to the State of Telangana on 02.12.2019. The respondent No.3 is directed to ensure that the concerned Field Officers are ready to receive the team from the State of Andhra Pradesh. The petitioner is directed to ensure that his stock is kept in such a way that it would be easy for the inspecting team to identify and verify the stock. After completing the inspection, the respondent Nos.3 and 4 are directed to give an opportunity of hearing to the petitioner before deciding whether his Certificate of Origin shall be issued to him or not. In case, they discover that he is eligible for the issuance of the Certificate of Origin, the same shall be issued to him immediately, after giving him an opportunity of hearing. The said exercise shall be carried out by the respondents positively by 06.12.2019.

With these directions, the writ petitions stands disposed of. As a sequel, miscellaneous petitions, pending if any, shall stand dismissed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

November 28, 2019
Note: Furnish CC today.
(B/o) DSK