
(2023) 03 TEL CK 0094
In the Telangana High Court
Case No : Writ Petition No. 4506 Of 2021

Gurram Harika

APPELLANT

Vs

State Of Telangana And 4 Others

RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Andhra Pradesh Forest Produce (Storage and Depot) Rules, 1989 — Rule 4(1)
T.S. Charcoal (Production & Transport) Rules, 1992, — Section 3(1)(2), 7(1)(2)
Telangana Forest Produce (Storage and Depot) Rules, 1989 — Rule 13, 13(2)
Andhra Pradesh Forest Act, 1967 — Section 59(2)(ii)

Citation : (2023) 03 TEL CK 0094

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : G. Raman Goud

Final Decision : Allowed

Judgement

1. In this Writ Petition, the petitioner is seeking a Writ of Mandamus declaring the order passed by the 3rd respondent vide proceedings No.2056/14/S3A dt.11.11.2020 as illegal, arbitrary, highhanded and without jurisdiction and contrary to the orders passed in W.P.No.13912 of 2020 dt.06.11.2020 and also in violation of principles of natural justice and contrary to the provisions of T.S. Forest Act and its Rules and consequently to set aside the same and to pass such other order or orders as this Court may deem fit and proper in the circumstances of the case.

2. Brief facts leading to the filing of the present Writ Petition are that the petitioner was granted licence No.21/S3A/2019-20 for setting up a forest produce depot at Survey No.204 of Nagireddypuram Village, Gangadhar Mandal, Rajanna Sircilla and Karimnagar District and the said licence was renewed by the 3rd respondent through proceedings Rc.No.2056/2014/S3A dt.23.04.2019 under Rule 4(1) of A.P. Forest Produce (Storage and Depot) Rules, 1989 and the petitioner was also permitted conversion of prosopis fuel into charcoal for the

period 2019-2020, i.e., from 23.04.2019 to 31.03.2020.

3. It is submitted that while things stood thus, on 24.07.2019, a flying squad headed by the 4th respondent had inspected the depot and found 7 kilns burning and also 21 kilns formed with miscellaneous fire wood, i.e., other than prosopis, ready to be burnt for conversion into charcoal. The Flying Squad Party, Karimnagar having found deviations in the kilns as against the sanctioned number of kilns, conducted a spot panchanama and seized the 21 kilns of charcoal formed with wood other than prosopis and registered an offence case vide proceedings POR No.003236/65 dt.24.07.2009 for a quantity of 2103.6313 cubic metres (cmt) (1314.77 tonnes) valued at Rs.39,61,402/- alleging that the petitioner has violated Rules 3(1)(2) and 7(1)(2) of the Charcoal Depot Rules, 1992 and the Circular No.9/96 dt.09.09.1996 of the Principal Chief Conservator of Forests and A.P. Water Land and Trees Act of 2002 and 2004 (WALTA in short).

4. A report to this effect was submitted by the Forest Divisional Officer, Flying Squad Division, Karimnagar on 30.07.2019 to the office of the Conservator of Forests, Karimnagar Circle, Karimnagar. It was observed that against 45 kilns sanctioned for conversion into charcoal, there were only 28 kilns which were found on the spot.

5. The Chief Conservator of Forests, Karimnagar vide Rc.No.822/2019/M4 (iii), dt.06.08.2019 instructed the authorised officer and the licensing authority, i.e., the District Forest Officer, Rajanna Sircilla and Karimnagar to take action in respect of the above. Accordingly, the authorised officer issued a show-cause notice to the petitioner herein, through Ref.No.2056/2014/S3A(ii), dt.18.08.2019 seeking explanation of the petitioner for violation of T.S. Charcoal (Production & Transport) Rules, 1992, T.S. Forest Produce (Storage & Depot) Rules, 1989, T.S. Forest Act, 1967, APWALTA 2002 and 2004 and the instructions issued by the Principal Chief Conservator of Forests, A.P., Hyderabad in Circular No.9/1996 dt.09.09.1996. The petitioner submitted her explanation on 28.08.2019 denying the lapses mentioned in the show-cause notice and filed all the documentary evidence in support of the material purchased, transported and formed into 45 kilns. She submitted that she has not committed any of the alleged irregularities and has not violated any rules and regulations or instructions as issued in the Circular. It was submitted that the concerned Deputy Range Officer, Gangadhara Section and Forest Range Officer, Karimnagar have inspected the charcoal depot site and after formation of the fuel wood into 45 kilns, verified the available stock and reported to the District Forest Officer, Rajanna Sircilla and Karimnagar District. Thereafter, the petitioner was accorded permission for burning the fuel wood into charcoal. She also stated that there was no truth in the allegations made in respect of 12 lorries of charcoal stock which was available in the depot premises as pertaining to previous year and submitted that the material lying in the site is being damaged due to heavy rains and is deteriorating from time to time and requested to drop further action and release the seized material in her favour.

6. The petitioner submitted that the authorised officer and the licensing authority, thereafter, conducted an enquiry on 26.10.2019 and recorded the depositions of the petitioner and also the Forest Range Officer, Karimnagar. Thereafter, pursuant to the instructions issued by the Chief Conservator of Forests, Warangal Circle, Warangal and FAC Karimnagar Circle on 15.11.2019 through Rc.No.2056/2014/S3A, dt.18.11.2019, the District Forest Officer, Rajanna Sircilla and Karimnagar District has constituted a Three Man Committee with (1) Sri M. Sadanandam, Forest Range Officer, Jagtial of Jagtial District, (2) Sri Ch. Nagaiah, Forest Range Officer, Peddapally of Peddapally District; and (3) Sri G. Rajeshwar, Forest Range Officer, FSP, Karimnagar with instructions to "re-assess the value of POR and quantity and to submit their assessment report". Accordingly, Sri Rajeshwar, Forest Range Officer, FSP, Karimnagar, being a Committee member, has submitted his report dt.10.01.2020 stating that without the permission of the licensing authority, the charcoal depot owner has brought exempted and non-exempted material to licenced charcoal depot site to convert them into charcoal. The other Two Committee Members, i.e., Sri M. Sadanandam, Forest Range Officer, Jagtial and Sri Ch.Nagaiah, Forest Range Officer, Peddapally of Peddapally District have submitted their reports dt.11.02.2020 to the licensing authority stating that only 467.4736 cmt., is considered as offence material i.e., without obtaining proper permission from the competent licencing authority. The value of the same was assessed at Rs.4,41,178/- by adopting the offence rate at Rs.1510/- per M.tonne.

7. Thereafter, the licensing authority, after considering both the reports, vide Ref.No.2056/2014/S3A, dt.24.02.2020, issued instructions to the Forest Range Officer, Karimnagar to assess the amount required to transport the material available at the said depot site to GTD, Kalleda including loading and unloading charges (Fuel wood and charcoal) and also fuel wood stacking. Accordingly, a report dt.26.02.2020 was submitted along with estimate with probable amount required for transportation of the material to GTD, Kalleda and also called for the sale results of fuel wood sold in GTD/temporary GTDs from the District Forest Officer, Siddipet, Forest Divisional Officer, Mahadevpur and District Forest Officer, Jagtial through Ref.No.2056/2014/S3(i), dt.24.02.2020. On submission of their reports dt.27.02.2020, 26.02.2020 and 25.02.2020 respectively and after considering the report of the Divisional Manager, Telangana State Forest Development Corporation, Subedari, Hanamkonda and on furnishing the formula to convert the fuel wood from Cubic Meter to Metric Tonne, the District Forest Officer, Rajanna Sircilla and Karimnagar being the authorised officer/licensing authority went through the connected records of the case, verified all the documentary evidence and also the report of the Three Man Committee and decided to compound the above offence case to meet the ends of justice. Accordingly, the authorised officer/licensing authority passed an order dated 27.03.2020 compounding the offence case for Rs.10,00,000/- besides levying penalty of Rs.10,000/- for violation of Transit Rules, 1972 and Charcoal Depot Rules, 1992 and further ordered to release all the seized material in favour of the

petitioner.

8. It is submitted that only after payment of Rs.10,00,000/-including Rs.10,000/- as penalty on 03.04.2020, the seized material has been released to the petitioner.

9. The petitioner made two representations dt.08.05.2020 and 7. 08.2020 requesting for renewal of her licence as the seized material was released by the 3rd respondent, i.e., fuel wood that is to be converted into charcoal and the said material was lying since 03.04.2020. As the 3 d respondent has not taken any steps for renewal of the petitioner's licence, the petitioner filed W.P.No.13494 of 2020 and on 21.08.2020, and this Court had adjourned the matter for two weeks for getting instructions of the respondents. It is submitted that on the very next day i.e., 22.08.2020, the petitioner was served with the impugned notice dt.18.08.2020 by the 5th respondent directing the petitioner to attend the enquiry which was to be held on 25.08.2020. The enquiry notice stated that the proceedings dt.27.03.2020 have been set aside by the 2nd respondent vide proceedings dt.22.07.2020 and that the 3rd respondent was directed to re-examine the case. It is submitted that in the meantime, on 06.11.2020, after considering the counter affidavit filed by the 3rd respondent, this Court was pleased to allow the W.P.No.13912 of 2020 setting aside the proceedings of the 2nd respondent dt.22.07.2020 including the enquiry notice dt.18.08.2020 giving liberty to the respondents therein to initiate appropriate steps in accordance with law for further enquiry. It is submitted that thereafter, without issuing any notice to the petitioner, the respondents have passed the impugned order dt.11.11.2020 compounding the offence at Rs.1,01,62,300/-. Challenging the same, the present writ petition has been filed.

10. Learned counsel for the petitioner, Sri G. Raman Goud, submitted that after the compounding order dt.27.03.2020 was passed and was accepted by the petitioner, without any fresh material on record and without any application made by the petitioner, respondent No.3 has suo motu initiated the revision proceedings and has ordered compounding of Rs.50,81,150/- and one time value of Rs.50,81,150/-which is illegal and arbitrary. He submitted that respondent No.3 has not issued any notice to the petitioner calling for explanation before cancelling the compounding order dt.27.03.2020 on or before passing the impugned order dt.11.11.2020 and thus, there is violation of principles of natural justice. He submitted that setting aside of the orders dt.27.03.2020 and passing of fresh order dt.11.11.2020 have to be in accordance with the provisions of the Forest Act and since there is no power of review granted to respondent No.3, the order is unsustainable. He has filed copies of the Telangana Charcoal (Production and Transport) Rules, 1992 and the Telangana Forest Produce (Storage and Depot) Rules, 1989 to demonstrate that there is no power of suo motu review under the Telangana Charcoal (Production and Transport) Rules, 1992 to review an order. It is submitted that under Rule 13 of the Telangana Forest Produce (Storage and Depot) Rules, 1989, an aggrieved person can file a revision application under Rule 13(2) of the Rules of 1989 against the order of

Conservator of Forests to the Principal Chief Conservator of Forests or any Chief Conservator of Forests as may be authorized by the Principal Chief Conservator of Forests, who may pass such order as he deems fit, and such order shall be final. Therefore, according to him, no suo motu revision power can be exercised by the 3rd respondent and hence, the order dt.11.11.2020 is liable to be set aside.

11. The learned Government Pleader for Forests, on the other hand, submitted that after the order has been passed by the 5th respondent compounding the offence at Rs.10,00,000/- and also imposed a penalty of Rs.10,000/-, certain new facts were brought to the notice of the 3rd respondent and therefore, the 3rd respondent has reconsidered the issue and has held that there are many lapses which were allegedly fraudulently done by the Charcoal Depot owner resulting in loss to the Government and therefore, disciplinary action was also initiated on the responsible staff including senior officers. He therefore justified the action of the respondent officers in passing the impugned order.

12. Having regard to the rival contentions and the material on record, this Court finds that the compounding order was initially passed on 27.03.2020 by the District Forest Officer, Rajanna, Sircilla and Karimnagar District and immediately thereafter on 03.04.2020, the petitioner has made payment of the compounding fee as well as penalty, i.e., the sum of Rs.10,10,000/-. Vide proceedings dt.08.04.2020, the said payment has been acknowledged and the same was brought to the notice of the District Forest Officer, Rajanna, Sircilla and Karimnagar District. It is thereafter that the said District Forest Officer, has suo motu initiated the impugned proceedings. From the recitals in the said proceedings, it is passed after issuing notice to the petitioner. It is noticed that the 3rd respondent has considered the report of the Forest Range Officer, Karimnagar, Mr. D. Rajeswar to be acceptable and the report of the other two officers as incorrect. Therefore, disciplinary action against the said officers was proposed to be taken. The provision under which he has undertaken the review of the earlier order is not mentioned. Therefore, presumably it is done under Rule 13 of the Telangana Forest Produce (Storage and Depot) Rules, 1989. For the sake of ready reference, the said provision is reproduced hereunder.

"13. Appeal and Revision:- (1) Any person aggrieved by the orders of Divisional Forest Officer may within thirty days of the service on him of the order, prefer an appeal to the Conservator of Forests who shall hold or cause to be held such enquiry as he deems fit and after giving an opportunity of making a representation to the appellant pass an order, as he deems fit.

(2) Any person aggrieved by an order of Conservator of Forests passed under sub-rule (1) may within thirty days from the date of receipt of the order prefer revision petition to the Principal Chief Conservator of Forests or any Chief Conservator of Forests as may be authorized by the Principal Chief Conservator of Forests, who may pass such order as he deems fit, and such order shall be final."

13. From a literal reading of above provision, it is noticed that the Sub-Rule (1) provides an appeal from the order of the Divisional Forest Officer to the Conservator Forests and under Sub-Rule (2) revision is provided from the order of the Conservator of Forests to the Principal Chief Conservator of Forests or any Chief Conservator of Forests as may be authorized by the Principal Chief Conservator of Forests. Both the provisions start with the phrase "any person aggrieved by the orders of". Therefore, it is clear that only a person who is aggrieved by the order of the specified officer can file an appeal or revision before the prescribed authority. In this case, the petitioner has not filed any appeal or revision before the concerned authority and under Sub-Rule (2) of Rule 13, there is no power of suo motu revision to the Principal Chief Conservator of Forests or any Chief Conservator of Forests. In this case, by order dated 22.07.2020, the Chief Conservator of Forests has apparently exercised suo motu power of revision and has directed respondent No.3 herein to re-examine the case from the initial stage duly observing the provisions of Telangana State Forest Offences (Compounding and Prosecution) Rules of 1969 and other relevant rules and take necessary action for finalization of the offence case registered vide POR No.003236/65 dt.24.07.2019 against the writ petitioner.

14. Pursuant to the same, the notice dated 18.08.2020 was issued, which was challenged before this Court in W.P.No.13912 of 2020. This Court vide orders dated 06.11.2020 has held that the order dated 22. 07.2020 setting aside the earlier order dated 27.03.2020 is in violation of principles of natural justice. The Court has therefore set aside the same and also the consequential enquiry notice dated 18.08.2020. Therefore, the earlier order dated 27.03.2020 occupied the field as on the date of the order and the liberty given by the Court to initiate appropriate steps in accordance with law for further enquiry is that the respondents ought to have issued a fresh notice to the petitioner before setting aside the proceedings dated 27.03.2020. The respondents have not done so. There is no reference to the order of the Court in the impugned order dated 11.11.2020 which is passed subsequent to the order of the Court on 06.11.2020. Perhaps, the respondent authorities did not receive copy of the order in W.P.No.13912 of 2020 and hence there is no reference to the said order in the impugned order dated 11.11.2020.

15. This Court in W.P.No.13912 of 2020 has considered the contention of the petitioner that when the offence is compounded vide proceedings dated 27.03.2020, the respondents have no power to reopen the matter and to issue the impugned proceedings without issuing any prior notice to the petitioner and in support of the said contention, the petitioner had relied upon the judgment of Hon'ble High Court of Andhra Pradesh in the case of Divisional Forest Officer, Karimnagar East Vs. Lachi Reddy 1978 LawSuit(AP) 219.

16. Learned counsel for the petitioner has relied upon the very same orders before this Court as well.

17. Having gone through the same, this Court finds that in the case of Lachi

Reddy (cited supra), the Single Judge had held that once the offence was compounded under the A.P. Forest Act, 1967 no further proceedings can be taken either against the person or against the property with reference to or on the basis of the very same facts, in view of Section 59(2)(iii) of the A.P. Forest Act, 1967.

18. The Division Bench of this Court in Writ Appeal No.38 of 1978 has upheld the said position. In this case also, the District Forest Officer has already compounded the offence and had also imposed penalty and had ordered release of the goods and the petitioner having paid the compounding fee as well as penalty, has received the custody of the goods. Therefore, in view of the judgment of this Court, no further action can be taken against him.

19. Further, in this case of National Energy Trading and Service Limited and Others Vs. Central Power Distribution Company of A.P. Limited and Others 2013 LawSuit (AP) 184, the High Court of A.P. has considered the question i.e., whether the APCPDCL was legally justified in unilaterally modifying the contracts entered into by it with others to the detriment of other contracting parties and proposing recovery of amounts pursuant thereto. In Para 39 of its order, the High Court of A.P. has held as under:

"39. The State and its instrumentalities are avowed role-models for the citizens and are expected to conform to certain standards in their actions and conduct. One such expected standard is that they would honour their contractual commitments and abide by the settled terms of their contracts. Variation of a concluded contract would be legally permissible only with the consent of both contracting parties and would ordinarily be before the performance of contractual obligations by either of them. Unilateral modification of contractual terms subsequently by one contracting party to the detriment of the other would be against the principle of consensus ad idem - the very foundation of a contract. The action of the APCPDCL in unilaterally reducing the tariff at which it agreed to purchase power on short-term basis from the trading licensees in these two cases therefore militates against the standards of fair-play in action expected of a State instrumentality and the basic tenets of contract law. Further, such variation, even according to the APCPDCL, was attributable to grounds wholly extraneous to the contracting parties as the reduction of the price was allegedly necessitated by issues relating to the two generating companies which were not even parties to the subject contracts."

20. Learned counsel for the petitioner has submitted that the authorities ought to have followed the provisions of law and ought not to have revised the compounding order without issuing notice to the petitioner and without having power to do so. Further, as seen from the order of the High Court, the order dated 22.07.2020 has been set aside by the High Court. Consequently, the order dated 27.03.2020 was revived. Until and unless the respondents issue notice to the petitioner and re-consider the issue and set aside the order dated 27.03.2020, the order dated 11.11.2020 cannot be passed.

21. In view of the same, this Court is of the opinion that the order dated 11.11.2020 has got no legs to stand as the very basis for passing such an order, i.e., the order dated 22.07.2020 has been set aside by the orders of this Court dated 06.11.2020 in W.P.No.13912 of 2020.

Consequently, the proceedings of respondent No.3 dated 11.11.2020 are set aside.

22. In view of the same, the Writ Petition is allowed. No order as to costs.

23. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.