

(2012) 06 AP CK 0069
In the Andhra Pradesh High Court
Case No : Writ Petition No. 17056 Of 2003

CH. Muthaiah

APPELLANT

Vs

The Divisional Forest Officer, Khammam Division, Khammam
and Another

RESPONDENT

Date of Decision : 29-06-2012

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 59(2)

Citation : (2012) 6 ALT 230 : (2013) 3 EFLT 21

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : P. Veera Reddy, for the Appellant;

Final Decision : Allowed

Judgement

Noushad Ali

1. This writ petition is filed assailing the orders in Rc. No. 2124/S2/94, dated 25.7.2001 passed by the 1st respondent-Divisional Forest Officer, Khammam Division, cancelling the Saw Mill licence of the petitioner, confirmed by the 2nd respondent-Conservator of Forest, Khammam Circle, Khammam vide proceedings Rc. No. 4503/02/M3, dated 18.3.2003, as arbitrary and illegal. The petitioner is the proprietor of Sri Venkateswara Saw Mill, Pallegudem Village, Khammam Rural Mandal and District. He was granted licence bearing No. 25/99 under the Andhra Pradesh Saw Mill (Regulation) Rules, 1969 (for brevity "the Rules"). The said licence was being renewed from time to time and was valid upto 31.12.2001 at the relevant point of time. During the surprise inspection of the mill on 3.5.2001, the Divisional Forest Officer (Vigilance), Hyderabad found timber illegally stored in the mill and thereby committed forest offence, violating Rules 3 and 4 of the Andhra Pradesh Forest produce Transit Rules, 1970. On the aforesaid allegation, the petitioner was given a show cause notice proposing to cancel the licence. The petitioner submitted his explanation on 18.7.2001 denying the said allegation. Not being satisfied with the explanation, the 1st respondent cancelled the licence

vide proceedings Rc. No. 2124/S2/94, dated 25.7.2001. The appeal preferred against the said order was dismissed by the 2nd respondent vide proceedings Rc. No. 4503/02/M3, dated 18.3.2003. It is against these orders, the petitioner has filed the present writ petition.

2. Heard Sri P. Veera Reddy, learned counsel appearing for the petitioner and the learned Government Pleader for Forests appearing for the respondents.

3. Learned counsel for the petitioner would urge that the petitioner is only the owner of the saw mill. The timber was brought by one Satyanarayana chary, a local carpenter for conversion and that the stock did not belong to the petitioner. The learned counsel would further urge that, in any event, the alleged offence was already compounded by collecting an amount of Rs. 13,520/- as compounding fee and hence licence cannot be cancelled on the basis of the same allegation.

4. On the other hand, the learned Government Pleader for Forests would submit that the petitioner was found to be guilty in holding the stock in the mill contravening the Rules. The petitioner admitted the violation, as is evident from payment of compounding fee. It is urged that mere acceptance of compounding fee does not absolve the petitioner from action against the licence under the provisions of the Rules.

5. Admittedly, the petitioner has paid compounding fee, thus admitting the allegation levelled against him. It is, therefore, not open to him to contend that he has not committed the offence.

6. The question that arises for consideration is, whether it is permissible to cancel the licence when once the offence has been compounded.

7. Section 59 (2) of the Andhra Pradesh Forest Act, 1967 requires to be noticed, which reads as under:

59. Power to compound offences:--

(2) On receipt of the sum of money referred to in sub-section (1) by such offer,--

(i) the accused person, if in custody, shall be discharged.

(ii) the property seized shall, if it is not to be so retained, be released, and

(iii) no further proceedings shall be taken against such person or property.

8. From a reading of the aforesaid provision, it emerges that once the offence is compounded and the compounding amount is paid, no further proceedings can be taken against the person or his property. The offence gets obliterated and no further action can emanate thereafter on the same allegation.

9. Identical issue fell for consideration before a learned Division Bench of this Court in DIVISIONAL FOREST OFFICER vs. LACHI REDDY 1978 (2) ALT 96.

10. In that case, the petitioner was a Forest Contractor. He was accused of illicitly felling the trees. The offence was compounded levying fine for the said offence. His contract was also cancelled notwithstanding the payment of compounding fee. Taking defence u/s 59 of the A.P. Forest Act, it was urged that the contract was not liable for cancellation after compounding the offence. In that context, it was held as follows:

Further, we agree with the construction laid by Jeevan Reddy, J, on Section 59(2) (iii). It is a well established proposition that confiscatory provision like Section 59 should be given beneficial construction where that is permissible. As the learned Judge pointed out, the object behind Section 59(2)(iii) appears to be that the order of composition effaces the offence and the same set of facts shall not give rise to any other or further action either against the person or property of the party compounding the offence. If the offence is a serious or a grave one, the authorities need not compound it and they can take action under Rule 30 of the Forest Rules and further prosecute the offending person in a court of law; but once compounding has been done and compensation has been accepted u/s 59, it would not be open to the department to proceed against him under Rule 30. That intention the legislature is manifest from the special provision in clause (iii) of Section 59(2), that no further proceeding shall be taken against the accused person or his property. Since this is a peculiar provision contained in the Andhra Pradesh Forest Act, providing for receiving the compensation for forest offence, it must be given its due weight. We are therefore of the opinion that cancellation of the contract is contrary to the provisions contained in Section 59(2) since the offence had already been compounded by accepting the appropriate compensation. For these two reasons, we uphold the decision of Jeevan Reddy, J. and dismiss the writ appeal.

11. From the aforesaid judgment, it is evident that no action would lie for cancellation of licence after compounding the offence. For the aforesaid reasons, this writ petition is allowed setting aside the impugned order dated 25.7.2001 passed by the 1st respondent, as confirmed by the 2nd respondent vide order dated 18.3.2003. No order as to costs.